

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 KJ 0478

STATE OF LOUISIANA IN THE INTEREST OF
D.K., JR.

Judgment rendered NOV 01 2017

Appealed from the
Juvenile Court
in and for the Parish of East Baton Rouge, Louisiana
Docket No. JU108451
Honorable Pamela T. Johnson, Judge

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DISTRICT ATTORNEY
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ATTORNEYS FOR
STATE OF LOUISIANA

ATTORNEY FOR
DEFENDANT-APPELLEE
D.K., JR.

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

PETTIGREW, J.

The sixteen-year-old juvenile, D.K., Jr., was alleged to be delinquent according to a petition filed by the State, pursuant to the Louisiana Children's Code. The petition was based upon the alleged commission of four counts of aggravated rape (counts one through four), violations of La. R.S. 14:42 (victim under the age of thirteen) (prior to revision by 2015 La. Acts Nos. 184, §1 and 256, §1) and one count of attempted aggravated rape (count five), a violation of La. R.S. 14:42 and 14:27, which were alleged to have occurred on or about June 1, 2014, through June 23, 2015. The juvenile initially entered a denial to the allegations. Pursuant to an agreement, the State amended count one to indecent behavior with a juvenile, a violation of La. R.S. 14:81, and dismissed, without prejudice, counts two through five. The juvenile entered a best interest plea to count one, as amended. Following a **Boykin**¹ examination, the juvenile court accepted the plea and adjudicated the juvenile to be delinquent. The juvenile court subsequently ordered that the disposition be deferred for a period of six months and that the juvenile be placed on supervised probation for a period of six months pending final disposition.

The State filed a motion to reconsider the disposition, which the juvenile court denied. The State now appeals, arguing that the juvenile court erred in denying its motion. For the following reasons, we affirm the adjudication of delinquency and deferred disposition. The juvenile's "Motion to Dismiss Appeal" and "Motion to Strike Factual Allegations Not in Record" are denied.²

FACTS

Because the juvenile entered a best interest plea, the facts of this case were never fully developed at the adjudicatory hearing. At the adjudicatory hearing, the

¹ **Boykin v. Alabama**, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969).

² The juvenile argues in his appellate brief and in the motion to dismiss appeal that this court does not have jurisdiction because the ruling contested by the State was not final at the time of the State's motion to appeal. The juvenile's deferred disposition was entered pursuant to La. Child. Code art. 896A. Comment (a) to Article 896A states, in pertinent part, "The concept of Paragraph A is recognized for convicted adults in Code of Criminal Procedure Article 893." Article 893 considers the suspended sentence to be final and allows for appeal. See La. Code Crim. P. art. 893A. The Code of Criminal Procedure controls where procedures are not provided in the Louisiana Children's Code. See La. Ch. Code arts. 104(1) & 803. Accordingly, we find the appeal of the juvenile's deferred disposition to be properly before this court.

State noted that at the time of the alleged offenses, the victim was twelve years old, and the juvenile was fifteen years old. The juvenile's counsel acknowledged that the State had sufficient evidence to sustain an adjudication for indecent behavior with a juvenile pursuant to La. R.S. 14:81A(1).

DISCUSSION

In its sole assignment of error, the State argues that the juvenile court lacked authority to enter a deferred disposition. Specifically, the State contends that the express language of La. R.S. 14:81H(1) prohibits the imposition of a deferred disposition.

Louisiana Revised Statutes 14:81H(1) provides:

Whoever commits the crime of indecent behavior with juveniles shall be fined not more than five thousand dollars, or imprisoned with or without hard labor for not more than seven years, or both, provided that **the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.** (Emphasis added.)

Under La. Code Crim. P. art. 893A, after a first or second conviction of a noncapital felony, a district court "may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation[.]" Similarly, under La. Child. Code art. 896A, the juvenile court may, on motion of the district attorney or of counsel for the child, suspend further proceedings and place the child on supervised or unsupervised probation. Thus, the State argues that a "proper construction of [Article 896 and Section 14:81H(1)] has to result in a finding that a juvenile ... is not entitled to a deferred disposition upon being adjudicated for the offense of indecent behavior with juveniles."

