DA 20-0430

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 94

IN THE MATTER OF:

V.K.B.,

A Youth.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DJ 19-161
Honorable Donald L. Harris, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Tammy Hinderman, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Michael P. Dougherty, Assistant Attorney General, Helena, Montana

Scott D. Twito, Yellowstone County Attorney, Laura Watson, Deputy County Attorney, Billings, Montana

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Submitted on Briefs: March 30, 2022

Decided: May 17, 2022

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Appellant V.K.B., a youth, appeals from the June 25, 2020 oral disposition and accompanying July 2, 2020 Department of Corrections Commitment Order issued by the Thirteenth Judicial District Court, Yellowstone County (Youth Court), which committed V.K.B. to the custody of the Montana Department of Corrections (DOC) for placement at the Pine Hills Youth Correctional Facility (Pine Hills), following his adjudication as a Delinquent Youth.

¶2 We restate the issue on appeal as follows:

> *Whether the District Court exceeded its statutory authority and abused its discretion by committing V.K.B. to DOC custody for placement at Pine Hills.*

¶3 We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 On May 11, 2019, V.K.B., then 15 years old, was at a friend's house in Billings. V.K.B. found a .22 caliber bolt-action rifle in his friend's bedroom. V.K.B., who had no training or experience with guns, began messing around with the gun, which was jammed. At some point, V.K.B. started to bang on the gun. When V.K.B. was banging on the gun, it was pointed in the direction of another friend, T.R., who was also 15 years old. As V.K.B. banged on the gun, it discharged and T.R. was shot and killed.

¶5 On August 21, 2019, a Billings Police officer responded to a call about a large group of people fighting and noticed a male, later identified as V.K.B., running from the scene. The officer reported V.K.B. threw rocks at the police vehicle. V.K.B. was later apprehended by the officer, who conducted a pat search where he discovered, among other

things, a marijuana pipe. On September 16, 2019, V.K.B. was a passenger in a car pulled over for having an inoperable tail lamp. When the officer approached the vehicle, he could smell a strong odor of marijuana. The officer obtained consent to search the vehicle and discovered, among other things, marijuana and a marijuana pipe. V.K.B. claimed ownership of the marijuana pipe.

¶6 On October 28, 2019, the State filed a Delinquent Youth Petition in Cause No. DJ-19-161 alleging V.K.B. was a delinquent youth. The Petition alleged four counts: Count I, negligent homicide in violation of § 45-5-104, MCA, for the May 11, 2019 incident; Count II, criminal possession of drug paraphernalia in violation of § 45-10-103, MCA, for the August 21, 2019 incident; Count III, criminal possession of dangerous drugs in violation of § 45-9-102, MCA, for the September 16, 2019 incident; and Count IV, criminal possession of drug paraphernalia in violation of § 45-10-103, MCA, for the September 16, 2019 incident. If committed by an adult, Count I would be a felony, while the remaining counts would be misdemeanors.

¶7 The Youth Court conducted an initial appearance on the Petition on November 14, 2019. V.K.B. entered a plea of "not true" to the allegations of the Petition. The Youth Court released V.K.B. on his own recognizance to his father's custody, subject to several conditions, including a mental health evaluation, a chemical dependency evaluation, random urinalysis tests, and GPS monitoring. Based on the results of his mental health evaluation, V.K.B. qualified for treatment at a therapeutic youth group home due to concerns regarding V.K.B.'s drug and alcohol abuse and his stated memories of trauma.

In January 2020, V.K.B. was placed in the STAR Youth Home in Billings, a therapeutic youth group home operated by Youth Dynamics, Inc.

¶8 On March 6, 2020, the State filed a separate Delinquent Youth Petition in Cause No. DJ-20-042 alleging V.K.B. was a delinquent youth. This Petition alleged V.K.B. committed the offense of misdemeanor theft, first offense, for stealing $160 from a cash box at Billings Skyview High School in January and February of 2020, while he was conditionally released pending adjudication in the first Petition. After being caught for the theft in February, but before the second Petition was filed, V.K.B. was temporarily placed in detention for violating his release conditions, before again being released on his own recognizance with instructions to continue residing at the group home.

