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NO. COA05-1133

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

IN THE MATTER OF:

Alamance County  
No. 99 J 7003

J.O.J.

Appeal by juvenile from orders entered 20 January 2005 by Judge James K. Roberson in Alamance County District Court. Heard in the Court of Appeals 19 April 2006.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Dana F. Barksdale, for the State.*

*Gilda C. Rodriguez for juvenile-appellant.*

HUNTER, Judge.

Juvenile appeals from orders of adjudication and disposition of the trial court. Juvenile contends the trial court erred by failing to specify in the disposition order that his commitment was for a maximum term of six months. Juvenile further argues the trial court erred in denying his release pending appeal. For the reasons stated herein, we affirm the orders of the trial court, but remand for correction of a clerical error.

Juvenile has a history of delinquency. On 20 January 2005, the trial court held an adjudication hearing, following which juvenile was adjudicated undisciplined for running away from home and delinquent for possession of marijuana, communicating threats,

assault, and a probation violation. At the hearing, the trial court informed juvenile that he would be committed to a youth development center for a minimum and maximum of six months. The written disposition order, however, states that the commitment is "indefinite." Upon expiration of the six-month term of commitment, juvenile's treatment team at the youth development center agreed that his "time in the YDC placement [should] be extended beyond 6 months because of his lack of progress emotionally, psychologically and behaviorally." A letter was sent to juvenile's mother explaining the decision to prolong juvenile's commitment for further rehabilitation and informing her of her right to have the extension reviewed by a trial court. Juvenile's mother did not respond to the letter. Juvenile appeals.

By his first assignment of error, juvenile argues the trial court erred in committing him to an indefinite period of time, rather than a six-month maximum term. Juvenile relies upon N.C. Gen. Stat. § 7B-2513(a) (2005) which states in pertinent part that:

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.

*Id.* Juvenile argues he has been kept in custody in excess of the maximum term allowed by section 7B-2513(a).

The State agrees with juvenile that the maximum commitment period was six months and does not contest a remand to the trial court for correction of the clerical error in the order of disposition. The State notes that the disposition order must conform to the order the trial court verbalized at the hearing. The State points to testimony at the hearing which shows that all parties understood that juvenile's commitment was for a maximum of six months. As to juvenile's commitment beyond the six-month period, the State notes that section 7B-2513 allows a commitment to be administratively extended if there is a need for continued care or treatment. N.C. Gen. Stat. § 7B-2513(a). Here, juvenile's treatment team agreed that he needed additional rehabilitation and that his commitment should be extended "because of [juvenile's] lack of progress emotionally, psychologically and behaviorally." Juvenile's mother failed to contest the treatment team's decision to extend juvenile's commitment.

We agree with the State that the trial court's error here was a clerical one, and that the administrative extension of juvenile's commitment was permitted pursuant to section 7B-2513(a). Although the error by the trial court was harmless, we remand for correction of the clerical error. See *In re J.L.B.M.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 627 S.E.2d 239, 248 (2006) ("[w]hile the trial court made the proper finding orally that commitment would not exceed the

juvenile's eighteenth birthday, this term was omitted from the written order. . . . Accordingly, we remand to the trial court with instructions to correct the clerical error on the commitment order").

Juvenile further contends that the trial court erred in denying his release pending appeal.

Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.

N.C. Gen. Stat. § 7B-2605 (2005). The trial court here made no findings regarding its decision to maintain custody of juvenile pending his appeal.

As the State correctly notes, this issue is now moot. The record affirmatively reflects the fact that juvenile has already served his six-month time period. Any extension of juvenile's commitment has been an administrative one over which we do not have jurisdiction. See *In re W.H.*, 166 N.C. App. 643, 648, 603 S.E.2d 356, 360 (2004) (holding that the failure of the trial court to make findings regarding denial of its release of the juvenile pending appeal was moot in light of the fact that the juvenile had already served his Level 3 disposition); *In re Lineberry*, 154 N.C. App. 246, 256, 572 S.E.2d 229, 236 (2002) (stating that "we are aware of the likelihood that the passage of time may have rendered the issue of [the] juvenile's custody pending appeal moot").

In conclusion, we affirm the orders of adjudication and disposition of the trial court, but we remand the order of disposition by the trial court for correction of a clerical error.

Affirmed, remanded in part for correction of clerical error.

Judges McGEE and STEPHENS concur.

Report per Rule 30(e).