STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0543

In the Matter of the Welfare of: P. T. C., Child.

Filed December 16, 2013
Reversed and remanded
Kirk, Judge

Martin County District Court
File No. 46-JV-12-140

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant P.T.C.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Terry W. Viesselman, Martin County Attorney, Michael D. Trushenski, Assistant County Attorney, Fairmont, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant child appeals from a district court order denying his motion to withdraw his guilty plea and argues that his plea was not intelligent. We reverse and remand because the child was not advised of the potential future consequences of his plea as required by Minn. R. Juv. Delinq. P. 8.04, subd. 1(C)(4).

FACTS

On August 14, 2012, appellant P.T.C., a first-time juvenile offender, appeared in district court on a delinquency petition alleging that he committed a misdemeanor violation of a harassment restraining order (HRO). After briefly consulting with a public defender, appellant pleaded guilty to violating the HRO. The record at the time of the plea indicates only that appellant was aware of the HRO and that he had contact with an individual in violation of the HRO.

The district court acknowledged his admission and set a date for a disposition hearing. On October 9, 2012, prior to disposition, appellant moved to withdraw his guilty plea because the district court failed to follow the rules of juvenile procedure when it accepted his plea. He argued that he did not make an intelligent plea because the district court failed to inquire on the record or obtain evidence in writing that he understood his rights and the consequences of pleading guilty.

The district court held an evidentiary hearing. Appellant testified that he met with a public defender briefly before his court appearance. He did not recall if the public defender informed him of his right to a trial or the consequences of having this delinquency adjudication on his record. He stated that he did not ask any questions because he thought he was going to plead guilty "and then that was it."

The public defender testified that it is her practice to inform a first-time juvenile offender about his rights and court procedures before he appears in court, but that she does not follow up and have the juvenile sign a Delinquency Statement of Rights form. The public defender stated she typically informs first-time juvenile offenders of their

right to a court trial, to testify on their own behalf, to bring witnesses and cross examine witnesses, and to remain silent. She stated that she met with appellant and his mother for approximately five to ten minutes before the hearing and discussed his rights with him. She indicated that the mother said she was familiar with the charges, and neither appellant nor his mother asked any follow-up questions.

The public defender could not recall if she discussed the court's recommendations for disposition as outlined in the predisposition report or prescreening recommendation. She did not remember if they discussed any possible defenses, or that a misdemeanor HRO violation was a charge that could be used to enhance future offenses. *See* Minn. Stat. §§ 609.02, subd. 16, .749, subd. 4 (2012).

On February 26, 2013, after denying the motion to withdraw the guilty plea, the district court adjudicated appellant as a delinquent and entered a disposition requiring six months of supervised probation.

D E C I S I O N

The district court may allow a juvenile to withdraw a guilty plea before disposition if it is fair and just to do so, giving due consideration to the reasons the juvenile gives and any prejudice that withdrawal of the plea would cause the state. Minn. R. Juv. Delinq. P. 8.04, subd. 2(A); *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). To be valid, a plea must be made intelligently, voluntarily, and accurately. *In re Welfare of J.J.R.*, 648 N.W.2d 739, 742 (Minn. App. 2002). An "intelligent" plea is one entered "with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. U.S.*, 397 U.S. 742, 748, 90 S. Ct. 1463, 1469 (1970); *see State v. Wukawitz*, 662 N.W.2d

517, 522 (Minn. 2003). A district court shall not accept a juvenile's plea until first determining under the totality of the circumstances and based on the juvenile's statements that the juvenile understands the charge, his trial rights, the court's power to make a disposition, and the future consequences if the charge is admitted to or found by the court. Minn. R. Juv. Delinq. P. 8.04, subd. 1. This must be based on the juvenile's statements either on the record or contained in a written document signed by the juvenile and the juvenile's counsel. *Id.*

After a careful review of the record, we conclude that appellant did not make an intelligent plea. At the initial appearance, there was no acknowledgement on the record or in writing that he understood the charge, his rights, and the consequences of waiving those rights and pleading guilty. There is a form in the district court's file that describes appellant's rights, but it is unsigned and was not referenced at the time of the plea.

The law presumes that a defendant who has the opportunity to consult with counsel before pleading guilty and is carefully questioned by the district court is informed of his constitutional rights. *Hernandez v. State*, 408 N.W.2d 623, 626 (Minn. App. 1987). It is not apparent that this adult principal applies or should apply to a juvenile. The purpose of the juvenile delinquency rules are to be "pursued through means that are fair and just, that *recognize the unique characteristics and needs of children*." Minn. R. Juv. P. 1.02 (emphasis added). The evidence shows that appellant briefly met with a public defender and she informed him of some of his rights, but there is no showing that they discussed the potential enhancement consequences of pleading guilty and none of this was made a part of the record at the time of the plea hearing. Appellant's mother told the public

defender that she was familiar with the charge, but her knowledge should not be imputed to appellant, as he never admitted on the record or in writing that he understood the nature of the charge. The testimony, combined with the lack of any oral or written admission by appellant, rebuts any legal presumption that appellant understood and appreciated the consequences of pleading guilty.

The record does not demonstrate that appellant was aware that this delinquency adjudication had the potential to enhance certain offenses in the future, so we need not determine whether the plea was deficient in other respects.

Reversed and remanded.