¶9 On May 14, 2020, the Youth Court held an initial appearance on the second Petition. V.K.B.'s attorney informed the court that V.K.B. would also like to make admissions in the first Petition at this time. V.K.B., pursuant to an agreement with the State, then pled "true" to both the theft allegation of the second Petition and to the negligent homicide allegation of the first Petition in exchange for the State dismissing Counts II-IV, the drug-related charges, of the first Petition. At the end of the hearing, the Youth Court received a letter from the STAR Youth Group Home manager, which recounted the progress the manager had observed in V.K.B. during his time at the home and noted the home was confident V.K.B. would "graduate our program successfully." The court congratulated V.K.B. after receiving the letter and told V.K.B. to keep up the hard work.

¶10 On June 11, 2020, the Youth Court held a dispositional hearing on both Petitions. Prior to the hearing, a Social History and Recommendations report was prepared by

Juvenile Probation Officer (JPO) LaBree Stephens. JPO Stephens's report noted that since V.K.B. had been placed at the group home he had participated in individual and family therapy, participated in chemical dependency treatment, been placed on medication for anxiety, and had worked towards improving his education. JPO Stephens's report recommended V.K.B. be placed on probation until age 21, "with placement and successful completion at Youth Dynamics Group Home." At the hearing, the Youth Court first heard testimony from T.R.'s family members before turning to JPO Stephens's recommendation V.K.B. be placed at the group home. The State and V.K.B. both concurred with that recommendation.

¶11 The court questioned JPO Stephens about what treatment V.K.B. was getting while at the group home and how much longer he would be there. JPO Stephens informed the court V.K.B. was getting chemical dependency treatment, individual and family treatment, had finished the school year with all passing grades, and was also attending day treatment at the New Day Ranch. JPO Stephens further informed the court V.K.B. had recently received an extension to stay at the group home, and she anticipated V.K.B. would be there for another four months. The Youth Court inquired as to what would happen when V.K.B. left the group home, and JPO Stephens responded that V.K.B. would be under his father's care, with the possibility V.K.B. would live with another family member because his father was not always available and V.K.B. would have lots of appointments for therapy and medication management. The Youth Court stated the recommendation V.K.B. stay at the group home until discharged to his father "[made] no sense" and noted it was "disturb[ed]" that V.K.B.'s father did not fill out the packet Youth Court Services asked him to complete.

JPO Stephens told the court V.K.B.'s father had full rights and a youth discharging from a group home would usually go back to their parents and that she spoke to V.K.B. about exploring options to live with other family members after completing group home treatment, to which the Youth Court responded:

> If my options are Pine Hills or getting him back with his dad in another four months, he's going to Pine Hills, if those are the only options that you're giving me. So here's what we're going to do. I – I – there's got to be a better way. This young man needs not only treatment which he's getting, and that's awesome, but he needs a lot of supervision and accountability once he gets out of that treatment, and if [he] doesn't have that, he's going to go right back to where he was. So what I want to make sure of is that when he's out of the youth home that he's going to go to a home where's he's going to be held accountable, where he's going to have pretty strict supervision, and I – nothing I see here in this record indicates that his dad is going to provide that for him. He couldn't even be here today. Now I'm not saying other family members can't, but I'm not comfortable at all with his father having that role at this point. So what we're going to do is I'm going—I'm going to continue this disposition. I want Youth Services to work with the family and see if we can't come up with something that provides more structure after he's done with the group home in four months, and, if not, then I'm going to provide more structure because he needs a longer period of structure and – to turn this around.

