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NO. COA08-851

NORTH CAROLINA COURT OF APPEALS

Filed: 17 March 2009

IN THE MATTER OF:
J.C.

Mecklenburg County
No. 06-J-1185

Appeal by juvenile appellant from disposition and commitment order entered 22 January 2008 by Judge Lisa C. Bell in Mecklenburg County Juvenile Court. Heard in the Court of Appeals 29 January 2009.

Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Kristen L. Todd, for the defendant-appellant.

STEELMAN, Judge.

A dispositional order must contain appropriate findings of fact encompassing the five factors set forth in N.C. Gen. Stat. § 7B-2501(c).

I. Factual and Procedural Background

In July 2007, J.C. (Juvenile) and his friend D.S.¹ purchased a 12-gauge single barrel shotgun for \$20. The next day, juvenile

¹ We will use initials to protect the identities of the juveniles involved in this case.

went to visit his father and used his father's tools to cut down the barrel and the stock.

On 16 July 2007, D.S. visited juvenile's residence. The only other person home at the time was juvenile's sister. Juvenile went into his bedroom and pulled the shotgun out from under the bed. Juvenile and D.S. proceeded to open the shotgun, look at it, and were playing with the shotgun, which was not loaded. Juvenile went to the bathroom.

Juvenile testified that when he came back from the bathroom, the shotgun was then closed, and he did not feel "comfortable with the way [D.S.] was playing with the gun. It looked like he didn't know what he was doing." Juvenile asked D.S. for the shotgun, but D.S. refused. When juvenile tried to pull the shotgun out of D.S.'s hands, the shotgun went off. Juvenile testified that after the shotgun fired, he threw the shotgun on the bed. He and his sister ran outside and called 911. Paramedics declared D.S. dead when they arrived at the residence.

Police collected the shotgun, which had one spent shell inside. Juvenile later told police that D.S.'s aunt "runs a much tighter house" so juvenile and D.S. agreed to keep the shotgun at juvenile's residence. He further told them that the boys had purchased the shotgun for the purpose of protecting D.S. from a "dude named Kevin." Juvenile admitted to being a member of a gang.

On 13 September 2007, a juvenile petition accusing the juvenile of involuntary manslaughter was filed in Mecklenburg County. On 22 January 2008, the juvenile admitted to committing

involuntary manslaughter, and the trial court adjudicated him delinquent.

After adjudication, the case proceeded to a disposition hearing on 30 January 2008. The trial court found juvenile had four delinquency history points and that his delinquency history level was high. A level three disposition order was entered committing juvenile to a youth development center for an indefinite period of time, with a maximum time of juvenile's eighteenth birthday.

Juvenile appeals.

II. Analysis

In his first argument, juvenile contends that the trial court erred in not making sufficient findings of fact to support its disposition order as required by N.C. Gen. Stat. § 7B-2512. The State acknowledges the trial court did not incorporate all of its findings into the dispositional order but argues the findings of fact announced in open court were sufficient to support the order. We agree with juvenile.

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 (2008).

Under the provisions of N.C. Gen. Stat. § 7B-2501(c), the trial court must consider five factors in selecting an appropriate disposition:

- (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) (2008).

The Disposition and Commitment Order contains an area for "Other Findings" and indicates that this is the appropriate place to include findings dealing with the five factors set forth in N.C. Gen. Stat. § 7B-2501(c). The findings in this section of the order in the instant case read as follows:

Commitment to a YDC for charge of involuntary manslaughter. Judge Bell wants DJJDP to seriously consider community commitment at Eckerd Camp. Acknowledged that [JC] made progress in the MRT program. Defense entered in a notice of appeal to the disposition. Judge Bell ordered her prohibition of his residence at Stonewall Jackson due to death threats. Juvenile was finger printed and photographed.

These findings fail to address any of the five factors the court was required to consider and do not support the entry of a level three disposition. *In re Ferrell*, 162 N.C. App. 175, 176-177, 589 S.E.2d 894, 895 (2004). The State cites an unpublished opinion of this Court to support its contention that the trial court need not

make written findings on the factors set out in N.C. Gen. Stat. § 7B-2501(c). *In re D.K.H.*, __ N.C. App. __, 664 S.E.2d 78, 2008 WL 2967081 (Aug. 5, 2008).

This Court upheld the trial court's dispositional order in *In re D.K.H.* in part because it contained a written finding of fact on one of the factors set forth in N.C. Gen. Stat. § 7B-2501(c): the violent nature of the offense. This finding showed that the trial court had considered the statutory factors and made sufficient findings of fact to explain its reasoning in imposing the chosen disposition. In this case, the findings of fact in the disposition and commitment order provide no explanation at all why the trial court chose a level three disposition. Instead, they simply recite the nature of the offense, the juvenile's delinquency history, the evidence received, the actual disposition, the juvenile's progress in a particular program, and the trial court's wishes regarding the location of the juvenile's commitment. The trial court did not make any written findings of fact pertaining to any of the factors set forth in N.C. Gen. Stat. § 7B-2501(c).

The dispositional order is vacated, and this matter is remanded to the trial court for entry of an order containing appropriate findings of fact pursuant to N.C. Gen. Stat. § 7B-2501(c) and N.C. Gen. Stat. § 7B-2512.

Because of our ruling on defendant's first argument, we need not address his second argument.

VACATED and REMANDED.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).