NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA IN THE INTEREST OF C.G.	*	**NO. 2013-CA-0711**
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		COURT OF APPEAL
	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2012-325-02-DQ-B, SECTION "B"
Honorable Tammy M. Stewart, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Daniel L. Dysart, Judge Rosemary Ledet)

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ADJUDICATION AFFIRMED; DISPOSITION SET ASIDE AND REMANDED; MOTION TO WITHDRAW GRANTED

OCTOBER 16, 2013

In this appeal, the juvenile, C.G., requests that this Court conduct a review of the record for errors patent and appellate counsel moves to withdraw as counsel. Finding no errors patent that merit a reversal of the adjudication, we affirm the adjudication of C.G. and grant counsel's motion to withdraw. However, the juvenile court judge erred in imposing a disposition while allowing for a dismissal under La. Ch.C. art. 896. Thus, we set aside the disposition and remand this matter for further proceedings.

STATEMENT OF FACTS/PROCEDURAL HISTORY

The State filed a delinquency petition on November 20, 2012, charging C.G. with violating La. R.S. 14:108, resisting an officer, and La. R.S. 14:63, criminal trespass. On February 26, 2013, the juvenile court held an adjudication hearing.

At the adjudication hearing, the State called Victoria Brady to testify. Ms. Brady stated that she was a security officer at G.W. Carver Collegiate School on November 6, 2012. Ms. Brady testified that she saw C.G. at school and informed

him that she believed he was still suspended and should not be at school. Ms. Brady verified that C.G. was still suspended, and she asked him to leave the school. Ms. Brady stated that C.G. got angry. After C.G. refused to leave, Ms. Brady contacted the police. After the police arrived, Ms. Brady escorted them around the school to locate C.G. During the officers' conversation with C.G., Ms. Brady stated that she observed C.G. jerk away from the officers. Ms. Brady acknowledged that a student is subject to being picked up for truancy if a student does not have a form from the school indicating why the student is not in school.

Next, the State called Officer Wiltz to testify. Officer Wiltz testified that on November 6, 2012, he arrived at G.W. Carver Collegiate School to assist another officer in an incident involving a student who refused to leave the school. Officer Wiltz testified that when C.G. was asked to remove his hands from his pockets, C.G. refused to do so. Officer Wiltz stated that after C.G. refused to remove his hands from his pockets, a struggle ensued as the officers attempted to place C.G. in handcuffs. Officer Wiltz asserted that C.G. did not go willingly with the officers.

Counsel for C.G. moved for a judgment of acquittal at the close of the State's case. After argument, the juvenile court judge denied the motion.

C.G. testified that on November 5, 2012, he was sent home early, similar to other suspensions. C.G. testified that he was to return the next day. On November 6, 2012, C.G. said that he went to school. After homeroom, C.G. attempted to switch classes and was informed by a counselor that he was still suspended from school. Seeing the principal in the hallway, C.G. asked to speak to the principal. C.G. stated that he and the principal stepped outside with an assistant principal. C.G. admitted that he was informed that he was not supposed to be at school, but was never told to leave by the principal or the assistant principal. C.G. contended

that the principal and the assistant principal were attempting to learn C.G.'s mood-whether he was joking around or focused on learning. C.G. claimed that he was informed that he could write an apology letter, as he had in the past, and the suspension would be overlooked. Notwithstanding, Ms. Brady arrived with several police officers. C.G. testified that Ms. Brady asked the principal and assistant principal to move away from C.G. as the officers approached C.G. C.G. acknowledged that he was asked twice to remove his hands from his pockets. After the second request, C.G. complied and removed his hands from his pockets. During the conversation with the police officers, C.G. stated that he placed his hands back in his pockets. C.G. testified that after he placed his hands back into his pockets, an officer approached and pushed him into a railing. After he was pushed against the railing, he started to turn and the officer placed him in a headlock. C.G. testified that he tried to remove the officer's arm as he could not breathe. C.G. said that when he attempted to remove the officer's arm, the other officers joined in and forced him to the ground. C.G. claimed that the officers never asked that he leave or informed him that he was trespassing. He maintained that he was not informed that he was under arrest until he was in the back of a squad car.