V.K.B.'s attorney suggested the Youth Court could order V.K.B.'s father to complete parenting classes. The court responded it was "not going to do that," and continued the dispositional hearing for two weeks, indicating it wanted "something that has more structure once [V.K.B.'s] done with the group home." Before going into recess, the court addressed V.K.B. directly, stating:

> I run a drug court. You've got drug issues. It takes in my drug court for adults – it takes two to three years of very intense supervision and a lot of treatment before there's any real genuine progress. I call the first year the honeymoon. That's just the honeymoon. The hard part gets when you get back into the community, and what I want to make sure is is that I believe you have the potential to be a very worthwhile productive citizen in this

> community, but you're going to need help, and you're going to need it for a while, and this is my opportunity to make sure you get that help, so that's what I'm going to do here, and let's put our heads together and figure out how we get that done.

¶12 On June 24, 2020, JPO Stephens provided a written update to the Youth Court, which maintained her recommendation V.K.B. be placed at the group home upon disposition and noted V.K.B. had funding to stay at the group home until September 2020, and the home could make a request for an extension if V.K.B. had not completed treatment by that time. The update further noted JPO Stephens was continuing to search for alternative placement options for when V.K.B. completed treatment at the group home, but an uncle and grandmother of V.K.B. JPO Stephens spoke with were not placement options. The group home had also made a referral for therapeutic foster care, but a placement was not yet open. Addressing the Youth Court's stated concerns regarding structure and supervision once V.K.B. returned to the community, the update informed the court that, upon discharge, V.K.B. would have "a series of rules to follow"; could be placed on a GPS monitoring unit and ordered to remain at home unless allowed to leave for a specific activity; noted V.K.B. needed to continue attending individual therapy, family therapy, and chemical dependency treatment; needed to attend medication management appointments; would be required to check in with his probation officer and provide urinalysis samples twice weekly; would need to maintain employment; and would attend high school in the fall, where he would meet with his school counselor and be in class most of the day. The update concluded by noting V.K.B. would "have a series of supervision on him in the community[.]"

¶13 The reconvened dispositional hearing continued on June 25, 2020. The Youth Court began by addressing JPO Stephens's update and asked the parties "if there's any difference in terms of the options available to the [c]ourt at this time[.]" The State went through the supervision options noted by JPO Stephens in her report and informed the court the State continued to recommend probation and "if there's a violation he can be sent immediately to Pine Hills at that point[.]" V.K.B.'s attorney informed the court youth probation was "still working on finding a placement option," but had another four months to do so before V.K.B. was scheduled to finish his time at the group home. V.K.B.'s attorney discussed possibly continuing the disposition again to allow time to find a placement option and told the court, "[w]e don't think Pine Hills is a good placement for him at this point [in] time" because "[V.K.B.] is doing really well where he is at right now." The court responded:

> Well, sure, he's going to do real well when he's in – when he has all these supports, when he's got all this structure, and I've got – I've read the letter from the home and he's doing very well, and he needs to be commended for that. That's not the issue. The issue is what happens to him when he gets out, and my concern is is that he does do very well in a structured environment where he gets treatment and there's accountability and that sort of thing, but I don't see that happening under – after September. I don't see that happening at all, so how do you address that issue?

V.K.B.'s attorney again asked for time to find an appropriate placement, either with another family member or in therapeutic foster care. The court noted that "family members haven't worked," and inquired about therapeutic foster care. JPO Stephens informed the court that, at the time, there was no opening for boys anywhere in Montana. V.K.B.'s father then asked to address the court. He explained that he had left his 15-hour-per-day job at the refinery and started a new job, with regular hours on Monday-Thursday from 6:00 a.m. to

4:00 p.m., with weekends off. He further informed the court he had made arrangements for his mother to watch V.K.B. in the mornings and that his mother and sister could give V.K.B. rides where he needs to go. V.K.B.'s father noted the previously-dismissed drug charges were from "self-medication" after V.K.B. tragically shot his friend, T.R.

¶14 After the parties stated there was nothing further to consider, the Youth Court proceeded to disposition. The court noted it reviewed its notes from the previous dispositional hearing, JPO Stephens's report and update, and the letter from the group home, which the court noted was "very complimentary" to V.K.B. The court told V.K.B. it needed to give V.K.B. structure, as well as treatment for substance use disorder, trauma, and grief. The court also noted V.K.B. would need to complete his education, before stating:

> Unfortunately, this [c]ourt has been assured only that you would be in the group home until September, and then after that I don't know where you're going to be, and this is the time and date set for disposition in this matter, and so what I'm afraid of is that even if the [c]ourt were to delay this any longer, which I don't think would be a good idea for anybody, that we'd be no closer to figuring out where we're going to be and what could happen at that time.

The Youth Court then proceeded to impose disposition[1] on V.K.B.:

> Sir, for the offenses of Negligent Homicide, which is a felony if committed as an adult, and Theft which is a misdemeanor, I'm going to adjudicate[] you as a delinquent youth based upon your admissions earlier. I'm going to

[1] The Youth Court imposed disposition on both Petitions at the same time. V.K.B. separately appealed the disposition imposed by the Youth Court for the second Petition, regarding the misdemeanor theft charge. After the State filed a notice of concession, this Court issued an order vacating the portions of the Youth Court's July 2, 2020 Department of Corrections Commitment Order in Cause No. DJ-20-042 which committed V.K.B. to DOC for placement at Pine Hills and ordered him to pay $2,000 in restitution. We remanded the matter to the Youth Court with instructions to issue an amended dispositional order. *In re V.K.B.*, No. DA 20-0432, Order (Mont. Feb. 1, 2022).

> impose the following disposition: That you be committed to the Department of Corrections until age 18 or sooner legally discharged with placement at the Pine Hills Youth Correctional Facility. And then I will place you on probation until age 21 under certain conditions . . . . I'm going to impose restitution in the amount of $2,000 payable to [T.R.'s grandmother] . . . . I'm striking condition 21 which says you'll be placed at the Youth Dynamics Group Home, and otherwise the conditions will remain in effect during the period of your probation.

The Youth Court also spoke about V.K.B.'s placement at Pine Hills:

> I want to make very, very clear that while you're at Pine Hills, I expect you to receive the following treatment. I expect that the – you will be treated for substance use disorder. You will get that counseling that you have been getting. I will expect that you will also get trauma counseling. I expect that you will also get grief counseling. . . . It's my understanding that at Pine Hills they have programs in which you can work and get – I'm not sure how they do it, but you – they give you an opportunity to work, and I think that can go towards the restitution amount, so you would be given an opportunity to do that there. . . . [W]hat I want you to do is when you get down to Pine Hills, don't resent the fact that you're there. Look at it as an opportunity and be a rockstar. You go down there, and you turn things around. You show everybody in this room that you've turned things around. That's what I hope for you.

¶15 The Youth Court issued its written Department of Corrections Commitment Order on July 2, 2020. This order committed V.K.B. to DOC custody and "recommend[ed] placement at Pine Hills Correctional Facility." V.K.B. appeals.

STANDARD OF REVIEW

¶16 "We review a youth court's application and interpretation of the Youth Court Act de novo for correctness." *In re K.J.R.*, 2017 MT 45, ¶ 11, 386 Mont. 381, 391 P.3d 71 (citing *In re K.J.*, 2010 MT 41, ¶ 13, 355 Mont. 257, 231 P.3d 75). We review a youth court's conclusions of law de novo to determine if they are correct. *In re C.D.H.*, 2009 MT 8, ¶ 21, 349 Mont. 1, 201 P.3d 126 (citations omitted). We review a youth court's

discretionary decisions for an abuse of discretion. *See In re K.J.R.*, ¶ 12 (citing *In re C.D.H.*, ¶ 21). A youth court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *In re K.J.R.*, ¶ 12.

DISCUSSION

¶17 *Whether the District Court exceeded its statutory authority and abused its discretion by committing V.K.B. to DOC custody for placement at Pine Hills.*

¶18 V.K.B. asserts the Youth Court exceeded its statutory authority and abused its discretion by placing him at Pine Hills, arguing § 41-5-1513(1)(b), (e), MCA,[2] would only authorize such a placement if the court determined he was a serious juvenile offender and found the placement was necessary for the protection of the public. V.K.B. contends the Youth Court did not make the requisite findings pursuant to that statute, and, in any event, there was not sufficient evidence in the record to support a finding that his placement at Pine Hills was necessary for the protection of the public.[3] The State asserts V.K.B. failed

[2] Because the negligent homicide offense for which V.K.B. was adjudicated as a delinquent youth in this matter was committed on May 11, 2019, all statutory references in this opinion are to the 2017 version of the Montana Code Annotated.

[3] V.K.B. turned 18 in late 2021 and was released from Pine Hills. Generally, this would make the issue of his commitment to Pine Hills moot, because this Court can no longer grant him relief by ordering his release from confinement. "Where an issue presented at the outset of the action 'has ceased to exist or is no longer "live," or if the court is unable due to an intervening event or change in circumstances to grant effective relief or to restore the parties to their original position, then the issue before the court is moot.'" *Ramon v. Short*, 2020 MT 69, ¶ 20, 399 Mont. 254, 460 P.3d 867 (citing *Gateway Opencut Mining Action Grp. v. Bd. of Cty. Comm'rs of Gallatin Cty.*, 2011 MT 198, ¶ 16, 361 Mont. 398, 260 P.3d 133). While the specific issue of V.K.B.'s confinement at Pine Hills may be moot, we recognize several exceptions to the mootness doctrine, including the public interest exception. "[T]he public interest exception applies where: (1) the case presents an issue of public importance; (2) the issue is likely to recur; and (3) an answer to the issue will guide public officers in the performance of their duties." *Ramon*, ¶ 21 (citing *Gateway Opencut*, ¶ 14).

to object below and has waived appellate review of his claim. The State further asserts, if this Court reaches the merits of V.K.B.'s argument, that the Youth Court merely recommended placement at Pine Hills under § 41-5-1513(1)(b), MCA, and the Youth Court did not abuse its discretion by not suspending V.K.B.'s DOC commitment. We agree with V.K.B.

¶19 At the outset, we briefly address the State's argument V.K.B. failed to preserve his issue for appeal. "We generally will not review an issue to which the appealing party failed to object in the trial court." *In re K.M.G.*, 2010 MT 81, ¶ 19, 356 Mont. 91, 229 P.3d 1227 (citing *State v. Kotwicki*, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892). Counsel for V.K.B. did not contemporaneously object during the dispositional hearing by asserting § 41-5-1513(1)(e), MCA, required the Youth Court to make specific findings prior to placing V.K.B. at Pine Hills. Counsel did object, however, to V.K.B.'s placement at Pine Hills because Pine Hills was not a good placement and V.K.B. was "doing really well where he is at right now." In addition, counsel further noted Youth Court Services was still attempting to find V.K.B. another placement option, whether with a family member or in therapeutic foster care, and had four months prior to his discharge from the group home to do so and asked for additional time for that process to continue. The clear thrust of

These concerns are implicated in this case because the commitment of juvenile offenders to Pine Hills by youth courts is an issue of public importance; which is likely to recur; and our answer to the issue presented, regarding the authority of a youth court to sentence a juvenile offender to Pine Hills under § 41-5-1513(1)(b) and (e), MCA, will guide youth courts in the performance of their duties. Accordingly, we find V.K.B.'s appeal is not moot merely because he has been released from confinement at Pine Hills.

counsel's argument was that V.K.B. did not need to be locked up at Pine Hills to protect the public and all parties involved were seeking to find an alternative placement for when V.K.B. completed his time at the group home to assuage the Youth Court's concerns regarding placing V.K.B. with his father. As placement at Pine Hills is a discretionary decision left to the Youth Court, *In re K.J.R.*, ¶ 18, and V.K.B.'s counsel repeatedly argued Pine Hills was not the correct placement, we find the issue of whether the Youth Court abused its discretion by placing V.K.B. at Pine Hills was preserved for appeal.

¶20 We note this appeal arises from a dispositional order entered for a negligent homicide V.K.B. committed when he was 15, and the proceedings are subject to the Youth Court Act, found in Title 41, chapter 5, MCA. As required by statute, the Youth Court Act

> must be interpreted and construed to effectuate the following express legislative purposes:
>
> (1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;
>
> (2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:
>
> (a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;
>
> (b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders;
>
> (c) in appropriate cases, restitution as ordered by the youth court; and

> (d) that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;
>
> (3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;
>
> (4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

Section 41-5-102, MCA. On May 14, 2020, V.K.B. pled "true" to the first Petition's negligent homicide allegation and was determined to be a delinquent youth by the Youth Court. The relevant version of the Youth Court act provided for "various final dispositions in the discretion of the court" for a youth adjudicated as a delinquent youth, including, among others, placing the youth on probation, committing the youth to the youth court for placement in a private, out-of-home facility, or committing the youth to the department for placement in a state youth correctional facility. *In re K.J.R.*, ¶ 18. After determining a youth is a delinquent youth, a youth court must conduct a dispositional hearing and direct "that a youth assessment or predisposition report" be made in writing by a juvenile probation officer. Section 41-5-1511(1)-(2), MCA. That predisposition report must be made available to defense counsel prior to the dispositional hearing. Section 41-5-1511(3), MCA. At the dispositional hearing, the youth court "shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report[.]" Section 41-5-1511(4), MCA.

¶21 As relevant to V.K.B.'s appeal from his commitment to Pine Hills, § 41-5-1513, MCA, sets forth dispositional options available to the Youth Court:

> (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:
>
> . . .
>
> (b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:
>
> (i) the youth committed four or more misdemeanors in the prior 12 months;
>
> (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and
>
> (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.
>
> . . .
>
> (e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

Section 41-5-1513(1)(b), (e), MCA. "'State youth correctional facility' means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder." Section 41-5-103(42), MCA. Pine Hills was, and remains, the correctional facility for juvenile male offenders, while Riverside served juvenile female offenders. V.K.B. asserts § 41-5-1513(1)(b), MCA, must be read together with § 41-5-1513(1)(e), MCA, when a youth court commits a delinquent youth to DOC for placement in a state youth correctional facility. V.K.B. argues the statutes require a youth court to determine a delinquent youth is both a serious juvenile offender and that placement in a state youth correctional facility is necessary for the protection of the public before a youth court is statutorily authorized to commit a delinquent youth to DOC for placement in a state youth correctional facility.

¶22 When construing a statute, this Court's first step is "'to ascertain and declare what is in terms or in substance contained [in the statute], not to insert what has been omitted or to omit what has been inserted.'" *State v. Running Wolf*, 2020 MT 24, ¶ 15, 398 Mont. 403, 457 P.3d 218 (quoting *State v. Gatts*, 279 Mont. 42, 47, 928 P.2d 114, 117 (1996)). "Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. "We interpret statutes to give effect to the Legislature's intent, and construe them as a whole to avoid absurd results." *State v. Wright*, 2021 MT 239, ¶ 16, 405 Mont. 383, 495 P.3d 435 (citing *State v. Brendal*, 2009 MT 236, ¶ 18, 351 Mont. 395, 213 P.3d 448). We presume the Legislature acts with deliberation and full knowledge of all existing laws on a subject and does not pass meaningless legislation. *Brendal*, ¶ 18 (citations omitted). We will harmonize statutes

relating to the same subject in order to give effect to each statute, but in situations "where general and specific statutes exist and the two cannot be harmonized to give effect to both, the specific statute controls." *Brendal*, ¶ 18 (citations omitted).