The juvenile's disposition hearing was held on October 19, 2016. During the hearing, the State recommended that the juvenile be placed on supervised probation for two years. The juvenile's counsel stated that the juvenile was in agreement with the probation, but noted that the juvenile had been released from the detention center and placed under supervision and assigned to case work in June 2015. According to

the juvenile's counsel, the juvenile had been operating under the rules of release for one year and four months with no issues and had only one treatment program left to attend. The State noted that the reason it requested a term of two years was because some juveniles took as long as twenty-four months to complete the sex offender treatment program. It further noted that it would not be opposed to early termination of the disposition if the juvenile's therapist decided that the juvenile reached the maximum benefits of the program. The juvenile court noted the evaluation of the juvenile indicated that he was at low risk and had no substance abuse issues. It then deferred disposition for six months and placed the juvenile on supervised probation. The State objected to the deferred disposition and filed a motion to reconsider the disposition on October 24, 2016.

On December 22, 2016, a hearing was held on the State's motion to reconsider the disposition, during which the State argued that the disposition imposed was lenient and that the juvenile was not entitled to a deferred disposition. The State offered into evidence the juvenile's psychosexual evaluation and an addendum to the predisposition report and presented the testimony of Department of Juvenile Services Probation Officer Kenya Reado. Officer Reado opined that six months was not a sufficient amount of time for the juvenile to complete the sex offender treatment program and recommended a disposition of two years of supervised probation.

The matter was continued until January 5, 2017, at which time the State presented the testimony of Dr. Brandon Romano. According to Dr. Romano, treatment for a low-risk juvenile would last approximately three months, and treatment for a moderate-risk youth would last approximately six months. The doctor explained that if the allegations made by the victim in the instant case were true, he would recommend that the juvenile's risk level be raised to at least moderate; and if the juvenile complied with the program, he would be in treatment for at least six months. The State also presented the testimony of the juvenile's probation officer Quanna Coleman, who confirmed that prior to the juvenile's October 19, 2016 disposition hearing, his drug

screen was negative for all illegal substances. The State then stipulated that the juvenile was participating in the sex offender treatment program.

At the conclusion of the testimony presented by the State, it argued that the juvenile was not entitled to a deferred disposition. The State reasoned that La. Child. Code art. 896 parallels La. Code Crim. P. art. 893 and was enacted with the desire of the legislature to provide juveniles with an opportunity to have their adjudications dismissed and removed from their record. It further contended that because La. R.S. 14:81 does not provide for an adult offender to have his conviction set aside or prosecution dismissed in accordance with La. Code Crim. P. art. 893, a juvenile adjudicated under that section was not eligible for a deferred disposition. The State concluded that although there are some occasions wherein juveniles are allowed a deferred disposition despite the language of the statute, those instances usually involve family and consultation with the victim. In the instant matter, the family of the victim did not ask the State to allow a deferred disposition, but asked "just the opposite."

The juvenile's attorney responded that although there are limitations on the juvenile court's discretion for disposition for certain offenses under La. Child. Code art. 897.1,³ the instant offense is not included in that article.

The juvenile court judge noted that she was present when the legislature discussed the issue. According to the judge, any offenses other than those specifically

³ Article 897.1 provides:

A. After adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:30, first degree murder; R.S. 14:30.1, second degree murder; R.S. 14:42, aggravated or first degree rape; or R.S. 14:44, aggravated kidnapping, the court shall commit the child who is fourteen years or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement until the child attains the age of twenty-one years without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence.

B. After adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery, the court shall commit the child who is fourteen years of age or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement for the length of the term imposed by the court at the disposition hearing without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence.