The State stipulated that if called to testify, Betty Washington, the head of the suspension committee for G.W. Carver Collegiate School, would establish that the suspension policies at G.W. Carver Collegiate School were undergoing significant revision as a result of too many suspensions. Further, Ms. Washington would establish that the suspension policies were not clearly communicated to the students. However, the State accepted the stipulation with the caveat that Ms.

Washington was not present at the time of the November 6, 2012 incident involving C.G.

After closing argument, the juvenile court judge adjudicated C.G. delinquent, finding he violated La. R.S. 14:108, resisting an officer, and La. R.S. 14:63, criminal trespass. On April 16, 2013, a disposition hearing was held. The juvenile court judge committed C.G. to the Department of Public Safety and Corrections for six months for resisting an officer and for thirty days for the criminal trespass. The juvenile court judge suspended both commitments, and placed C.G. on active probation for six months. The juvenile court judge advised C.G. that his counsel had been informed that because this was C.G.'s first offense, the court would grant C.G. a dismissal pursuant to La. Ch.C. art. 896, in the event C.G. successfully completed probation.

STANDARD OF REVIEW

In order to adjudicate a child delinquent, the State must prove beyond a reasonable doubt that the child committed the delinquent act alleged in the petition. La. Ch.C. art. 883. The standard for the State's burden of proof in a juvenile delinquency proceeding is "no less strenuous then the standard of proof required in a criminal proceeding against an adult." *State in the Interest of A.G.*, 630 So.2d 909, 910 (La. App. 4 Cir. 12/30/93); *State in the Interest of G.M.*, 617 So.2d 212, 221 (La. App. 5 Cir. 4/14/93). As a court of review, we grant great deference to the juvenile court's factual findings, credibility determinations, and assessment of witness testimony. *State ex rel. W.B.*, 2008-1458, p.1 (La. App. 4 Cir. 4/22/09), 11 So.3d 60, 61.

In evaluating the sufficiency of evidence to support a conviction, an appellate court must determine whether, viewing the evidence in the light most

favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The *Jackson* standard of review is applicable in juvenile delinquency cases. *State in the Interest of T.E.*, 2000-1810, p.4 (La. App. 4 Cir. 4/11/01), 787 So.2d 414, 417.

In addition, La. Const. art. V, § 10(B) mandates that an appellate court review both law and facts when reviewing juvenile adjudications. "While delinquency proceedings may in many ways implicate criminal proceedings, sometimes even mimicking them, they are nonetheless *civil* in nature." *State in the Interest of D.R.,* 2010-0405, p.5 (La. App. 4 Cir. 10/13/10), 50 So.3d 927, 930. Therefore, as in the review of civil cases, a factual finding made by a trial court in a juvenile adjudication may not be disturbed by an appellate court unless the record evidence as a whole does not furnish a basis for it, or it is clearly wrong. *See State in the Interest of Batiste*, 367 So.2d 784 (La. 1979); *State ex rel. E.D.C.*, 39,892 (La. App. 2 Cir. 5/11/05), 903 So.2d 571; *State ex rel. T.W.*, 2009-0532 (La. App. 3 Cir. 10/7/09), 21 So.3d 465; and *State in the Interest of S.S.*, 557 So.2d 407 (La. App. 4 Cir. 1990). In sum, we apply the "clearly wrong-manifest error" standard of review to determine whether there is sufficient evidence to satisfy the standard of proof beyond a reasonable doubt.

DISCUSSION

Appellate counsel complied with the procedures outlined by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So.2d 528 (La. App. 4 Cir.1990). Counsel filed a brief complying with *State v. Jyles*, 96–2669 (La. 12/12/97), 704 So.2d 241. Counsel's detailed review of the procedural history of the case and the facts of the

case indicates a thorough review of the record. Counsel moved to withdraw because she believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed the record and found no trial court ruling that arguably supports the appeal. This Court informed C.G. and his guardian that he had the right to file a brief on his own behalf. He did not do so. Thus, this Court's review is limited to errors on the face of the record. La.C.Cr.P. art. 920.

