NO. COA02-343

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

IN THE MATTER OF:

CONROY L. OLIVER

Mecklenburg County
No. 99 J 117

Appeal by respondent from orders entered 4 October 2001 by Judge E.M. Currence in Mecklenburg County District Court. Heard in the Court of Appeals 14 November 2002.

Attorney General Roy Cooper, by Assistant Attorney General Brent D. Kiziah, for the State.

Robert T. Newman, Sr. for defendant/appellant.

TYSON, Judge.

I. Background

On 16 October 2000, respondent Conroy Oliver, ("juvenile") was adjudicated delinquent on the charges of two counts of larceny of an automobile and two counts of assault. Juvenile was sentenced to a Level 2 disposition, and remained in detention until he was placed in residential treatment on 29 November 2000. On 13 July 2001, juvenile was adjudicated delinquent for unauthorized use of a vehicle, and sentenced to a Level 3 disposition. This disposition ordered juvenile to be placed in a training school for

an indefinite period, with a six-month minimum, until juvenile's eighteenth birthday.

On 21 June 2001, juvenile struck a fellow juvenile, Floyd Williams in the eye while living at the training school. Williams was hospitalized with a fractured eye socket. On 28 June 2001, juvenile ran from law enforcement officers and willfully resisted, delayed, and obstructed Officer W.C. Hastings.

On 4 October 2001, juvenile executed a transcript of admission to the charge of resisting, delaying, or obstructing a public officer. Judge Currence adjudicated respondent guilty of the charge of assault inflicting serious injury. The court found that juvenile had received a Level 3 disposition previously and had four or more prior adjudications of delinquency. The court also found the juvenile to be over fourteen years of age, delinquent for two or more prior felony offenses, and previously committed to a training school. The court ordered a definite commitment of eighteen months, this sentence to run consecutively to the first commitment.

II. Issue

The issue is whether the trial court erred in sentencing juvenile to a definite commitment of eighteen months for assault inflicting serious injury and resisting, delaying or obstructing a public officer when the maximum allowable sentence under the criminal statutes for an adult is 210 days.

III. Violation of Appellate Rules

The State's brief outlines numerous violations by respondent of the North Carolina Rules of Appellate Procedure. In our discretion, we choose to review the merits of the case pursuant to Rule 2, N.C. Rules of Appellate Procedure.

IV. Length of Commitment

Prior to the juvenile's adjudications at issue, juvenile was adjudicated delinquent and committed under N.C.G.S. § 7B-2513(a). This statute states,

> (a) Pursuant to G.S. 7B-2506 and G.S. 7B-2508, the court may commit a delinquent juvenile who is at least 10 years of age to the Department for placement in a youth development center. Commitment shall be for an indefinite term of at least six months. In no event shall the term exceed: . . . .
> (3) The eighteenth birthday of the juvenile if the juvenile has been committed to the Department for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
>
> *No juvenile shall be committed to a youth development center beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense, except* when the Department pursuant to G.S. 7B-2515 determines that the juvenile's commitment needs to be continued for an additional period of time to continue care or treatment under the plan of care or treatment developed under subsection (f) of this section. At the time of commitment to a youth development center, the court shall determine the maximum period of time the juvenile may remain committed before a determination must be made by the Department pursuant to G.S. 7B-2515 and shall notify the juvenile of that determination.

N.C.G.S. § 7B-2513(a) (2001) (emphasis supplied).

Juvenile argues that his sentence violates N.C.G.S. § 7B-2513(a). Juvenile emphasizes that his sentence is for a term longer than the maximum for which an adult could be sentenced for the same offenses. The maximum imprisonment an adult criminal could receive is 210 days, with the requisite prior record level. Assault inflicting serious injury is a Class A1 misdemeanor that carries a maximum sentence of 150 days if the defendant has a level III prior misdemeanor status. N.C.G.S. § 14-33(c) (2001), N.C.G.S. § 15A-1340.23(c)(2) (2001). Resisting, delaying or obstructing a public officer is a Class 2 misdemeanor, and its maximum sentence for a prior record level III defendant is 60 days. N.C.G.S. § 14-223 (2001), N.C.G.S. § 15A-1340.23(c)(2).

The State counters that N.C.G.S. § 7B-2513(b) allows for imposition of the sentence. "The court may commit a juvenile to a definite term of not less than six months and not more than two years if the court finds that the juvenile is 14 years of age or older, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a youth development center." N.C.G.S. § 7B-2513(b) (2001).

Nothing in subsection (a) of N.C.G.S. § 7B-2513 restricts subsection (b). The language in subsection (a) clearly applies to indefinite terms of commitment and limits the duration of an indefinite sentence. N.C.G.S. § 7B-2513(a) ("Commitment shall be for an *indefinite* term of at least six months.") Subsection (b) applies to definite terms of commitment and is not restricted by the language in subsection (a). N.C.G.S. § 7B-2513(b) ("The court

may commit a juvenile to a definite term of not less than six months and not more than two years . . .").

In *In re Allison,* 143 N.C. App. 586, 547 S.E.2d 169 (2001), this Court upheld the constitutionality of a sentence imposed under subsection (a), which purportedly violated language in that subsection. In *Allison,* the juvenile argued that her sentence was unconstitutional as applied because it was harsher than that she would have received as an adult. *Id.* at 594, 547 S.E.2d at 173. This Court found the argument without merit. *Id.* at 596, 547 S.E.2d at 175.

> Appellants seek to equate the protective custody of children under the juvenile laws of the State with the trial and punishment of adults under the criminal statutes. By so doing, they conclude that since a juvenile may be committed "during minority" (unless sooner released by the proper authorities) he is required "to serve a longer period of confinement" than the criminal law visits upon an adult for violation of the same statute. Therefore, they argue, the juvenile statutes are constitutionally unsound. The equation is a non sequitur; its rationale fallacious. Nothing in [*In re Gault,* 387 U.S. 1, 18 L. Ed. 2d 527 (1967)] or other recent federal decisions supports it. There are still many valid distinctions between a criminal trial and a juvenile proceeding. *Burrus,* 275 N.C. at 533, 169 S.E.2d at 889. *See In re Whichard,* 8 N.C. App. 154, 157-58, 174 S.E.2d 281, 283 (1970), *cert. denied,* 403 U.S. 940, 29 L. Ed. 2d 719 (1971) (rejecting the appellant's claim that the Juvenile Court Act is unconstitutional because it 'authorizes a longer period of confinement for a juvenile who violates a criminal statute than for an adult who violates the same statute').

Id. at 595, 547 S.E.2d at 174.

Juvenile adjudications differ from criminal convictions in their effect upon the juvenile. Although the juvenile may serve a sentence longer than an adult who committed the same offense, the juvenile's record of adjudication is sealed upon reaching majority. N.C.G.S. § 7B-3200 (2001). The juvenile also will not serve his sentence in an adult facility. N.C.G.S. § 7B-2506 (2001).

V. Prior Felonies

Juvenile also argues that his sentence imposed under subsection (b) of N.C.G.S. § 7B-2513 is error because he only has one prior felony conviction. It is clear from the record and sentencing sheets that juvenile had two prior felony offenses, both larcenies of automobiles.

The multiple felony offenses were punished as one pursuant to statutes that all juvenile offenses tried during the same session of court are consolidated. N.C.G.S. § 7B-2507(d) (2001) ("For purposes of determining the delinquency history level, if a juvenile is adjudicated delinquent for more than one offense in a single session of district court, only the adjudication for the offense with the highest point total is used."); N.C.G.S. § 7B-2508(h) (2001) ("If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses.") The juvenile's record shows that he was adjudicated delinquent for two distinct felonious automobile larcenies. Only one disposition and sentence was given for those adjudications. N.C.G.S. § 7B-2513(b) requires the

juvenile to be "previously adjudicated delinquent for two or more felony *offenses*." (Emphasis supplied). Juvenile committed and was adjudicated delinquent for two felony offenses even though there was only one disposition pursuant to N.C.G.S. § 7B-2508(h).

VI. Conclusion

Our courts have upheld the constitutionality of a juvenile sentence that is longer than that of an adult criminal committing the same offense. *In re Burrus*, 275 N.C. 517, 533, 169 S.E.2d 879, 889 (1969); *Allison*, 143 N.C. App. at 596, 547 S.E.2d at 175. The limitations in N.C.G.S. § 7B-2513(a) are applicable to indefinite sentences imposed under that subsection and not the sentence in the present case. Subsection (b) properly applies to the definite sentence at bar because the juvenile had been adjudicated of two prior felony offenses. We affirm the sentence of eighteen months imposed by the trial court under N.C.G.S. § 7B-2513(b).

AFFIRMED.

Judges WALKER and McCULLOUGH concur.

Report per Rule 30(e).