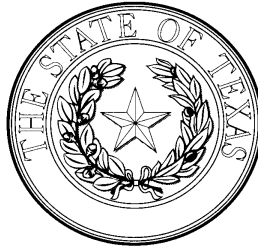


Opinion issued July 13, 2021



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-19-00517-CV

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**IN THE MATTER OF A.E.B.**

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**On Appeal from the 314th District Court  
Harris County, Texas  
Trial Court Case No. 2017-01822J**

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**MEMORANDUM OPINION**

Appellant, A.E.B., challenges the juvenile court’s Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice, entered after a release-or-transfer hearing, which transferred appellant from the Texas Juvenile Justice Department (“TJJJD”) to the Texas Department of Criminal Justice-Correctional Institutions Division (“TDCJ-CID”) for the remainder of his

determinate sentence<sup>1</sup> of commitment for ten years. In three issues, appellant contends that the juvenile court exceeded its authority and jurisdiction in transferring appellant to the TDCJ-CID, appellant’s constitutional rights to due process and due course of law<sup>2</sup> were violated when he did not receive sufficient notice of the release-or-transfer hearing, and that the juvenile court erred in ordering appellant transferred to the TDCJ-CID.

We affirm.

### **Background**

In March 2017, the State filed its determinate-sentence petition in the juvenile court seeking to adjudicate appellant delinquent and alleging that on or about February 27, 2017, appellant engaged in delinquent conduct. Specifically, appellant “unlawfully, while in the course of committing theft of property owned by [the complainant] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten[ed] and place[d] [the complainant] in fear of imminent bodily injury and death,” and appellant “use[d] and exhibit[ed] a deadly

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<sup>1</sup> See TEX. FAM. CODE ANN. § 53.045 (“Offenses Eligible for Determinate Sentence”); see also *In re R.C.*, No. 14-19-00246-CV, --- S.W.3d ---, 2021 WL 2252174, at \*1 n.1 (Tex. App.—Houston [14th Dist.] June 3, 2021, no pet.) (“In a determinate sentence situation, a juvenile is initially committed to the [TJJD] with a possible transfer for the [TDCJ-CID].”); *In re X.A.*, No. 01-19-00227-CV, 2020 WL 237939, at \*1 n.2 (Tex. App.—Houston [1st Dist.] Jan. 16, 2020, no pet.) (mem. op.).

<sup>2</sup> U.S. CONST. amends. V, XIV; TEX. CONST. arts. I, §§ 10, 19.

weapon, to wit: a firearm.”<sup>3</sup> (Emphasis omitted.) A Harris County grand jury approved and certified the State’s determinate-sentence petition.<sup>4</sup>

### **A. Plea and Sentence**

On January 29, 2019, appellant, with an agreed punishment recommendation from the State, pleaded true to having engaged in delinquent conduct by committing the offense of aggravated robbery. Specifically, in the Stipulation of Evidence, which appellant signed, appellant agreed that he had been “served with a summons and petition on th[e] case” and that on or about February 27, 2017, in Harris County, Texas, appellant “did then and there unlawfully, while in the course of committing theft of property owned by [the complainant] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place [the complainant] in fear of imminent bodily injury and death, and [appellant] did then and there use and exhibit a deadly weapon, to wit: a firearm.”<sup>5</sup> (Emphasis omitted.) For the purposes of the affirmative deadly-weapon finding, appellant stipulated that

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<sup>3</sup> See TEX. FAM. CODE ANN. § 51.03(a); TEX. PENAL CODE ANN. § 29.03(a)(2) (“Aggravated Robbery”).

<sup>4</sup> See TEX. FAM. CODE ANN. §§ 53.04, 53.045(d); see also *In re X.A.*, 2020 WL 237939, at \*1 n.2 (“The Texas Legislature created a system for prosecuting juvenile offenders for certain violent offenses and this is called the determinate sentence system. To invoke this system, the [State] must obtain grand jury approval of a juvenile court petition charging one of the covered offenses. If the petition is approved and certified to the juvenile court, the case proceeds to adjudication and disposition.” (internal citations omitted) (internal quotations omitted)).

<sup>5</sup> See TEX. PENAL CODE ANN. § 29.03(a)(2).

he “used a deadly weapon, namely, a firearm.” And appellant accepted and agreed to the State’s punishment recommendation of ten years’ commitment “in the [TJJD] with a possible transfer to the [TDCJ-CID] or the [TDCJ-Pardons and Paroles Division (“TDCJ-PD”)].<sup>6</sup> In connection with the plea agreement, the State non-suited a separate petition filed in the juvenile court, arising from the same conduct, which also sought to adjudicate appellant delinquent and alleged that appellant engaged in delinquent conduct by committing the offense of criminal trespass.<sup>7</sup>

In accordance with the plea agreement, the juvenile court signed the Determinate Sentencing Judgment and Order of Commitment, imposing a determinate sentence of commitment for ten years against appellant. Because the delinquent conduct that appellant stipulated he had committed constituted a first-degree felony offense under the Texas Penal Code,<sup>8</sup> the juvenile court assessed against appellant a minimum period of confinement in the TJJD of three years.<sup>9</sup> Appellant received credit for “307 days in detention” before he was committed to

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<sup>6</sup> The juvenile court’s January 29, 2018 Determinate Sentencing Judgment and Order of Commitment also notified appellant of the “possible transfer” to the TDCJ-CID or the TDCJ-PD.

<sup>7</sup> *See* TEX. PENAL CODE ANN. § 30.05.

<sup>8</sup> *See* TEX. PENAL CODE ANN. § 29.03(b).

<sup>9</sup> *See* TEX. HUM. RES. CODE ANN. § 245.051(c)(2).

the TJJD, making March 28, 2020 the end date for his minimum period of confinement in the TJJD.

**B. TJJD Referral for Release-or-Transfer Hearing**

On April 2, 2019, the TJJD sent a written referral to the juvenile court notifying the court that appellant had been assessed a determinate sentence of ten years' commitment and he would "not complete his statutory minimum period of confinement of three years [in the TJJD] . . . by the time of his 19th birthday" in June 2019. Thus, the TJJD requested that a hearing be set "no later than [sixty] days" from the date the juvenile court received the referral "to determine whether [appellant] w[ould] be transferred to [the TDCJ-CID] or released to [the TDCJ-PD]."<sup>10</sup> The TJJD acknowledged that because appellant had not completed his minimum period of confinement, it could not release appellant without the approval of the juvenile court. And the TJJD asked the juvenile court to have a bench warrant issued for appellant's return to the juvenile court for a release-or-transfer hearing.

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<sup>10</sup> See TEX. ADMIN. CODE § 380.8565(e), (g) (explaining TJJD has responsibility to request hearing and provide transfer recommendation to juvenile court for juvenile who will not complete minimum period of confinement before his nineteenth birthday; hearing's purpose is "to determine whether the [juvenile] will be transferred to [the] TDCJ-CID or to [the] TDCJ-PD"; and "[t]he committing juvenile court is the final decision authority for transferring a [juvenile] to [the] TDCJ-CID").

The juvenile court issued a bench warrant to return appellant to Harris County on May 1, 2019, and again on June 5, 2019.

**C. Release-or-Transfer Hearing<sup>11</sup>**

On June 10, 2019, the juvenile court held a release-or-transfer hearing with appellant present and represented by counsel. Appellant's aunt also attended the hearing. At the start of the hearing, appellant's counsel announced that he and appellant were "ready."

At the hearing, the complainant testified about the 2017 aggravated robbery committed by appellant. She stated that she and her family were in the parking lot of a grocery store. Their truck was stopped near a Water Mill Express, a purified water vending machine near the grocery store. As her husband filled jugs with water, the complainant waited in the driver's seat of the truck. Her three-year-old and ten-month-old daughters were in their car seats in the backseat.

The complainant briefly turned around to talk to her daughters. When she turned back to face the front of the truck again, she saw appellant holding her husband "at gunpoint." She then noticed that appellant was beside the driver's side door of the truck pointing a firearm at her. Appellant told her "to give him everything that [she] had." The complainant gave appellant her cellular telephone

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<sup>11</sup> See TEX. FAM. CODE ANN. § 54.11(a).

and her wallet with her “credit card, cash[,] and ID.” Then appellant ordered her to “[g]et off the truck,” while continuing to point the firearm at her. (Internal quotations omitted.) The complainant told him, “No. My girls are in the backseat.” (Internal quotations omitted.) Appellant looked back and saw the complainant’s daughters and said, “I’m not playing. Get [out of] the truck. Hurry up and get them [out].” (Internal quotations omitted.) At that point, the complainant was scared for her daughters. She stepped out of the truck and “opened the back door.” She could not reach her three-year-old daughter, who was on the other side of the truck and “couldn’t get [her] out of her car seat.” Meanwhile, appellant was “still pointing the gun at [her] telling [her] to hurry up.” The complainant “unbuckled the baby out of the car seat,” but she would not let go of the seat “because [she] didn’t want them to take off with the truck with her three-year-old [daughter] inside.”

The complainant’s husband, who was still being held “at gunpoint” by the other teenager who was present, reached for the three-year-old daughter, but “it was hard to unbuckle her because she was in a panic.” While appellant and the other teenager continued to hold the complainant and her husband “at gunpoint,” the complainant and her husband were “able to get the girls out [of the truck].” Appellant and the other teenager then fled in the truck.

A little later, the complainant and her husband drove around the area to see if appellant had abandoned the truck nearby. They “heard gunshots and then [they]

saw an ambulance . . . .” They followed the ambulance, which stopped near a Wing Stop restaurant by the highway. They got out of their car and asked some of the bystanders “what [had] happened.” The complainant and her husband learned that a woman had been shot and that someone in “a dark [J]eep [truck] shot at a vehicle.” They were able to confirm that the truck belonged to the complainant because the bystanders “had part of the license plate number.”

When asked about the aggravated robbery’s effect on her, the complainant responded that she is “still scared.” She does not “go out by [her]self with [her] girls.” Her three-year-old daughter “still remembers” the aggravated robbery and is scared, too. When they pass by the grocery store where the aggravated robbery happened, her daughter says, “Mom, look. That’s where they took our truck.” (Internal quotations omitted.)

The complainant acknowledged that she was aware that appellant [had] received a “[ten]-year sentence” for the aggravated robbery offense. When asked how she felt about the possibility of him “being paroled before . . . serv[ing] three years” of that sentence, she said that she “fe[lt] confused.” She and her daughters “can’t even get past that stage and [appellant]’s being released.”

The juvenile court admitted into evidence a copy of the Houston Police Department’s offense report for the aggravated robbery and the related investigation. Included in the report is the complainant’s witness statement taken near the time of



the aggravated robbery, which was consistent with her testimony at the release-or-transfer hearing. The offense report also states that the complainant's stolen truck "was used [i]n a murder" involving appellant and three other suspects.

The juvenile court also admitted into evidence a copy of the TJJD's master file relating to appellant's behavior during his time in TJJD custody, and a copy of a summary report about appellant's behavior since his commitment to the TJJD. Among other things, the TJJD's master file shows that during a November 2018 psychological evaluation, appellant told the evaluator that his criminal history started when, at about nine years old, "he began stealing BB guns from the store." He did this five or six times and "got caught every time." (Internal quotations omitted.) Appellant "was expelled from school in the [fourth] grade" for "having a pellet gun at school." He "us[ed] the gun to shoot at people's windows while on school property."

When he was about thirteen years old, appellant "began selling marijuana and cocaine," adding that his "family sold drugs, so that's all [he] knew." (Internal quotations omitted.) Appellant "recalled 'drug raids' occurring in his home," during which his family would "hide drugs." In one such raid, "a SWAT team enter[ed] the home and question[ed] him about where drugs were hidden."

Also, when he was about thirteen years old, appellant and his friends "began robbing people" during "income tax time." (Internal quotations omitted.) He would

“rob[] people” when they were exiting their cars, when they were leaving stores, or “wherever” appellant and his friends “felt like somebody had money.” (Internal quotations omitted.) He estimated “having robbed approximately 100 people, [and he] used weapons during the robberies to help the [victims] give it up faster.” (Second alteration in original.) (Internal quotations omitted.) Appellant was “always with at least one” other person during a robbery.

Appellant also reported that when he was about fourteen years old, “he stole seven cars from two car lots . . . and drove them until [either] the police took them, [he] got into a chase [with police], or a tow truck took them.” (Third alteration in original.) (Internal quotations omitted.) During the same year, “he broke into two homes.” One of the homes was selected because it belonged to a law enforcement officer. Appellant explained that he “knew [that law enforcement officers] had a special type of gun[.]” (Internal quotations omitted.) Appellant and his friends stole “shotguns from th[at] home.” They also “vandalized the second home and stole flat screen TVs.”

Appellant told the evaluator that he began having physical altercations with his peers when he was twelve years old, and he “estimated [that he had] been in [seventy] fights[,]” which were “often gang-related.” Appellant stated that “he enjoys fighting” His “last fight took place in the juvenile detention center in September 2017.”

Previously, appellant “was on juvenile probation for one month after being referred for [t]respassing.” And he told the evaluator that “[he] was still doing robberies. [He] didn’t want to get caught for little stuff; [he]’d rather get caught for big stuff.” (Internal quotations omitted.)

In its summary report, the TJJD stated that appellant was admitted to the Ron Jackson Orientation and Assessment Unit on February 2, 2018 and had been at the Giddings State School, a TJJD high restriction facility, since March 6, 2018. Appellant would not complete the three-year minimum period of confinement for his ten-year determinate sentence until March 28, 2020, but he would be nineteen years old in June 2019 and would “not be able to complete his [minimum period of confinement]” while in the TJJD’s custody.

As to appellant’s history of delinquency before commitment, the TJJD noted that appellant had one prior “referral to juvenile authorities” for a criminal trespass offense on February 25, 2017 “that was refused and dismissed.” As to the delinquent conduct that led to appellant’s determinate sentence of commitment for ten years, the summary report states that, “[a]ccording to records, [appellant] and co-actors used guns to rob a family at gunpoint before fleeing the scene in the [complainant’s] vehicle.”

The TJJD stated that appellant’s “grooming and hygiene appeared appropriate” and appellant “appeared to be calm” and “maintained consistent eye

contact.” Appellant “offered logical responses to questions posed and did not appear to have any difficulty articulating the responses.” He “denied experiencing mental health problems” and “his thinking was logical and coherent.” Appellant had prior psychiatric diagnoses of attention deficit-hyperactivity disorder, attention deficit disorder, bipolar disorder, and schizophrenia, but had not shown any symptoms associated with those disorders since arriving at the TJJD.

Appellant was “receiv[ing] special education services” and scored at sixth grade reading and math levels. “He entered [the] TJJD with no high school credits and ha[d] since earned nine.” He “passed two of four sections” on the GED exam and had no vocational training or certifications.

According to the report, the TJJD viewed most of appellant’s “misbehaviors” as “oppositional in nature, including refusing to follow staff directives, speaking disrespectfully, and engaging in horseplay with peers.” (Internal quotations omitted.) He had “four incidents of threatening others, all of which occurred within the first eight months of his commitment.”

Appellant had “progressed steadily” in rehabilitative treatment. The treatment “assessment evaluates a [juvenile]’s progress in reducing risk factors for recidivism and increasing protective factors related to positive community reintegration.” From entry level at “Stage 1,” appellant advanced to “Stage 4” by December 2018, and in April 2019, he advanced to “Stage YES-Active,” “in which a [juvenile] . . . actively

prepare[s] to be released to the community.” Appellant was assigned one specialized treatment program, the Capital and Serious Violent Offender Treatment Program, which he began in June 2018 and completed in March 2019.

Based on appellant’s “overall progress” and his “demonstrated . . . ability to comply with expectations,” the TJJD recommended his referral to the TDCJ-PD “prior to the completion of his three-year minimum period of confinement to serve the remainder of his [ten]-year determinate sentence.” And the TJJD recommended that, “in addition to general parole rules,” appellant be placed in the Super Intensive Supervision Program (“SISP”), “the most restrictive parole program that [the] TDCJ-PD has.” SISP would require appellant to wear an electronic monitor on his ankle and to have weekly meetings with his “parole officer” to establish “a schedule of where [appellant would be] allowed to go.” Appellant also would be required to participate in substance abuse counseling, education/vocational training, and anger management counseling. And appellant would maintain gainful employment and have no affiliation with any gang or participate in any gang activity. Appellant would “remain under the supervision of [the TDCJ-PD] until the completion of his [ten]-year determinate sentence,” and, if appellant violated the conditions of his parole, parole would be revoked, “he would be remanded to [the TDCJ-CID,] and [he] would forfeit all accumulated parole time.”