In compliance with *State v. Benjamin*, we performed an independent and thorough review of the record. C.G. was properly charged with violating La. R.S. 14:108, resisting an officer, and La. R.S. 14:63, criminal trespass. C.G. was present and represented by counsel during his appearance to answer the petition, at the adjudication hearing, and at the disposition hearing. Our review reveals no patent error and no non-frivolous issue or trial court ruling that requires reversal of the adjudication.

However, appellate counsel for C.G. noted that the juvenile court judge failed to comply with La. Ch.C. art. 896. Specifically, counsel noted that the juvenile court judge imposed a disposition and stated that if C.G. successfully completed probation, she would grant a dismissal pursuant to La. Ch.C. art. 896. We note that this presents a *res nova* issue for this Court.

The Children's Code allows for the imposition of a deferred dispositional agreement. The Code provides:

> A. At any time 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, with or without any of the conditions authorized by Article 897(B)(1) or Article 899(B)(1).

> B. The child and his parent must consent to this special type of disposition. If the child has waived counsel, the court must advise the child and his parent concerning the consequences of a deferred dispositional agreement and of the child's right to have a disposition imposed by the court in accordance with Articles 897 through 900.
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> C. A deferred dispositional agreement order shall comply with all the requirements of Article 903.
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> D. A deferred dispositional agreement shall remain in force for six months unless the child is discharged sooner by the court. Upon application of the district attorney or by any agency supervising the child made before the expiration of the six-month period, a deferred dispositional agreement order may be extended by the court for an additional period not to exceed six months, or for such period in which the child is a full-time participant in a juvenile drug court program operated by a court of this state, whichever period is longer.
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> E. If prior to the expiration of the order a new petition alleging the commission of a delinquent act is filed against the child, or the child otherwise fails to fulfill the express terms and conditions of the order, the court may proceed to impose any disposition authorized by this Title and the child may be held accountable as if the deferred dispositional agreement order had never been entered.
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> F. If 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.C. art. 896

The Children's Code does not specifically state that a juvenile court judge must enter either a disposition or a deferred dispositional agreement. Thus, we look to the language of the applicable statutes themselves. Statutory interpretation starts with the language of the statute. *State v. M.C.*, 2010-1107, p.4 (La. App. 4 Cir. 2/18/11), 60 So. 3d 1264, 1266, *citing State v. Benoit*, 2001–2712, p.3 (La. 5/14/02), 817 So.2d 11, 13. Where a statute is clear and unambiguous, and its application does not lead to absurd results, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.

State ex rel. T.C., 2009-1852, p.7 (La. App. 1 Cir. 2/12/10), 35 So. 3d 1088, 1091, *citing State v. Benoit*, 2001–2712, p.3 (La. 5/14/02), 817 So.2d 11, 13.

After closely reviewing article 896 of the Children's Code, we believe that the legislature intended that a juvenile court judge enter either a disposition or a deferred dispositional agreement. Under La. Ch.C. art. 896(A), the court must suspend further proceedings after an adjudication if the court intends to enter into a deferred dispositional agreement. Under La. Ch.C. art. 896(E), if the child fails to fulfill the conditions of the deferred dispositional agreement or is charged with another offense, then the court may proceed to impose any disposition allowed by the Code. More persuasively, under La. Ch.C. art. 896(B), the court must advise the child and the child's parent of the child's right to have a disposition imposed in lieu of the deferred dispositional agreement if the child has waived his right to counsel.

Thus, we find that the juvenile court judge committed error by imposing a disposition and then crafting a deferred dispositional agreement when informing C.G. that the court would allow a dismissal under La. Ch.C. art. 896 if he successfully completed the probation ordered in the disposition. This creates an inconsistency. Thus, we set aside the disposition and remand the matter to the juvenile court to impose a disposition or enter a deferred dispositional agreement.

Based on the foregoing reasons, the adjudication of delinquency is affirmed and appellate counsel is allowed to withdraw. However, the disposition is set aside and the matter remanded to the juvenile court for further proceedings consistent with this opinion.

ADJUDICATION AFFIRMED, DISPOSITION SET ASIDE AND REMANDED; MOTION TO WITHDRAW GRANTED