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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-785

Filed: 15 March 2016

Orange County, No. 10 JB 32

IN THE MATTER OF: D.B.

Appeal by Juvenile-Appellant from an adjudication order entered 4 October 2014 by Judge Kathryn W. Overby in Alamance County District Court, and from three dispositional orders entered 20 January 2015, 21 January 2015, and 28 January 2015 by Judge Joseph Buckner in Orange County District Court. Heard in the Court of Appeals 2 December 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Stephanie A. Brennan, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender David W. Andrews, for the Juvenile-Appellant.

HUNTER, JR., Robert N., Judge.

Juvenile ("D.B.") appeals following a 20 January 2015 dispositional hearing, from original and amended disposition orders entered 20 January 2015, 21 January 2015, and 28 January 2015. On appeal, D.B. contends the trial court erred by: (1) denying his motion to continue the dispositional hearing; (2) imposing a Level 3

dispositional order after the State failed to prove he had four prior adjudications; and (3) imposing a Level 3 dispositional order believing it to be mandatory. We disagree.

I. Factual and Procedural History

On 15 September 2014, petitions were filed against D.B. in Alamance County for consumption of alcohol under age 19 and resisting a public officer. D.B. was on probation at the time of these petitions. Pursuant to a plea agreement, D.B. admitted to resisting a public officer and the State dismissed the alcohol petition. D.B. was adjudicated delinquent and the case was transferred to Orange County for disposition.

On 5 November 2014, additional petitions were filed against D.B. for felony breaking and entering and felony larceny. D.B. appeared in Orange County District Court on 13 November 2014 and was assigned an attorney. That same day, an Orange County clerk gave the attorney notice of a disposition hearing set for 2 December 2014.

Because D.B.'s adjudication for resisting a public officer violated his probation, a court counselor, Pat Cameron ("Counselor Cameron"), filed a motion for review on 14 November 2014. The motion was set for hearing on 2 December 2014.

On 2 December 2014, D.B. failed to appear for his dispositional hearing and the hearing on the motion for review. Consequently, the court entered an order for secure custody.

On 15 January 2015, D.B. appeared before the trial court for a detention hearing. At the hearing, D.B.'s attorney objected to D.B. remaining in custody. The State put on evidence showing D.B. absconded supervision. Local law enforcement found D.B. at his mother's house, and his mother was charged with contributing to the delinquency of a minor. The court ordered D.B. to remain in secure custody until 20 January 2015 for another hearing. D.B.'s attorney moved to schedule the hearing on a different date, arguing the following:

> [M]y understanding [is] that [the North Carolina Department of] Juvenile Justice is going to be recommending a commitment to [a] YDC [youth development center]. I only have one day in my office between today and next Tuesday. I don't believe I am going to be able to come up with a plan to present a judge as a possible alternative to [a] YDC [youth development center] before that date. So I do just want to say that I am not going to be prepared to go forward on the probation violation that day. . . . there is [also] a 50-50 chance I could be in a jury trial.

The court responded, " I appreciate your notice. I am not sure there is much we can do about it."

On 20 January 2015, D.B. appeared before the trial court for his dispositional hearing. D.B. was fifteen years old at the time of the hearing. Counselor Cameron submitted a predisposition report and recommended D.B. be committed to a youth development center ("YDC"). D.B.'s attorney stated D.B.'s mother was working with a member of the Muslim community to come up with an alternative plan that did not involve commitment to a YDC. His attorney asked for a continuance to further

develop the plan. The court responded, "YDC, actually, has more programming options. . . . And [D.B.] might get out [of a YDC] . . . with a little more closure." D.B.'s attorney voiced concern that YDC commitment could last "until [D.B.'s] eighteenth birthday," to which the court replied, "[b]ut we're looking at [D.B.'s] whole life that we're worried about." The court denied the continuance, and stated, "Unfortunately, because of the number of points, I don't think we can do that. I am going to give him the commitment. [The State] is going to dismiss [D.B.'s] other cases." D.B. did not put on any rebuttal evidence.

The same day, the court entered a disposition order finding 12 delinquency history points and four prior adjudications. On 21 January 2015, the court filed an amended disposition order, finding 11 delinquency history points and the same four prior adjudications. The amended order also had marks in boxes indicating the court "received and considered" a predisposition report and a risk and needs assessment. On 28 January 2015 the court entered a second amended order without marks in the "received and considered" boxes.

