

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA IN
THE INTEREST OF T.P.

*

NO. 2018-CA-0946

*

COURT OF APPEAL

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2018-100-03-DQ-C, SECTION "C"
Honorable Candice Bates Anderson, Judge

Judge Terri F. Love

(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Paula A. Brown)

Leon Cannizzaro
District Attorney
Donna Andrieu
Assistant District Attorney-Chief of Appeals
Irena Zajickova
Assistant District Attorney
ORLEANS PARISH
619 S. White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE, STATE OF LOUISIANA

Katherine M. Franks
LOUISIANA APPELLATE PROJECT
P.O. Box 220
Madisonville, LA 70447

COUNSEL FOR APPELLANT/JUVENILE, T.P.

AFFIRMED

January 9, 2019

This appeal arises from the juvenile court's adjudication of the juvenile as delinquent. The juvenile court judge's disposition placed the juvenile in secure care for juvenile life with the option for reconsideration if the juvenile receives his high school diploma and learns a trade by the time he reaches eighteen years of age. The juvenile now appeals contending that his disposition is excessive.

Given the juvenile's history with the juvenile justice system and the judge's reasoning, we do not find that the juvenile court judge abused her discretion in disposition. The adjudication and disposition are affirmed.

PROCEDURAL HISTORY AND ADJUDICATION

T.P.¹ was charged with 1) aggravated assault with a firearm, 2) aggravated criminal damage to property, 3) simple burglary, and 4) unauthorized use of a motor vehicle for his alleged involvement in a vehicle theft, vehicle burglary, and shooting. Three other juveniles were also alleged to have participated: N.G., W.W., and E.M. The State decided to *nolle pros* the charges of 1) aggravated assault with a firearm and 2) aggravated criminal damage to property.

At T.P.'s adjudication hearing, Janice Eckert testified that her black Audi Q5

¹ As T.P. is a juvenile, he will be referred to by his initials. La. C.Ch. art. 412.

was stolen in March 2018, but that she did not see who stole her vehicle. Ms. Eckert stated that she did not know T.P. and that he did not have permission to drive her vehicle.

Stacy Helm testified that she and her son were carrying groceries from her white Audi Q5 into her home when a black SUV drove up carrying three or four people. Two people from the black SUV entered her vehicle. Ms. Helm stated that she was fired upon by W.W. Ms. Helm did not know T.P. A surveillance camera photographed Ms. Eckert's stolen black Audi Q5 leaving the area of Ms. Helm's home.²

Detective William Mullaly of the Special Operations Division testified that he assisted in the investigation of the incidents and developed suspects. One suspect, N.G., admitted his role in the incidents and placed T.P. at the scene, as the driver of the stolen black Audi Q5 during the incident with Ms. Helm. On cross-examination, Detective Mullaly stated that there were no independent lay witnesses that placed T.P. at either incident. Detective Mullaly further stated that T.P. and W.W. were co-defendants in other cases.

N.G. previously pled guilty and was sentenced for his role in the incidents. N.G. identified T.P. as the driver of the stolen black Audi Q5 during the burglary of Ms. Helm's vehicle. N.G. stated that he, T.P. and two others stopped the vehicle with the intent to burglarize Ms. Helm's white Audi Q5. N.G. stated that he was burglarizing Ms. Helm's vehicle when he heard someone scream and then heard gunshots.

Detective Terrance Hilliard testified that he interviewed W.W., who

² This fact was offered and agreed to as a stipulation.

identified T.P. as a passenger in the stolen black Audi Q5 and N.G. as the shooter.³ Detective Hilliard noted the inconsistencies between N.G.'s statements and W.W., but stated that W.W. fabricated other portions of his statement based on information learned during the investigation. Further, Detective Hilliard stated that, in his opinion, N.G. was more credible than W.W.