C. At least six months prior to the release of the child, the department shall prepare an individualized and thorough transitional plan that identifies the techniques, programs, personnel, and facilities that will be used to assist the child in achieving a successful return to his family and the community. A copy of the transitional plan shall be mailed to the court that ordered the disposition of commitment.

listed in Article 897.1 are subject to the provisions of deferred disposition unless otherwise stated in the code. She noted that she based the original disposition on the factual basis from the victim, what the State proved, and Dr. Romano's report. She further noted that no evidence of additional accusations of illegal or inappropriate conduct had been reported. The juvenile court judge found no abuse of discretion in the deferral of the juvenile's disposition or in the length of his probation.

In its written reasons for judgment, the juvenile court further stated that it was authorized to enter the deferred disposition under Articles 896 and 897. The juvenile court reasoned that because the Louisiana Children's Code is not silent on dispositions and deferred dispositions, it is not superseded by La. R.S. 14:81H(1).

The function of statutory interpretation and the construction to be given to legislative acts rests with the judicial branch of government. **State in the Interest of A.M. and T.K.**, 98-2752, p. 2 (La. 7/2/99), 739 So.2d 188, 190. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law is applied as written and no interpretation may be made in search of the intent of the legislature. La. Civil Code art. 9. When the words of a law are ambiguous, however, their meaning must be found by examining their context and the text of the law as a whole. La. Civil Code art. 12. Further, it is a well-recognized and long-established rule of statutory construction that a statute should be interpreted as a whole to effect the legislative intent and should be construed in such a way as to reconcile, if possible, apparent inconsistencies or ambiguities so that each part is given effect. **State v. Cazes**, 263 So.2d 8, 12 (La. 1972). Finally, the paramount consideration in interpreting a statute is ascertaining the legislature's intent and the reasons that prompted the legislature to enact the law. **Garrett v. Seventh Ward General Hosp.**, 95-0017, p. 9 (La. 9/22/95), 660 So.2d 841, 846, overruled on other grounds, **Al Johnson Const. Co. v. Pitre**, 98-2564 (La. 5/18/99), 734 So.2d 623.

Louisiana Children's Code article 104 provides, in pertinent part, "Where procedures are not provided in this Code, or otherwise by law, the court shall proceed in accordance with: (1) The Code of Criminal Procedure in a delinquency

proceeding[.]" Chapter 16 of Title VIII in the Louisiana Children's Code provides disposition guidelines for juvenile courts, and Article 901B specifically provides that the juvenile court "should impose the least restrictive disposition authorized by Articles 897 through 900[.]" Under Article 896A, "after the entry of an adjudication order, the court may, on motion of the district attorney or of counsel for the child, suspend further proceedings and place the child on supervised or unsupervised probation[.]" Article 896D further provides that the "deferred dispositional agreement shall remain in force for six months unless the child is discharged sooner by the court." Thereafter, "[i]f the child satisfactorily completes the court ordered period of supervision, the court shall discharge the child from any further supervision or conditions, set aside the adjudication, and dismiss the petition with prejudice." La. Ch. Code art. 896F.

Louisiana Children's Code article 897A(3) provides that after adjudication of any felony-grade delinquent act other than those described in Article 897.1, the court may "[p]lace the child on probation in the custody of his parents or other suitable person." As noted, Article 897.1 restricts the benefit of a deferred disposition for first degree murder, second degree murder, aggravated or first degree rape, aggravated kidnapping, and armed robbery. Because the Louisiana Children's Code provides procedures and limitations for entering a deferred disposition, the juvenile court was not required to proceed in accordance with the Louisiana Code of Criminal Procedure. In Article 897.1, the Louisiana Children's Code specifically sets forth offenses for which juveniles are not allowed deferred disposition. The instant offense, indecent behavior with a juvenile, is not one of those enumerated offenses. Thus, the juvenile court was authorized to enter a deferred disposition in the instant matter and did not err in denying the State's motion to reconsider the disposition. Accordingly, the State's assignments of error are without merit.

ADJUDICATION AND DISPOSITION AFFIRMED; JUVENILE'S MOTION TO DISMISS APPEAL AND MOTION TO STRIKE FACTUAL ALLEGATIONS NOT IN RECORD DENIED.