The court found D.B. had four prior adjudications under N.C. Gen. Stat. § 7B-2508(g), and 11 delinquency history points, putting D.B. in a "high" delinquency history level. The court entered a Level 3 disposition and committed D.B. to a YDC for a minimum of six months. The State dismissed the remaining charges for felony

breaking and entering and felony larceny. D.B. filed his written notice of appeal on 28 January 2015, appealing the adjudication order and three dispositional orders.

After settlement of the record, we note the following. D.B. was on probation at the time of his adjudication due to a 4 February 2014 order signed by Judge Scarlett in Orange County. Judge Scarlett's order contained a signed delinquency history level worksheet, in which the State and D.B. stipulated to the following prior adjudications: 19 May 2010 misdemeanor breaking and entering; 17 November 2010 misdemeanor larceny; 20 July 2011 misdemeanor shoplifting; 18 February 2012 felony larceny of a motor vehicle; 18 July 2012 felony breaking and entering of a motor vehicle; and 2 July 2013 misdemeanor possession of stolen property. These adjudications were listed in Counselor Cameron's predisposition report and submitted to the court, although the parties did not stipulate to the adjudications in the 2 December 2014 delinquency history level worksheet. The Level 3 disposition order at issue recites these adjudications as well, except it lists 15 February 2012 as the adjudication date for the felony larceny of a motor vehicle offense. The court also found D.B. had three additional prior adjudications for 20 July 2011 misdemeanor shoplifting, 2 July 2011 misdemeanor possession of stolen property, and 3 December 2013 misdemeanor possession of stolen property.

II. Standard of Review

"A motion to continue is addressed to the court's sound discretion and will not be disturbed on appeal in the absence of abuse of discretion." *In re C.L.*, 217 N.C. App. 109, 117, 719 S.E.2d 132, 136 (2011) (citations and quotation marks omitted). "An abuse of discretion occurs where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re J.L.*, 199 N.C. App. 605, 608–09, 685 S.E.2d 11, 14 (2009) (citations and quotation marks omitted).

With regard to D.B.'s second contention, "[t]he State bears the burden of proving, by a preponderance of the evidence, that a prior adjudication exists and that the juvenile before the court is the same person as the juvenile named in the prior adjudication." N.C. Gen. Stat. § 7B-2507(f). Our standard of review is whether the disposition is supported by evidence. *In re D.R.H.*, 194 N.C. App. 166, 170, 668 S.E.2d 919, 921 (2008) (citing *State v. Jeffery*, 167 N.C. App. 575, 578, 605 S.E.2d 672, 674 (2004) (reviewing sufficient proof of prior criminal convictions under N.C. Gen. Stat. § 15A-1340.14(f) as a criminal analog to juvenile N.C. Gen. Stat. § 7B-2507(f) matters)).

Third, we review whether the court properly entered a Level 3 disposition order for an abuse of discretion. "The decision to impose a statutorily permissible disposition is vested in the discretion of the juvenile court and will not be disturbed

absent clear evidence that the decision was manifestly unsupported by reason." *In re K.L.D.*, 210 N.C. App. 747, 749, 709 S.E.2d 409, 411 (2011) (citation omitted).

III. Analysis

We review D.B.'s contentions in three parts: (A) the motion to continue; (B) sufficiency of the evidence for the Level 3 disposition; and (C) whether the trial court erroneously believed it was bound to impose a Level 3 disposition.

A. Motion to Continue

N.C. Gen. Stat. § 7B-2406 entitled, "Continuances," under Article 24 "Hearing Procedures" of the Juvenile Code, controls the issue of D.B.'s motion to continue. Section 7B-2406 provides the following:

> The court for good cause may continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

N.C. Gen. Stat. § 7B-2406. "The burden of establishing adequate justification for allowing a requested continuance is on the party seeking such relief." *In re C.L.*, 217 N.C. App. at 117, 719 S.E.2d at 136. The grounds for continuance must be fully established by the moving party. *In re Lail*, 55 N.C. App. 238, 240, 284 S.E.2d 731, 732 (1981).

D.B. contends "a continuance is mandatory if the juvenile requests one." We disagree.

D.B.'s contention is premised upon N.C. Gen. Stat. § 7B-2413, which provides the following in relevant part: "The court shall proceed to the dispositional hearing upon receipt of the predisposition report. . . . Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. . . ." *Id.* D.B. does not contend he was denied an opportunity to offer evidence in rebuttal to the predisposition report.

When disposition is continued, it should be done in accordance with section 7B-2406. *In re D.L.H.*, 364 N.C. 214, 219 n. 2, 694 S.E.2d 753, 756 n. 2 (2010) ("[P]articularly in a case involving secure custody pending disposition, we are compelled to reiterate the mandates of that statute, which encourage expeditious handling of juvenile matters. . . .") (citing N.C. Gen. Stat. § 2406).

Our Court has held a juvenile's motion to continue is properly denied when it is made to "obtain cumulative documentation." *In re D.A.S.*, 183 N.C. App. 107, 111, 643 S.E.2d 660, 663 (2007). A court may deny such a motion for continuance when a "[j]uvenile [is] not seeking to obtain additional evidence reports, or assessments of the type specified in N.C. Gen. Stat. § 7B-2406." *In re C.L.*, 217 N.C. App. 109, 117, 719 S.E.2d 132, 137 (2011).

D.B. bases his motion for continuance outside of section 7B-2406. He "has not claimed that he had access to additional evidence or had any other basis for seeking a disposition that differed from the one that the trial court ultimately adopted." *Id.* The trial court followed section 7B-2406 by considering the "best interests" of D.B. N.C. Gen. Stat. § 7B-2406. Specifically, the court considered D.B.'s delinquency history points, D.B.'s "entire life," the need for closure, and the superior programming options available at YDC facilities. In light of these considerations, we cannot hold the court abused its discretion by denying D.B.'s motion to continue.

B. Sufficiency of the Evidence

D.B. contends the State did not carry its burden in proving he had four or more prior adjudications on his record. We disagree.

The Juvenile Code requires courts to determine a delinquency history level for each delinquent juvenile. N.C. Gen. Stat. § 7B-2508(b). "The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications and to the juvenile's probation status . . . ." N.C. Gen. Stat. § 7B-2507(a). Section 7B-2507(b) sets a schedule of points for different offense types, the sum of which categorizes a juvenile as a low, medium, or high delinquent history level under N.C. Gen. Stat. § 7B-2507(c). D.B.'s 11 delinquency history points put him in a "high" delinquency history level. N.C. Gen. Stat. § 7B-2507(c)(3).

Based upon the delinquency history level, the court imposes a Level 1, 2, or 3, disposition. Level 1, the lowest level, imposes "community disposition." N.C. Gen. Stat. § 7B-2508(c). The next level, Level 2, authorizes a court to impose an "intermediate disposition." N.C. Gen. Stat. § 7B-2508(d). The most serious level, Level 3, authorizes commitment to a YDC. N.C. Gen. Stat. § 7B-2508(e).

Our statutes authorize a court to impose a Level 3 disposition when a juvenile commits a violent offense, commits a serious offense and has a high delinquency history, or commits a minor offense and "has been adjudicated of four or more prior offenses." N.C. Gen. Stat. §§ 7B-2508(f), (g). The latter provision is at issue in the case *sub judice* because D.B. was adjudicated for resisting a public officer, a class 2 misdemeanor, which qualifies as a minor offense. N.C. Gen. Stat. § 2508(a)(3).

"For purposes of determining the number of prior offenses . . . each successive offense is one that was committed after adjudication of the preceding offense." N.C. Gen. Stat. § 7B-2508(g). "The State bears the burden of proving, by a preponderance of the evidence, that a prior adjudication exists and that the juvenile before the court is the same person as the juvenile named in the prior adjudication." N.C. Gen. Stat. § 7B-2507(f). The State "shall" prove the adjudications by any of the following methods: "(1) Stipulation of the parties. (2) An original or copy of the court record of the prior adjudication. (3) A copy of records maintained by the Department of Public

Safety or by the Division.[1] [or] (4) Any other method found by the court to be reliable." *Id.* The original court records, a "copy" of the records, "or a copy of the records maintained by the Department of Public Safety or of the Division" with the same name as the juvenile charged, "is *prima facie* evidence that the juvenile named is the same person as the juvenile before the court, and that the facts set out in the record are true." *Id.* The prosecutor is obliged to "make all feasible efforts to obtain and present to the court the juvenile's full record." *Id.* If the juvenile requests his or her record from the prosecutor, "the prosecutor shall furnish the juvenile's prior adjudications to the juvenile within a reasonable time sufficient to allow the juvenile to determine if the record . . . is accurate." *Id.*

D.B. contends the State failed to carry its burden of proof by a preponderance at his disposition hearing. Counselor Cameron addressed the trial court and recommended YDC confinement for D.B. due to his delinquency history points,[2] and the fact that D.B. resisted a public officer while on probation for a previous adjudication. The State asked the court to adopt Counselor Cameron's recommendations, which were also before the court in written form, in the predisposition report. We note the predisposition report includes the four

[1] The "Division" is "The division of Juvenile Justice of the Department of Public Safety" as defined in N.C. Gen. Stat. § 7B-1501(10a).

