



On 16 December 2009, Juvenile was adjudicated delinquent of felony breaking and entering (B&E) and felony larceny after B&E, upon which the trial court entered a Level 2 disposition and placed Juvenile on twelve months' probation. Juvenile violated the drug use and curfew provisions of his probation, and the trial court imposed additional conditions, including a 30-day electronic monitoring requirement. A motion for review filed 6 May 2010 alleged Juvenile violated his probation by removing his electronic monitoring anklet on 3 May 2010 and leaving home. When Juvenile had not returned home by 11 May 2010, a runaway petition was also filed. On 17 June 2010, two delinquency petitions were then filed against Juvenile alleging felony B&E and misdemeanor larceny in connection with the theft of a stereo amplifier from a vehicle belonging to Mr. Timothy Liles.

At a hearing conducted on 10 August 2010, the State proceeded on the 17 June 2010 allegations, which Juvenile denied. Durham police officer Ronnell Campbell testified that on 29 May 2010, Mr. Liles caught Juvenile removing a stereo amplifier through the back window of Mr. Liles' vehicle, which "had been busted out." Juvenile was with two other Hispanic

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identifies both "his adjudication of delinquency and disposition entered August 10, 2010," his brief does not address the adjudication of delinquency. Juvenile thus abandons his appeal from this adjudication order. See N.C.R. App. P. 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned.").

males, one of whom pointed a gun at Mr. Liles' face when he yelled at them. Moments after Officer Campbell responded to the scene, Mr. Liles identified a passing vehicle as the one in which the suspects had fled. Officer Campbell stopped the vehicle with the Juvenile and two other suspects, at which time he saw a baseball bat on the center console and what was later identified as Mr. Liles' amplifier in the trunk area. The trial court found Juvenile's commission of the alleged offenses had been proven beyond a reasonable doubt.

Prior to the dispositional phase, Juvenile admitted to removing his electronic monitoring bracelet and leaving home, as alleged in the pending motion for review. Juvenile's runaway petition was dismissed, and the trial court "accept[ed] [his] violation of probation by cutting off his bracelet."

Juvenile's court counselor then proposed a 12-month Level 2 disposition to be served consecutive to the current probation, specifically recommending participation in Project Build; intensive in-home treatment; disallowing any association with gang members; an additional 28 days for non-compliance; and 100 community service hours, pending a response on Juvenile's recently submitted wilderness camp application. She acknowledged, however, that while Juvenile wanted help to stay

out of trouble, "he does have a problem with staying in the home" and "really does not need to be in the community." Recommending an immediate "training school commitment," the State argued that Juvenile's failure to abide by his current probation demonstrated "that he's not going to comply with anything in the community" and that wilderness camp would not "be sufficient." The trial court imposed a Level 3 disposition, committing Juvenile to a YDC. Juvenile appeals.

Juvenile contends the trial court erred by committing him to a YDC without making sufficient written findings of fact to support its decision, as required by N.C. Gen. Stat. § 7B-2512, and abused its discretion in imposing a Level 3 disposition where the court counselor had recommended that a new Level 2 sentence be appended to his current probation. We disagree.

Upon an adjudication of delinquency, the trial court "shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile," N.C. Gen. Stat. § 7B-2501 (c) (2009). While the proper disposition for a delinquent juvenile is a matter within the court's discretion, *In re Ferrell*, 162 N.C. App. 175, 176, 589 S.E.2d 894, 895 (2004), its selection must be based upon the following factors:

- (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.

*Id.* at 176-77, 589 S.E.2d at 896. A disposition order must "be in writing" and "contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat § 7B-2512 (2009).

Here, the Level 3 disposition and commitment order (Order) contains "appropriate findings of fact" which demonstrate that the trial court adequately addressed the pertinent factors. See *In re V.M.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Apr. 19, 2011) ("[T]he trial court's written order [must] contain[] []sufficient findings to allow this Court to determine whether it properly considered all of the factors required by N.C.G.S. § 7B-2501(c).").

In the Order's pre-printed fields, the trial court found that Juvenile was adjudicated for felony B&E of a motor vehicle and misdemeanor larceny; was on probation at the time for previous adjudications of felony B&E and felony larceny; and had

been adjudicated for a violent or serious offense, authorizing Level 3. In the "Other Findings" section, the court added:

Juvenile was placed on intensive probation for [a] prior felony B/E/L. While on intensive he cut off electronic monitoring and subsequently committed a felony B/E motor vehicle during with [sic] 18 yr old co[defendant] pointed a gun at victim. He is heavily gang involved. He complied with no probation condition and has violated prior time.

The trial court also indicated its receipt and consideration of a predisposition report and risk and needs assessments, which were each incorporated by reference and attached to the Order.

While nothing in N.C. Gen. Stat. §§ 7B-2501 or 7B-2512 requires the trial court to make a written finding of fact for every factor it must assess, the "Other Findings" and the contents of the reports incorporated into the subject Order, especially in conjunction with the transcript, address at least four, if not all five, of the § 7B-2501(c) considerations.

In addition to the pre-printed finding that "[J]uvenile has been adjudicated for a violent or serious offense," the predisposition report labels the current offense classification as "Serious" and the court's written findings note that the current B&E felony was gang-related and involved pointing a gun at the

victim. We thus believe the trial court considered the seriousness of Juvenile's misconduct.

The findings that Juvenile severed his ankle monitor and complied with no probation term reflect the court's insistence that he be answerable for his conduct, where the trial judge had admonished Juvenile for doing nothing "the Court ordered except commit another felony offense" and warned: "You run, you cut off your electronic monitoring. You haven't shown me anything except continuing the behavior and pattern that your [sic] doing that's going to get you killed as well." This admonishment and related findings of fact evidence an effort to hold Juvenile accountable for his actions and the consequences thereof.

While the finding of Juvenile's gang involvement does not itself point to any § 7B-2501 factor, the trial court appears to have considered this fact as a circumstance affecting criminal liability. For, the pre-disposition report notes: Juvenile "is heavily influenced by his fellow gang members" and "constantly runs away from home due to his involvement with the [gang]." The trial judge also suggested that Juvenile's conduct may, to some extent, be the product of his associations and environment: "You by yourself, I don't think you'd be doing this but you[r] involvement with the gang is leading you to an early death or

prison." Thus, the trial court also accounted for any mitigated degree of culpability due to gang influences on Juvenile.

The assessment reports identify Juvenile as "High Risk" based on his class F-1 felony offense, three runaway incidents, substance abuse, serious school behavior problems, and gang membership and "High Needs" based on unmet substance abuse treatment and protection needs and his risk-taking/impulsive behavior. Both reports found that Juvenile's parents could not supervise or control him, or prevent him from running away. The trial court discussed the risks inherent in his behavior and further explained that he needed "to get out of this community" because he was "sinking fast" and there was "nothing else" that could be done "in a short amount of time." Notably, Juvenile's own readiness for a "drastic change" in the environment was also noted in the pre-disposition report. Where the trial court specified Juvenile's need to get "off the marijuana" and "out of the gang" to "reach [his] potential" and resolved that "staying in the community [would] not work," it clearly considered the rehabilitative and treatment needs indicated in the assessments.

We conclude that the Order thus contains appropriate written findings of fact, which demonstrates that the trial court considered the requisite statutory factors under N.C. Gen.



Stat. § 7B-2501(c), and explains that a YDC commitment was necessary to remove Juvenile from his community, thus satisfying N.C. Gen. Stat. § 7B-2512. In light of our conclusion, we briefly note that the two cases of precedential value on which Juvenile relies, *In re Ferrell* and *In re V.M.*, are distinguishable as the trial court here made sufficient findings of fact and thoroughly explained its reasoning for Juvenile's YDC commitment. See *In re V.M.*, \_\_\_ N.C. App. at \_\_\_, \_\_\_ S.E.2d at \_\_\_ (reversing disposition order because absolutely no findings addressed any § 7B-2501(c) factor, no "Other Findings" were made, and no additional findings of fact were attached to order, precluding this Court's ability to determine whether trial court made requisite considerations); see also *In re Ferrell*, 162 N.C. App. at 177, 589 S.E.2d at 895 (setting aside order because findings did not support change of custody disposition)).

Moreover, the trial court did not abuse its discretion in ordering the Level 3 YDC commitment, as Juvenile argues.

"Once a juvenile is placed in a dispositional level, the statutes provide dispositional alternatives which may be utilized by the trial court," *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002), and the court must "select the

most appropriate disposition" that is calculated to protect the public and to meet the juvenile's needs and best interests, N.C. Gen. Stat. § 7B-2501 (c). The choice among statutorily permissible dispositions is left to the trial court's discretion and "will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason." *In re N.B.*, 167 N.C. App. 305, 311, 605 S.E.2d 488, 492 (2004). Where there is a choice between "two appropriate dispositional levels," however, "no specific guidelines" exist, and the trial court's election of the level is likewise within its discretion. *In re Robinson*, 151 N.C. App. at 737, 567 S.E.2d at 229.

Here, Juvenile's "serious" offense, see N.C. Gen. Stat. § 7B-2508(a)(2) (2009) (classifying "[a]djudication of a Class F through I felony offense" as "Serious"); N.C. Gen. Stat. § 14-56 (2009) (deeming breaking and entering motor vehicle a class I felony), combined with Juvenile's "high" delinquency history level, based on his prior class H felony and commission of the current offense while on probation, see N.C. Gen. Stat. § 7B-2507(b)(2), (4), -(c)(3) (2009), authorized the imposition of a Level 2 or Level 3 disposition, see N.C. Gen. Stat. § 7B-2508(f). Thus, the trial court had the discretion to choose between the intermediate, "primarily community based" Level 2

dispositions or a YDC commitment under Level 3. *In re Robinson*, 151 N.C. App. at 737, 567 S.E.2d at 229; *see also In re T.B.*, 178 N.C. App. 542, 545-46, 631 S.E.2d 857, 859 (2006) (observing that commitment of the juvenile to training school is a Level 3 disposition and not an alternative available under Level 2).

"We have been clear that choosing between two appropriate dispositional levels is within the trial court's discretion," *In re D.A.F.*, 179 N.C. App. 832, 835, 635 S.E.2d 509, 511 (2006) (internal quotation marks omitted), such that "[t]his Court will not overturn its choice unless it is so arbitrary that it could not have been the result of a reasoned decision." *In re T.B.*, 178 N.C. App. at 544, 631 S.E.2d at 858 (internal quotation marks omitted).

The record in the case *sub judice* clearly shows that the imposition of a Level 3 disposition was the result of a reasoned decision. The trial court was presented with evidence that Juvenile had not complied with any community-based condition; was not in school and repeatedly ran away; and even after given the opportunity to remain at home on electronic monitoring, had cut off his anklet. The Level 2 recommendation was discounted by Juvenile's failure to make progress while allowed to be in the community and further undermined by the juvenile court

counselor's own acknowledgment that Juvenile has "a problem with staying in the home" and "really does not need to be in the community." Evidence that Juvenile's parents had marginal supervision skills and difficulty controlling him also indicated that the suggested Level 2 dispositional alternatives, which required "adult supervision at all times when in the community" and Juvenile's avoidance of any people or places "deemed inappropriate by his parent or guardian" would be thwarted. Of particular concern to the trial court was not only Juvenile's involvement with a gang but also, the heavy influence that Juvenile's fellow gang members had over him, which was "leading [Juvenile] to an early death or prison." Where the trial court described Juvenile's pattern of behavior as conduct likely to "get [him] killed," it specified that, other than removal from the community, "[t]here's nothing else we can do in a short amount of time" to keep Juvenile safe. In light of the evidence, including this explicit consideration of alternatives available in the community, Juvenile's high risk level of future offending, and his high needs score, Juvenile has failed to show that the trial court abused its discretion in choosing the Level 3 dispositional level and related YDC commitment over a Level 2 disposition that would allow Juvenile to stay in the community.

We conclude that the trial court's decision to commit Juvenile to a YDC was based on appropriate written findings of fact, in accordance with N.C. Gen. Stat. § 7B-2512, and that its election of this Level 3 disposition instead of Level 2 as recommended by the juvenile court counselor was not an abuse of discretion. We note that the disposition and commitment order does not specify Juvenile's delinquency history points and level, and we remand for correction of the clerical error. See *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (defining "[c]lerical error" as "[a]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination" (internal quotation marks omitted)).

While a "Worksheet to Determine Juvenile Disposition Level" calculates Juvenile's total delinquency history points at four, two points for the 16 December 2009 F-I felony B&E and two points for being on probation on the date of the current offense, the copy of the worksheet contained in the record is not signed by the trial judge, nor is there any evidence that it was incorporated into the Order by reference. In any event, the worksheet erroneously states that Juvenile's delinquency history level is medium, despite the fact that the accrual of four or

more points correlates to a high history level. However, in light of the evidence and documentation before the trial court, our discussion above, and Juvenile's own admission in his brief that he had obtained "a 'high' delinquency history level, it is apparent that the trial judge understood that her discretion to choose between a Level 2 or 3 disposition was based on the combination of Juvenile's "serious" offense with his "high" delinquency history level. Where a court "has the inherent power to make its records speak the truth and, to that end, to amend its records to correct clerical mistakes or supply defects or omissions therein," *State v. Davis*, 123 N.C. App. 240, 242-43, 472 S.E.2d 392, 393 (1996), we remand for the purpose of correcting the dispositional order to accurately reflect Juvenile's delinquency history points and delinquency history level.

Affirmed; Remanded for correction of clerical error.

Judges BRYANT and GEER concur.

Report per Rule 30(e).