

IN THE INTEREST OF: M.E.C., : IN THE SUPERIOR COURT OF  
A MINOR, : PENNSYLVANIA

APPEAL OF: M.E.C. : No. 349 MDA 2013

Appeal from the Order Entered February 11, 2013  
In the Court of Common Pleas of Dauphin County  
Juvenile Division at No(s): CP-22-JV-0000215-2012

BEFORE: BENDER, P.J., WECHT, J., AND FITZGERALD\*, J.

MEMORANDUM BY BENDER, J.: **FILED JANUARY 13, 2014**

M.E.C., a minor, appeals from the order entered on February 11, 2013, which revoked a consent decree and placed him on formal probation. We vacate and remand.

In January 2012, Appellant forced the minor victim to perform oral sex upon him. Thereafter, Appellant was alleged delinquent for the following offenses: Involuntary Deviate Sexual Intercourse, 18 Pa.C.S. § 3123(1), (2); Sexual Assault, 18 Pa.C.S. § 3124.1; Indecent Assault, 18 Pa.C.S. § 3126(a)(1); and Indecent Exposure, 18 Pa.C.S. § 3127.

In August 2012, following Appellant's admissions to the alleged offenses, the trial court entered a consent decree. A condition of the consent decree probation required Appellant to obtain a psychosexual evaluation and follow any treatment recommendations. Pursuant to his treatment recommendations, Appellant entered counseling. On December 10, 2012, Appellant signed a treatment contract that obligated him to refrain from possession of any pornographic material or visiting establishments that

\*Former Justice specially assigned to the Superior Court.

maintain or distribute such materials. However, during a counseling session, Appellant disclosed that he had viewed pornography. On January 14, 2013, based on Appellant's disclosure to his counselor, the probation office moved to revoke the consent decree. The trial court held a hearing, following which it revoked its consent decree and imposed formal probation. The trial court supported its decision with an opinion filed pursuant to Pa.R.A.P. 1925(a).

In his timely appeal, Appellant asserts that the trial court erred because (1) revocation based on Appellant's disclosure undermines the treatment, reformation, and rehabilitation purposes of the Juvenile Act; and (2) Appellant's compulsory disclosure rendered illusory the "pre-dispositional status" afforded him by the consent decree. **See** Appellant's Brief at 4.

A petition alleging delinquency must be disposed of in accordance with the Juvenile Act. **See *In the Interest of J.J.***, 848 A.2d 1014, 1017 (Pa. Super. 2004) (citing ***In the Interest of Bosket***, 590 A.2d 774, 776 (Pa. Super. 1991)); 42 Pa.C.S. §§ 6301 *et seq.* "[P]etitions may be disposed of in three ways: (1) by informal adjustment; (2) by consent decree, or (3) by hearing." **Id.** at 1017 (citing ***Commonwealth v. J.H.B.***, 760 A.2d 27 (Pa. Super. 2000)).

Our standard of review of dispositional orders is well settled: "The Juvenile Act grants broad discretion to the court when determining an appropriate disposition. We will not disturb a disposition absent a manifest abuse of discretion." ***In the Interest of R.D.***, 44 A.3d 657, 664 (Pa.

Super. 2012) (quoting ***In the Interest of R.D.R.***, 876 A.2d 1009, 1013 (Pa. Super. 2005)). An abuse of discretion “requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support as to be clearly erroneous.” ***Commonwealth v. Rodriguez***, 2013 PA Super 302, --- A.3d ---, at 2 (quotation omitted).

Appellant argues that revocation of his consent decree undermined the treatment, reformation, and rehabilitation purposes of the Juvenile Act. **See *In the Interest of J.B.***, 39 A.3d 421, 427 (Pa. Super. 2012) (citing ***In the Interest of C.M.T.***, 861 A.2d 348, 356 (Pa. Super. 2004)). Specifically, Appellant notes that rehabilitation of a juvenile “is attained through accountability and the development of personal qualities that will enable the juvenile offender to become a responsible and productive member of the community.” ***Id.*** (quoting ***In the Interest of R.D.R.***, 876 A.2d 1009, 1013 (Pa. Super. 2005)). According to Appellant, by disclosing his use of pornography he committed to honest participation in the therapy process. Revocation of the consent decree, thus, was counter to the legislative intent of the Juvenile Act and hampered the goal of productive reintegration into the community.

Appellant’s argument fails to account for the public safety:

**(b) Purposes.** -- This chapter shall be interpreted and construed as to effectuate the following purposes:

...

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

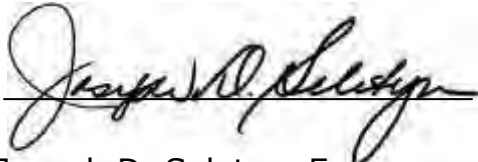
42 Pa.C.S. § 6301(b)(2). In addition to treatment, reformation, and rehabilitation, an express purpose of the Juvenile Act is protection of the community. ***Id.*** The trial court must balance these purposes in the exercise of its discretion. ***See In the Interest of R.W.***, 855 A.2d 107, 111 (Pa. Super. 2004) (vacating an order of the trial court for failure to balance the public interest against the rehabilitative needs of the juvenile).

Nevertheless, the record is inadequate to support the trial court's decision. There is no evidence that establishes *when* Appellant allegedly violated the treatment contract. The timing of his alleged violation is significant. On December 10, 2012, Appellant signed the contract, obligating him to refrain from possession of any pornographic material. Absent evidence sufficient to establish that Appellant violated its terms *after he agreed to be bound by them*, revocation of the consent decree was clearly erroneous. Moreover, the record suggests that Appellant's disclosure occurred at the outset of his treatment. Failure to consider the timing of both Appellant's violation and his disclosure risks undermining the balance required by the Juvenile Act. ***See In the Interest of J.B.***, 39 A.3d at 427; ***In the Interest of R.W.***, 855 A.2d at 111.

Because sufficient evidence is not of record, we conclude the trial court abused its discretion. ***In the Interest of R.D.***, 44 A.3d at 664. Accordingly, we vacate the February 11, 2013 order and remand for a new hearing consistent with this memorandum. ***See Commonwealth v. Mullins***, 918 A.2d 82, 85-86 (Pa. 2007) (approving this Court's consistent practice of remanding for new violation of probation hearings when revocations are vacated due to insufficient evidence).<sup>1</sup>

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 1/13/2014

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<sup>1</sup> In light of our conclusion, we do not reach Appellant's second argument.