

STATE OF MICHIGAN
COURT OF APPEALS

In re RODGER ANTHONY BOWMAN, JR.,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

RODGER ANTHONY BOWMAN, JR.,

Respondent-Appellant.

UNPUBLISHED
December 21, 2004

No. 249308
Wayne Circuit Court
LC No. 01-398021

Before: Meter, P.J., and Wilder and Schuette, JJ

PER CURIAM.

Respondent appeals as of right his commitment to the Department of Community Justice (DCJ) following his conviction of probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On November 13, 2001 respondent (DOB 8-28-85) pleaded guilty of third-degree retail fraud, MCL 750.356d(4). He was placed on probation and ordered to participate in the STAND program. On March 14, 2002 respondent pleaded guilty of assault and battery, MCL 750.81. The trial court took the plea under advisement.

In March 2003, petitioner filed a petition charging that respondent violated his probation by failing to comply with the terms of the STAND program by smoking marijuana and failing to maintain contact with his probation officer. The trial court convened a pretrial hearing on March 11, 2003, but adjourned the proceeding due to respondent's failure to appear. The trial court issued a writ of apprehension for respondent.

At a hearing on April 22, 2003, respondent pleaded guilty of violating his probation by smoking marijuana and failing to maintain contact with his probation officer. Respondent's counsel stated that respondent regretted violating his probation, and hoped to obtain his GED and enroll in community college in order to pursue a career in truck driving or construction. In addition, counsel indicated that respondent disputed certain statements contained in the predisposition report. Counsel also noted that respondent had complied with most of the

requirements of the STAND program. The trial court indicated that it did not intend to say anything, and committed respondent to the DCJ.

II. STANDARD OF REVIEW

We review a trial court's findings of fact at a juvenile disposition proceeding for clear error, and the ultimate decision for an abuse of discretion. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994).

III. ANALYSIS

If a trial court finds that a juvenile under its jurisdiction has committed a violation of probation, the court may continue the juvenile on probation or order any disposition provided for in MCL 712A.18 or MCL 712A.18a. MCR 3.944(C)(1). The disposition can include a warning, a fine, community service, or placement in an institution. Respondent argues that the trial court abused its discretion by committing him to the DCJ because the sentence was disproportionate to his circumstances and those of the underlying offense. We disagree and affirm. The Rules of Evidence do not apply at dispositional hearings. The trial court was entitled to consult the predisposition report prepared in this case, but was not required to admit the report into evidence. MCR 3.943(C)(1). A juvenile has the due process right to have the trial court respond to alleged inaccuracies in a probation report. *In re Barber*, 168 Mich App 661, 666; 350 NW2d 211 (1988). Resentencing is not required if the record shows that the trial court disregarded the challenged inaccuracies when making its sentencing decision. *Id.* The trial court failed to answer respondent's challenges to several statements in the predisposition report; however, respondent points to nothing in the record that indicates that any of the challenged information impacted the trial court's sentencing decision. The unchallenged information before the trial court demonstrated that respondent pleaded guilty of an assaultive offense while on probation in his home, and violated his probation by smoking marijuana and failing to maintain contact with his probation officer. Respondent failed to reform his behavior when given an opportunity to do so while remaining in the community. The trial court's decision to commit respondent to the DCJ was authorized by MCL 712A.18 and MCR 3.944(C)(1), and did not constitute an abuse of discretion under the circumstances. *Brown, supra.*

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette