NO. COA01-12

NORTH CAROLINA COURT OF APPEALS

Filed: 2 January 2002

IN THE MATTER OF:
EDWARD ALLEN ZEHNER,
a minor child.

Cleveland County
No. 00 J 086

Appeal by juvenile from order entered 26 July 2000 by Judge K. Dean Black in Cleveland County District Court. Heard in the Court of Appeals 7 November 2001.

Attorney General Roy Cooper, by Assistant Attorney General Hilda Burnett-Baker, for the State.

George B. Thomasson, P.A., by David Mark Hullender, for juvenile-appellant.

HUDSON, Judge.

Edward Allen Zehner (the "juvenile") appeals from a dispositional order committing him to the Office of Juvenile Justice (the "OJJ") for placement in a training school for an indefinite term of at least six months, but not to exceed his eighteenth birthday. He also appeals the order imposed orally at the dispositional hearing requiring him to register pursuant to N.C. Gen. Stat. § 7B-2509 (1999). We find no error and affirm.

On 4 April 2000, a Juvenile Petition was filed, in which it was alleged that the juvenile was delinquent on the basis of his

commission of a violation of N.C. Gen. Stat. § 14-27.2 (1999) ("First-degree rape"), a class B1 felony. Specifically, it was alleged that sometime during August 1999, while the juvenile was under the age of eighteen, he "did unlawfully, willfully and feloniously ravish and carnally know ... a child under the age of thirteen years." On 2 May 2000, the juvenile admitted to the charges and was adjudicated delinquent.

The OJJ issued its Predisposition Report on 2 May 2000. In that report, the OJJ indicated that the juvenile's Delinquency History Level was "low" and his offense classification was "violent." Thus, the authorized disposition was Level 2 or 3. *See* N.C. Gen. Stat. § 7B-2508(f) (Supp. 2000). The OJJ concurred in the recommendation of the District Attorney's Office that a Level 3 Disposition (commitment) be imposed.

The juvenile was referred to Pathways for a Sex Offender Specific Evaluation. The juvenile was fully cooperative. Pathways issued its report on 5 June 2000. The counselor observed that the juvenile "needs close adult supervision as well as age-appropriate sex education." The counselor expressed concern about whether the juvenile's mother was capable of providing such supervision, and recommended a referral to

> complete a sex offenders specific treatment in a group setting as well as individual and family intervention . . . . Another possibility is a sex offender specific treatment in a group home setting with staff able to confront him regularly for his thinking errors, empathy issues, and his risks for reoffending. This option would also remove him from the very risky situation of living next to his victim and living with his

enabling mother.

The dispositional hearing was held on 25 July 2000. After hearing argument, the court adjourned until the following day, in order to further review the matter. On 26 July 2000, the court entered an order committing the juvenile to the OJJ for an indefinite term of at least six months, but not to exceed the juvenile's eighteenth birthday. The court further made a finding that the juvenile was a danger to the community and, pursuant to N.C.G.S. § 7B-2509, the court required the juvenile to register.

In his first two assignments of error, the juvenile argues that the court failed to make findings of fact sufficient to justify imposition of a Level 3 Disposition, and that the court abused its discretion in imposing a Level 3 Disposition rather than a Level 2 Disposition. The statute governing dispositional orders provides as follows:

> The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

N.C. Gen. Stat. § 7B-2512 (1999). Regarding the determination of an appropriate disposition, the legislature has directed as follows:

> In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S.

> 7B-2508, the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:
>
> (1) The seriousness of the offense;
>
> (2) The need to hold the juvenile accountable;
>
> (3) The importance of protecting the public safety;
>
> (4) The degree of culpability indicated by the circumstances of the particular case; and
>
> (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

N.C. Gen. Stat. § 7B-2501(c) (1999). The legislature has also provided that "[t]he purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction, including the protection of the public." N.C. Gen. Stat. § 7B-2500 (1999). To this end,

> The court should develop a disposition in each case that:
>
> (1) Promotes public safety;
>
> (2) Emphasizes accountability and responsibility of both the parent, guardian, or custodian and the juvenile for the juvenile's conduct; and
>
> (3) Provides the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community.

Id.

Here, the court stated in its written order that

> The court finds the seriousness of this offense, the reported and apparent needs of the juvenile, the proximity of and apparent access to the victim, the best interest of public safety emphasizing the accountability and responsibility of the juvenile and his

> parents and to provide appropriate consequences and treatment would indicate that the juvenile should be committed to the department of juvenile justice for an indefinite term of not less than six months.

The juvenile contends that, except for the reference to the juvenile's proximity to the victim, the court merely mimicked the language in N.C.G.S. § 7B-2500 and N.C.G.S. § 7B-2501(c), without making any findings particular to this juvenile. Additionally, the juvenile complains that the court failed to indicate the weight it gave to the statutory factors, and argues that the court should have given more weight to facts favoring a Level 2 Disposition.

The statutes do not require the court to make written findings detailing its decision-making process. The court had before it a Predisposition Report, *see* N.C. Gen. Stat. § 7B-2413 (1999), which included a risk and needs assessment. Additionally, a Sex Offender Specific Evaluation was prepared by Pathways and was before the court. The Predisposition Report recommended that the juvenile be committed to the OJJ. The transcript from the dispositional hearing and the order indicate that the court reviewed the information before it and considered the appropriate statutory factors. The order "state[s] with particularity . . . the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested." N.C.G.S. § 7B-2512. Therefore, we hold that the court complied with the requirements of the Juvenile Code.

Although the juvenile argues that the court should have given

more weight to the facts that are favorable to him, he fails to identify any abuse of discretion on the part of the court. Hence, we conclude there was no abuse of discretion.

The juvenile also contends that the court erred in failing to make findings as to the inappropriate nature of alternatives to commitment. The juvenile quotes *In re Groves*, 93 N.C. App. 34, 376 S.E.2d 481 (1989), where this Court held that "the judge had an affirmative obligation to inquire into and to seriously consider the merits of alternative dispositions, and . . . his failure to do so was error." 93 N.C. App. at 39, 376 S.E.2d at 484; *see also In re Khork*, 71 N.C. App. 151, 155-56, 321 S.E.2d 487, 490 (1984). However, the Juvenile Code has been amended since *Groves* was decided. *See* Act of October 22, 1998, 1997 N.C. Sess. Laws 695. At the time *Groves* was decided, the General Assembly had directed that

> In choosing among statutorily permissible dispositions for a delinquent juvenile, the judge shall select the least restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile. A juvenile should not be committed to training school or to any other institution if he can be helped through community-level resources.

N.C. Gen. Stat. § 7A-646 (1986). With the amendment and recodification of the Juvenile Code, the General Assembly replaced the requirement that the judge "select the least restrictive disposition" by the requirement that the judge "select the most appropriate disposition," one that "is designed to protect the

public and to meet the needs and best interests of the juvenile," based on a set of enumerated factors. N.C.G.S. § 7B-2501(c).

We conclude that the court complied with the statutory requirements, and we find no abuse of discretion. Accordingly, these assignments of error are overruled.

In his third and final assignment of error, the juvenile argues that the trial court erred in requiring him to register pursuant to N.C.G.S. § 7B-2509. According to N.C.G.S. § 7B-2509:

> In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first-degree rape) . . ., the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes.

The juvenile argues first that the General Assembly did not intend for N.C.G.S. § 7B-2509 to apply to first-degree statutory rape, the offense to which the juvenile pled guilty. The rape statute, which is entitled "First-degree rape," provides in relevant part:

> A person is guilty of rape in the first degree if the person engages in vaginal intercourse:
> (1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or
> (2) With another person by force and against the will of the other person, and:
> a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
> b. Inflicts serious personal injury upon the victim or another person;

> or
> c. The person commits the offense aided and abetted by one or more other persons.

N.C.G.S. § 14-27.2(a). The juvenile argues that the General Assembly intended for the registration requirement of N.C.G.S. § 7B-2509 to apply only to delinquent juveniles who have violated N.C.G.S. § 14-27.2(a)(2), and not to those who have violated N.C.G.S. § 14-27.2(a)(1). However, it is plain that both offenses have been included within "rape in the first degree." If the General Assembly had intended that only juveniles who had committed the offense proscribed by N.C.G.S. § 14-27.2(a)(2) be required by N.C.G.S. § 7B-2509 to register, then it could have so limited the provision in N.C.G.S. § 7B-2509. It did not, and we decline to presume such an intent.

Additionally, the juvenile argues that the judge did not make the requisite finding under N.C.G.S. § 7B-2509 that the juvenile is a danger to the community. Contrary to the juvenile's contention, the statute does not require that the judge make written findings, and thus, the fact that the court's order does not refer to the statute or contain a finding that the juvenile is a danger to the community is not error. At the hearing, the judge stated "[t]he Court will further make a finding that the juvenile should register through the registration system, and . . . that the juvenile is a danger or could be a danger to the community." Because the court complied with the statute, this assignment of error is overruled.

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).