

[Cite as *In re Dunn*, 2002-Ohio-403.]

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
LOGAN COUNTY**

IN RE:

JOHN W. DUNN, IV	CASE NO. 8-01-13
MINOR CHILD-APPELLANT	O P I N I O N

IN RE:

JOHN W. DUNN, IV	CASE NO. 8-01-14
MINOR CHILD-APPELLANT	O P I N I O N

IN RE:

JOHN W. DUNN, IV	CASE NO. 8-01-15
MINOR CHILD-APPELLANT	O P I N I O N

**CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas
Court, Juvenile Division**

JUDGMENT: Judgment Reversed

DATE OF JUDGMENT ENTRY: January 31, 2002

ATTORNEYS:

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Walters, P.J

{¶1} In this consolidated appeal, Appellant, John Dunn, appeals a 1998 decision of the Logan County Common Pleas Court, Juvenile Division, placing Appellant on probation after suspending two six month commitments to the Department of Youth Services, and a subsequent 2001 decision revoking this probation and reinstating the prior commitments. Appellant contends that the court's failure to make a record of the proceedings warrants reversal and that as a result of failing to make such record, there is no record demonstrating that Appellant knowingly, intelligently, and voluntarily admitted his guilt or that he was apprised of the grounds for which revocation of his probation was premised. We agree. The juvenile court's failure to record the proceedings precludes this Court from reviewing the transcript in order to decide whether Appellant's

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admissions were voluntary or whether his probation was properly revoked; consequently, the judgments of the juvenile court must be reversed and remanded.

{¶2} The facts leading to this appeal are as follows. In 1998, multiple complaints were filed against Appellant as a result of his breaking and entering into several boats docked at Deer Creek State Park Marina located in Pickaway County, Ohio. The cases were consolidated and transferred to the Logan County Common Pleas Court, Juvenile Division, for a hearing and disposition. Appellant entered admissions to all counts of breaking and entering, and the remaining charges were dismissed. The court determined that Appellant was delinquent and immediately proceeded to disposition. Appellant was committed to the custody of the Department of Youth Services for two minimum consecutive sentences of six months each and a maximum term not to exceed his attainment of age twenty-one. Thereafter, the court suspended these commitments and placed Appellant on indefinite delinquency probation.

{¶3} Subsequently, in 2001, Appellant was arrested for possession of drug paraphernalia, and a complaint was filed in the Logan County Common Pleas Court, Juvenile Division. Appellant entered an admission to this charge. Upon disposition, the court ordered Appellant to seek a substance abuse assessment and sentenced him to ten days in the juvenile detention center; however, all ten days were suspended, and Appellant was ordered to continue his probation. Thereafter,

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more than two months later, the court, sua sponte, revoked Appellant's probation and reinstated the previously stayed commitments from the 1998 disposition.

{¶4} From the 1998 and 2001 dispositional proceedings, Appellant brings this appeal, asserting three assignments of error for our review. For purposes of brevity and clarity we will discuss Appellant's three assignments of error together.

Assignment of Error I

{¶5} **The trial court committed reversible error when it failed to create a complete record in violation of Juv.R. 37(A).**

Assignment of Error II

{¶6} **John Dunn's admissions were not knowing, intelligent, and voluntary, as required by the Fifth and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 16 of the Ohio Constitution, and Juv.R. 29.**

Assignment of Error III

{¶7} **The trial court violated John Dunn's right to notice and due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 16 of the Ohio Constitution when the record does not establish that it followed the proper procedures for probation revocation.**

{¶8} In his first assignment of error, Appellant maintains that the court erred by failing to make a complete record of the proceedings in violation of Juv.R. 37(A). Appellant claims, in his second and third assignments, that by doing so, the trial court has prevented this Court from determining whether Appellant's admissions were voluntary and whether Appellant's probation was properly revoked.

{¶9} As an initial matter, we note that this court will not reverse the decision of a Court of Common Pleas, Juvenile Division, unless that court has abused its discretion.¹ An abuse of discretion “connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.”²

{¶10} According to Juv.R. 37(A), dispositional proceedings of delinquency cases must be recorded, which allows for the preparation of a transcript for appellate review.³ The court, herein, failed to record both the 1998 and 2001 dispositional proceedings. This constitutes an abuse of discretion and warrants reversal.⁴ Thus, Appellant’s first assignment of error is sustained.

{¶11} Appellant maintains in his second assignment of error that the record does not support that the admissions he entered for the 1998 charges were properly made. Because the court herein failed to record the proceedings, a transcript was unable to be produced upon Appellant’s request, and this court, therefore, has nothing to review in order to determine whether Appellant’s admissions were made voluntarily and knowingly as required by Juv.R. 29(D)(1) and (2).

Consequently, Appellant’s second assignment of error is well taken and sustained.

¹ *In re William H.* (1995), 105 Ohio App.3d 761, 767, citing *In re Anthony M.* (Mar. 10, 1995), Lucas App. No. L-94-204, unreported.

² *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

³ Juv.R. 37(A); *In re Solis* (1997), 124 Ohio App.3d 547, 551; *In re Garcia* (Apr. 12, 2001), Cuyahoga App. No. 78153, unreported.

⁴ *Id.*; *In re Collins* (1998), 127 Ohio App.3d 278, 280.

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{¶12} In his third assignment of error, Appellant asserts that the record does not demonstrate that his probation was properly revoked pursuant to Juv.R. 35(B). Appellant first argues that the record fails to show that he was afforded a probation revocation hearing;⁵ however, both the appearance docket and the relevant judgment entry reflect otherwise. Accordingly, we do not sustain Appellant’s third assignment of error on these grounds.

{¶13} Appellant does, however, further contend in his third assignment of error that the record does not reveal that he was informed of the grounds for which his probation was revoked. Juv.R. 35(B) mandates that juveniles be “apprised of the grounds on which revocation is proposed.” Because the juvenile court failed to record the probation revocation proceedings, this court has no basis to review Appellant’s claims. As such, Appellant’s arguments are well taken, and his third assignment of error is sustained.

{¶14} Having found error prejudicial to Appellant herein, in the particulars assigned and argued, the judgments of the juvenile court are hereby reversed and the matter is remanded for further proceedings in accordance with this opinion.

Judgment reversed and remanded.

BRYANT and HADLEY, J.J., concur.

/jlr

⁵ Juv.R. 35(B).

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