The juvenile court adjudicated T.P. delinquent for 1) simple burglary in violation of La. R.S. 14:62, and 2) unauthorized use of a motor vehicle in violation of La. R.S. 14:68.4. Following a pre-dispositional investigation, the juvenile court placed T.P. with the Office of Juvenile Justice for juvenile life. However, the juvenile court provided that it would entertain a modification of sentence if T.P. received his high school diploma and learned a trade by his eighteenth birthday.⁴ T.P. appeals contending that he received an excessive disposition.⁵

EXCESSIVE DISPOSITION

“A juvenile has the same constitutional rights against excessive punishment as an adult.” *State in Interest of R.C.*, 16-0966, p. 2 (La. App. 4 Cir. 12/28/16), 208 So. 3d 962, 964. This Court previously outlined our responsibilities when reviewing a juvenile's claims of an excessive disposition as follows:

[w]hen an excessive disposition is complained of in a juvenile proceeding, the record must be reviewed to determine whether the juvenile court imposed the least restrictive disposition consistent with the circumstances of the case, the child's needs, and the best interest of society. *State ex. Rel. M.N.H.*, 2001–1218 (La.App. 3 Cir. 2/6/02), 807 So.2d 1149; *State ex. rel. K.H.*, 98–632 (La.App. 5 Cir. 12/16/98), 725 So.2d 583; *State in Interest of T.L.*, 28,564 (La.App. 2 Cir. 5/8/96), 674 So.2d 1122. In any review for excessiveness, the appellate court must first ascertain whether the lower

³ N.G. identified W.W. as the shooter, as did Ms. Helm.

⁴ T.P. was sixteen at the time of the disposition.

⁵ T.P. does not appeal his adjudication of delinquency.

tribunal took cognizance of the general guidelines provided for juvenile cases in Louisiana Children's Code Article 901, and whether the record reflects an adequate factual basis for the commitment imposed. *State in Interest of T.L.*, 674 So.2d 1122. "Following that determination, the reviewing court need only explore for constitutional excessiveness in light of the circumstances of the case and the background of the juvenile." *Id.* at 1124. "[A]bsent a showing of manifest abuse of the wide discretion afforded in such cases, a disposition will not be set aside as constitutionally excessive." *Id.*

State ex rel. D.M., 02-2528, pp. 9-10 (La. App. 4 Cir. 7/2/03), 851 So. 2d 1216, 1222. As to factors regarding whether T.P.'s behavior warranted secure care, La. Ch.C. art. 901(C) provides:

C. Except as provided in Article 897.1, commitment of the child to the custody of the Department of Public Safety and Corrections may be appropriate if any of the following exists:

- (1) There is an undue risk that during the period of a suspended commitment or probation the child will commit another crime.
- (2) The child is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment.
- (3) A lesser disposition will deprecate the seriousness of the child's delinquent act.
- (4) The delinquent act involved the illegal carrying, use, or possession of a firearm.

T.P.'s appeal contends that "incarceration was warranted," but that the juvenile court judge imposed "unrealistic conditions . . . to achieve a modification of the judgment." T.P. alleges that receiving his GED and learning a trade by his eighteenth birthday may be unattainable, as he has not been successful in school and suffers from ADHD and Bipolar Disorder. T.P. avers that juvenile life is excessive for "non-violent offenses."

The disposition transcript reflects that the juvenile court thoroughly considered the above factors, as well as others, in determining that T.P. should

receive juvenile life. The juvenile court judge stated the following:

So obviously this was a trial that I heard several months ago in which Mr. [P.] was involved as well as several other individuals, Mr. [W.W.], Mr. [T.P.], Mr. [E.M.], and I believe at that time, I think we previously discussed in that was I was looking at in regards to Mr. [T.P.] and the possibility that if he were to go to trial and I was adjudicating him delinquent that that would be a possibility that I would be looking at juvenile life. Part of the problem, Mr. [T.P.], and what is going on is that you have continuously come to juvenile court. So I took judicial notice of your brown folder of the times that we have had interaction with one another.

In the past four years since you've been coming to Court, so you first started making appearances in juvenile court in 2014. We allowed, at that point, for you to move to Texas during some times. Sometimes you would live with your grandmother. Sometimes you lived at home, mom sometimes lived next door. But one continuous factor is you kept coming back, right. You were adjudicated delinquent in 2014 then you came back. When I took count of the current number of cases that you have that have either opened pending or you served time on in juvenile court, that total is 16. So that represents a juvenile matter pretty much for every year of your life.

* * *

You're 16. Okay, so Mr. [T.P.], in that time we've tried probation, okay. And that didn't work. We were non-compliant, we tested positive for drugs, or we got re-arrested, or we didn't attend school. Then we tried secure placement. You were placed in secure care at the Office of Juvenile Justice at one point; is that correct? So we went to secure care and you were in secure care for some time and then came back out and began to re-offend again. So we've tried every single possibility of what we could do in order to rehabilitate you and give you an opportunity to be in the community and try to see if you could do something different.

I, myself, have had you on matters in which I have repeatedly, it's been a revolving door. You come in, I allow you to go back, your grandmother comes in, we talk, we try to put a plan together, in place, and it doesn't really seem to have any benefit. The only thing that has continued to happen is that you have continued to get delinquent adjudications. In 2018 you were also released

on electronic monitoring. You also tampered with the monitor. So even when we tried another one of our alternatives and to place you on the monitor, that didn't work. You've been charged with one, two, three, four counts of unauthorized use, simple burglary, resisting an officer, the only thing that I do not have consistent in any of my reports are school records. What grade were you currently in Mr. [T.P.] when you were attending school?

* * *

9th grade. So that would put you about three grades behind where you would be correct?

* * *

So you have not used this time to go to school and further yourself. The only thing that has happened while you've been out on the streets of New Orleans is you've continued to re-offend, continued to get yourself in trouble, continued to come into this Court. So the only thing that I have the ability to do is stop it and maybe put you some place where you have no choice but to try to make different kinds of decisions. You're still very, very young. But being out in the streets is not serving you or your family or anybody well because the next step with this is you're either going to get yourself in something that is going to end up getting you in something further than any of us could get you help with.

So I am going to have to make the decision that today I am going to have to sentence you to a time where I believe you can get the help that you need. You can get the ability to try to get your GED. You can get the ability to get your diploma. You can get the ability to get a trade. But you can show us that you can do something different, right? Okay. So it is ordered adjudged and decreed that Mr. [T.P.] is a juvenile for proper placement with the Office of Juvenile Justice. You are hereby placed with the Office of Juvenile Justice for Juvenile Life. But let me explain to you what that's going to mean, but I am going to give you the opportunity of where I will modify my own sentence, okay. So you're currently 16, so at 18 years of age if you have gotten to the 12th grade — You're listening, don't turn around. You have to listen because these are important. You have gotten to the 12th and received your high school diploma, that you have also learned a trade, then at that time I will modify my sentence to make you eligible for release. But I need you to do something and do something different than what you're doing now and to go back out in the street of New Orleans is not going to serve you or anybody that loves you well.

So while today you may think of this as a terrible thing that could happen to you but look at it as an opportunity and a gift to do something different. So it just depends on what you make of it, okay.

Clearly, the judge previously attempted to utilize every type of punishment with T.P. The juvenile court judge reminded T.P.'s grandmother that he also has a probation revocation pending and informed her that he was "not eligible for any of my programs." The record reflects that the juvenile court judge concluded juvenile life was the only remaining viable option. Given the learned juvenile court judge's reasons and T.P.'s history of delinquency and failure to comply with other programs, we find that the juvenile court judge did not abuse her discretion. T.P.'s disposition of juvenile life with the possibility of a modified sentence at age eighteen is not excessive.⁶ The adjudication and disposition are affirmed.

DECREE

For the above-mentioned reasons, we find that the juvenile court judge did not abuse her discretion. The juvenile life disposition given to T.P. was not excessive considering his history with the juvenile justice system. Accordingly, T.P.'s adjudication and disposition are affirmed.

AFFIRMED

⁶ This Court notes that the sentence is less than the twelve year maximum sentence contained in La. R.S. 14:62.