¶23 The plain language of both § 41-5-1513(1)(b), MCA, and § 41-5-1513(1)(e), MCA, discuss a youth court's authority to place a delinquent youth in a state correctional facility. The first sentence of § 41-5-1513(1)(b), MCA, subject to limitations not relevant here, appears to generally authorize a youth court to commit any offender to DOC for placement in a state youth correctional facility, stating a youth court may "commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age." This general grant of authority is immediately limited by the remainder of subsection (1)(b), however, which limits the authority of a youth court to place a delinquent youth, who has been adjudicated as such for committing misdemeanor offenses, to a state youth correctional facility unless several conditions are met. Section 41-5-1513(1)(b)(i-iii), MCA; *see also In re K.M.G.*, ¶ 32. Presuming the Legislature does not pass meaningless legislation, we must also give meaning to § 41-5-1513(1)(e), MCA, if possible. This statute authorizes a youth court "in the case of a delinquent youth who is determined by the court to be a serious juvenile offender," to specify "that the youth be placed in a state youth correctional facility . . . if the judge finds that the placement is necessary for the protection of the public." Section 41-5-1513(1)(e), MCA. Interpreting § 41-5-1513, MCA, as a whole, then, as we are required to do, *Wright*, ¶ 16, it is clear that subsection (1)(b)'s general grant of authority for a youth court to place a delinquent youth at a state youth

correctional facility is limited by both subsections (1)(b)(i-iii) and (1)(e). Both limitations, in accordance with the stated purpose of the Youth Court Act, which requires "separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community," § 41-5-102(3), MCA, specify that a youth court must make findings showing placement at a state youth correctional facility is necessary for the protection of the public. *See* § 41-5-1513(1)(b)(iii), MCA (requiring a youth court find "the youth will present a danger to the public if the youth is not placed in a state youth correctional facility" before commitment is authorized) and § 41-5-1513(1)(e), MCA (requiring a youth court, in the case of a serious juvenile offender, to find placement at a state youth correctional facility "is necessary for the protection of the public" before commitment is authorized). As V.K.B.'s disposition in this case arose from his negligent homicide offense, which would be a felony if committed by an adult, § 41-5-513(1)(b)(i-iii), MCA, is not implicated in this case. Section 41-5-1513(1)(e), MCA, is implicated, however, therefore commitment of V.K.B. to DOC for placement at Pine Hills is only statutorily authorized if the Youth Court found V.K.B. was "a delinquent youth who is determined by the court to be a serious juvenile offender," and "the judge finds that the placement is necessary for the protection of the public." V.K.B. is correct in his assertion the Youth Court failed to make these findings.

¶24 Prior to committing a delinquent youth to a state youth correctional facility pursuant to § 41-5-1513(1)(e), MCA, a youth court must find the youth is a "serious juvenile offender." "Serious juvenile offender" is a statutorily-defined term in the Youth Court Act, and means "a youth who has committed an offense that would be considered a felony

offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs." Section 41-5-103(38), MCA. The Youth Court did not specifically make this finding in either its oral or written disposition in this case. It is clear from the record, however, that V.K.B. is a "serious juvenile offender" as defined by statute, because he was adjudicated for the offense of negligent homicide, which is an offense against a person which would be considered a felony offense if committed by an adult. Section 41-5-103(38), MCA. In such a clear case, we would not overturn the Youth Court merely for not stating V.K.B. is a "serious juvenile offender" prior to committing him to Pine Hills.

¶25 The statute requires more than simply being a "serious juvenile offender" before a commitment to Pine Hills is authorized, however, as it requires a youth court to additionally find "the placement is necessary for the protection of the public." Section 41-5-1513(1)(e), MCA. The Youth Court made no finding V.K.B.'s placement at Pine Hills was necessary to protect the public in this case, and V.K.B. correctly argues the record does not support such a finding in any event. In the Youth Court, the State, JPO Stephens, the defense, and V.K.B.'s group home all concurred V.K.B. should complete his treatment at the group home before transitioning back into the community. All agreed V.K.B. could be appropriately supervised when he transitioned back to the community, and, if a violation occurred, V.K.B. could be "sent immediately to Pine Hills at that point[.]" The parties also requested additional time to find an alternative placement if the Youth Court maintained its position placement with V.K.B.'s father was not acceptable, which the court denied. Neither the State, nor JPO Stephens, nor the defense, nor V.K.B.'s group home asserted

any public safety concern with the plan presented to the Youth Court. Further, no one involved in the case recommended V.K.B. be taken out of his current treatment, when he was four months away from completing the group home program and doing well with his treatment, and be placed into youth prison to start treatment anew—this time surrounded by serious juvenile offenders who needed to be placed at Pine Hills for the protection of the public. The Youth Court, apparently concerned for V.K.B.'s future prognosis due to the court's experience with adult drug offenders in drug court and its wariness regarding V.K.B's father's ability to provide structure once V.K.B. finished his time at the group home, rejected the recommendations made by all parties involved and sent V.K.B. to Pine Hills without finding such a placement was necessary for the protection of the public or considering a lesser restrictive alternative.[4] Such a placement in this case both exceeded the Youth Court's statutory authority and was an abuse of its discretion.

[4] We reject the State's argument that, because the written dispositional order committed V.K.B. to DOC custody but only "recommend[ed] placement at Pine Hills," the Youth Court never actually committed V.K.B. to Pine Hills and reversing the dispositional order to strike a non-existent placement order would be futile. The Youth Court's oral disposition specifically committed V.K.B. to Pine Hills and the court repeatedly spoke about what V.K.B. would be doing at Pine Hills when pronouncing disposition. While a youth court proceeding "is a remedial civil proceeding rather than a criminal proceeding," *In re K.J.R.*, ¶ 31, V.K.B. was, for all intents and purposes, sentenced to youth prison in this case. "[T]he oral pronouncement of a criminal sentence in the presence of the defendant is the 'legally effective sentence and valid, final judgment' and [] the written judgment is merely evidence of the oral sentence." *State v. Johnson*, 2000 MT 290, ¶ 15, 302 Mont. 265, 14 P.3d 480 (quoting *State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9). "[I]n the event of conflict between the oral pronouncement of sentence and the written judgment and sentence, the oral pronouncement controls." *Johnson*, ¶ 16 (citing *Lane*, ¶ 48). It is clear the Youth Court committed V.K.B. to Pine Hills in its oral pronouncement of disposition, which is the controlling disposition for this Court to consider.

¶26 We have previously reversed youth court dispositional orders committing juvenile offenders to Pine Hills for failing to consider a lesser restrictive alternative, *In re J.F.*, 241 Mont. 434, 437, 787 P.2d 364, 366 (1990), and for failing to find an offender was a "serious juvenile offender," when the acts for which the youth was adjudicated were not sufficient to bring them within the definition of a serious juvenile offender. *In re H.F.*, 242 Mont. 381, 383, 791 P.2d 53, 54 (1990). Our decision today once again reaffirms that when a youth court fails to follow the statutory limitations on youth incarceration prescribed by the Legislature, it is "without authority to commit [a juvenile offender] to a youth correctional facility." *In re H.F.*, 242 Mont. at 383, 791 P.2d at 54. Because the Youth Court in this case failed to find V.K.B.'s placement at Pine Hills was necessary for the protection of the public and articulate its basis for such, as required by § 41-5-1513(1)(e), MCA, and the record does not support such a finding, the Youth Court both exceeded its statutory authority and abused its discretion by committing V.K.B. to DOC custody for placement at Pine Hills and its dispositional order must be reversed.

CONCLUSION

¶27 The District Court exceeded its statutory authority and abused its discretion by committing V.K.B. to the DOC for placement at Pine Hills without making the required findings that V.K.B. was a serious juvenile offender and such a commitment was "necessary for the protection of the public," as mandated by § 41-5-1513(1)(e), MCA. The Youth Court's dispositional order committing V.K.B. to DOC's custody is reversed with instructions to strike the portion of that order imposing V.K.B.'s commitment to DOC and recommending placement at Pine Hills.

¶28 Reversed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ JIM RICE