[2] Counselor Cameron mistakenly stated D.B. had 12 delinquency history points. This was corrected in the trial court's order and changed to 11 points.

adjudications listed in the trial court's order: 15 February 2012 larceny; 18 July 2012 felony breaking and entering of a motor vehicle; 19 May 2010 breaking and/or entering; and 17 November 2010 larceny.[3] Further, the predisposition report states in a 18 July 2012 "update" entry, "[D.B.] currently has four previous adjudications." The trial court's original disposition order and first amended order indicate the trial court considered the predisposition report and the risk and needs assessment. Moreover, the trial court found in these two orders, and the second amended order at issue, that D.B. resisted a public officer while on probation pursuant to a 4 February 2014 court order. That 4 February 2014 order appears in the settled record, and it contains a delinquency history level worksheet D.B. stipulated to, listing six prior adjudications, four of which are the adjudications at issue.

Lastly, the identity of the juvenile in the prior adjudications is not at issue. Although the burden to prove the adjudications by a preponderance is not his to bear, D.B. does not contend he is not the person named in the prior adjudications. Moreover, he did not object to the predisposition report or Counselor Cameron's summary of the facts therein. Nor does he object to the 4 February 2014 order and delinquency history worksheet in the record on appeal. It is clear from the record, transcript, and the trial court's order that the State carried its burden and proved the

[3] The predisposition report does not explicitly name the 19 May 2010 adjudication for breaking and/or entering, but it does state D.B. "has been on probation since 5/19/10," when he was adjudicated delinquent.

four prior adjudications through Counselor Cameron and the written documentation before the trial court. Therefore, we hold the Level 3 disposition is supported by the evidence.

C. Level 3 Disposition

D.B. contends the trial court imposed a Level 3 disposition under the erroneous belief that it was required to commit D.B. to a youth development center. We disagree.

At the outset, we note a trial court has discretion to impose an alternative disposition under N.C. Gen. Stat. § 7B-2506, but it is not compelled to do so. "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." N.C. Gen. Stat. § 7B-2501(c). Our statutes compel a court to impose a disposition that is "designed to protect the public and to meet the needs and best interests of the juvenile" based upon the following factors: (1) the seriousness of the offense; (2) the need to hold the juvenile accountable; (3) the importance of protecting 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.*

Here, there is no dispute D.B. has a "high" delinquency history level since he has 11 points, well beyond the minimum threshold of 4 points. N.C. Gen. Stat. § 7B-

2507(c)(3). If D.B. had fewer than four prior adjudications, he would be adjudicated under the table set out in N.C. Gen. Stat. § 7B-2508(f), and the trial court could impose a Level 2 disposition for his minor offense. N.C. Gen. Stat. § 7B-2508(f). However, D.B. had four or more prior adjudications, and our statutes allow the trial court to impose a Level 3 disposition for his minor offense under N.C. Gen. Stat. § 7B-2508(g).

At the hearing, the court asked the attorneys, "How can we help this young man?" The court considered D.B.'s "whole life," the programming options at a YDC, and D.B.'s need for closure. In its order, the trial court found D.B. committed a class 2 misdemeanor while on probation, had a high level of delinquency history points, 11 to be precise, and had prior adjudications for two felonies and five misdemeanors. All of this indicates the trial court considered the statutory factors in N.C. Gen. Stat. § 7B-2501(c), and imposed a Level 3 disposition to best serve D.B. and the public.

In support of his argument, D.B. cites an isolated statement by the trial court out of context. After the court explained its reasoning for concluding that commitment to a youth development center was the appropriate disposition, D.B.'s counsel reiterated a request to continue the disposition hearing because "Mom just wants the opportunity to present an alternative to the Court, and that's what I'm asking for the opportunity to do." The court then stated: "Unfortunately, because of the number of points, I don't think we can do that." In context, "that" refers to the

request for a continuance; it does not refer to counsel's request for an alternative disposition. Therefore, we hold the trial court did not abuse its discretion in ordering the Level 3 disposition.

IV. Conclusion

For the foregoing reasons we affirm the trial court.

AFFIRMED.

Judges Stephens and Inman concur.

Report per Rule 30(e).