

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000894-ME

J.M.T., A JUVENILE

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE WALTER F. MAGUIRE, JUDGE
ACTION NO. 09-J-00028

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, KELLER AND STUMBO, JUDGES.

KELLER, JUDGE: J.M.T., a juvenile, appeals from a juvenile status offender order of the Rockcastle Family Court adjudging him a habitual truant. J.M.T. also appeals from the family court's disposition order and detention order holding him in contempt for violation of a previous court order. For the following reasons, we vacate and remand.

FACTS

On April 16, 2010, a status offender complaint was filed against J.M.T. alleging that he was a habitual truant. On May 25, 2010, J.M.T. appeared at his arraignment and the family court appointed counsel. At the arraignment, the family court was informed that J.M.T. had 39.9 unexcused absences for the 2009-2010 school year. The family court ordered J.M.T. to attend summer school and set a status review for July 27, 2010.

At the July status review, the family court was informed that J.M.T. completed summer school as ordered, and the court set another status review for September 14, 2010. We note that J.M.T.'s attorney was not present at the July status review. At the September status review, the family court was informed that J.M.T. had one unexcused absence and two unexcused tardies for the 2010-2011 school year. The family court then entered an order requiring J.M.T. to pursue counseling with Comprehensive Care and to cooperate fully with his parents and school officials. We note that J.M.T. and his counsel were not present at the September status review. However, J.M.T.'s parents were present with their attorneys. It appears from the record that one of those attorneys told J.M.T. to go to school and not to appear for court.

On November 30, 2010, J.M.T. appeared with counsel before the family court for another status review. The family court was informed that, since the last court date, J.M.T. had four unexcused absences and three unexcused tardies. The court then scheduled an adjudication hearing.

On February 1, 2011, J.M.T. appeared before the family court for the scheduled adjudication hearing on the habitual truancy charge. At the outset of the hearing, the county attorney raised an issue regarding an excuse note that J.M.T. presented to the school from Catholic Health Initiatives. The county attorney stated that he subpoenaed the real note from Catholic Health Initiatives and believed that the one J.M.T. presented to his school had been altered. The county attorney further stated that he planned to file charges against J.M.T. for criminal possession of a forged instrument and asked the family court to hold J.M.T. in detention pending criminal charges.

J.M.T.'s counsel objected to the allegations that J.M.T. had committed criminal possession of a forged instrument arguing that there was no notice of these allegations. The family court stated that the Commonwealth needed to initiate appropriate charges and that the adjudication hearing would be continued until any charges were properly brought.

On March 15, 2011, the family court held an adjudication hearing and noted that J.M.T. had nine unexcused absences and five unexcused tardies for the 2010-2011 school year. J.M.T., through counsel, then stipulated to the charge of habitual truancy.¹ The family court, without undertaking any type of *Boykin*² colloquy, then entered a juvenile status offender order finding J.M.T. to be a

¹ Although not an issue raised by J.M.T., we note that J.M.T.'s counsel advised the family court that J.M.T. was willing to stipulate to habitual truancy. J.M.T. never personally admitted his guilt.

² *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

habitual truant. Based on that finding, the family court ordered J.M.T. to obey all rules of his home; to attend school on time with no unexcused absences or behavior problems; and to surrender his video game systems, video games, and DVD player to the Rockcastle County Attorney's office. The order further provided that any unexcused absences would be considered contempt of court and that J.M.T. would be placed in detention for each school day he missed. A disposition hearing was scheduled for April 26, 2011.

At the disposition hearing, Rebecca Isaacs, the Director of Pupil Personnel for the Rockcastle County Board of Education, testified that J.M.T. had three unexcused absences since the previous court date. The family court then inquired as to whether J.M.T. surrendered his video game systems, games, and DVD player as previously ordered. J.M.T.'s mother explained that the Rockcastle County Attorney's office would not accept them, so she asked a friend to hold them. The family court acknowledged that reasonable efforts had been made to comply with the order. The county attorney then asked that J.M.T. serve two days of detention for his three unexcused absences. J.M.T.'s counsel objected, arguing that this was a disposition hearing and not a contempt hearing, and that he did not receive notice of the unexcused absences.

The family court judge noted the objection and stated that, "for purposes of disposition," he was ordering J.M.T. to ten days in an approved status offender detention facility. The judge then stated that, on the "recommendation of the county attorney," J.M.T. was to serve two days in detention with the remaining

eight days suspended on the condition that J.M.T. have no more unexcused absences through the fall 2011 school semester. The family court then entered a disposition order consistent therewith. Additionally, the court entered an order of detention ordering J.M.T. to the two days of detention. This appeal followed.

ANALYSIS

On appeal, J.M.T. first argues that his admission of guilt was not made knowingly and intelligently. Specifically, he claims that the requirements of *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), were not met. J.M.T. acknowledges that this claim is not preserved for appellate review, but he asks this Court to review this claim for palpable error under Kentucky Rule of Criminal Procedure (RCr) 10.26.

RCr 10.26 provides that:

A palpable error which affects the substantial rights of a party may be considered . . . by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Because an improperly entered guilty plea certainly implicates manifest injustice, we examine the merits of the issue.

As set forth in *J.D. v. Commonwealth*, 211 S.W.3d 60, 62 (Ky. App. 2006):

Boykin is the seminal case in the arena of the validity of a guilty plea. In *Boykin*, the U.S. Supreme Court stated that “[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial We cannot presume a waiver of these [] important federal rights from a silent

record.” 395 U.S. at 243, 89 S. Ct. 1709. The Supreme Court ultimately held that the trial court committed error when it “accept[ed] petitioner’s guilty plea without an affirmative showing that it was intelligent and voluntary.” *Id.* at 242, 89 S. Ct. 1709. In *D.R.*, this Court stated that “it [is] beyond controversy that *Boykin* [] applies to juvenile adjudications.” 64 S.W.3d at 294, FN2. The *D.R.* court went on to state that:

The validity of a guilty plea must be determined not from specific key words uttered at the time the plea was taken, but from considering the totality of circumstances surrounding the plea These circumstances include the accused’s demeanor, background and experience, and whether the record reveals that the plea was voluntarily made.

Id. at 294.

(Footnote omitted).

Having reviewed the record, we find that J.M.T. was not informed of his *Boykin* rights at the time he entered his admission. Specifically, he was not informed of constitutional rights waived by admitting guilt or of the range of possible punishments. Furthermore, J.M.T. was a fifteen-year-old child who had little experience with the court system. Thus, based on the totality of the circumstances, J.M.T.’s admission of guilt was not made knowingly or intelligently. *J.D.*, 211 S.W.3d at 62-63; *D.R.*, 64 S.W.3d at 295-96. Accordingly, we conclude that this error amounts to palpable error, requiring reversal of the family court’s adjudication that J.M.T. was a habitual truant. As a result, we

vacate the juvenile status offender order, the order of detention, and the disposition order of the family court that flowed from that adjudication.

We note that J.M.T. argues that the order of detention was invalid and that statements of the family court judge and the county attorney were so prejudicial as to deny him of his due process rights. Because we have vacated the order of detention and are remanding this matter, these arguments are moot.

CONCLUSION

For the foregoing reasons, we vacate the juvenile status offender order, detention order, and disposition order and remand for further proceedings consistent with this opinion. We note that the Commonwealth may be able to pursue a case against J.M.T. However, it cannot do so based on J.M.T.'s March 15, 2011, admission.

ALL CONCUR.

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