The summary report concludes that, if the juvenile court decided “to transfer [appellant] to [the] TDCJ-CID, he would be returned to [the TJJD] until such time that the facility receive[d]” the court’s transfer order “and necessary transportation arrangements [we]re made,” which would typically occur within “one week after the [release-or-transfer] hearing.”

Alanna Bennett, the court liaison for the TJJD’s Department of Sentence Offender Disposition, testified about the TJJD’s summary report and master file related to appellant. During the ten months that appellant spent in the TJJD, he had “[thirty-two] incidents on file, twenty-eight of which were referred to the regulation and safety unit.” Most of the incidents involved horseplay, but four of them involved threatening others.

On behalf of the TJJD, Bennett recommended that appellant be referred to the TDCJ-PD for parole. She acknowledged that, including his 307 days in detention before he was committed to the TJJD, appellant had served twenty-six out of the thirty-six months of the minimum period of confinement applicable to his determinate sentence.

Bennett admitted that the statement of prior delinquent history in the TJJD’s summary report failed to note that appellant had previously served “probation [in] Fort Bend County for robbery.” She also explained that the TJJD did not interview the complainant about appellant’s delinquent conduct because the complainant did

not ask to be contacted by the TJJD. Bennett was not aware that the truck stolen by appellant in the aggravated robbery was used an hour later in the commission of a homicide and did not know that “[murder] charges” had been considered against appellant.

Appellant’s aunt, Adrienne Burton, testified that she participated in therapy with appellant at the Giddings State School and believed that he had been rehabilitated. She met with the “parole officer” and, if appellant was released on parole, she was ready to have appellant live with her at her home in Galveston, Texas. She “worked with the staff at Giddings [State School]” to arrange for appellant to continue his education, including completing his GED and enrolling in college courses.

**D. Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice**

On June 10, 2019, the juvenile court signed a Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice. The order includes findings that:

- “[Appellant] ha[d] been continuously detained for th[e] [aggravated robbery] offense since March 29, 2017 and should be given time credit since that date.”
- “[Appellant] is still in need of rehabilitation and the welfare of the community requires the transfer.”
- “[Appellant] displayed a deadly weapon to wit: [a] firearm.”

- “. . . [I]t is therefore in the best interest of [appellant], and the public at large, that [appellant] be transferred to the [TDCJ-CID] in accordance with Section 54.11, Texas Family Code, to serve the remainder of his [ten-]year determinate sentence.”

Appellant moved for new trial, and the juvenile court, after holding a hearing on the motion, denied it.

### **Juvenile Court Jurisdiction**

In his first issue, appellant argues that the juvenile court lacked authority and jurisdiction to transfer appellant to the TDCJ-CID because the juvenile court’s authority to transfer appellant “depend[ed] upon the recommendation[.]” of the TJJD and the “TJJD recommended that [a]ppellant be released under [TDCJ-PD] supervision.”

Jurisdiction is the power of a court to decide a case. *See Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 655 (Tex. 2013) (“The most fundamental restraint on judicial power is jurisdiction—our very authority to decide cases in the first place—and if we lack it, we lack it.”); *Save Our Springs Alliance, Inc. v. City of Kyle*, 382 S.W.3d 540, 544 (Tex. App.—Austin 2012, no pet.) (“A court’s subject-matter jurisdiction traditionally consists of a power, conferred by constitutional or statutory authority, to decide the type of claim alleged in the plaintiff’s petition and to award an authorized form of relief.”); *see generally In re D.L.M.*, 982 S.W.2d 146, 148 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (“‘Judicial power,’ as envisioned by the Texas Constitution, embraces (1) the power



to hear facts, (2) the power to decide the issues of fact made by the pleadings, (3) the power to decide the questions of law involved, (4) the power to render a judgment on the facts found in accordance with the law as determined by the court, (5) and the power to execute the judgment or sentence.”). Jurisdiction is a question of law, which we review de novo. *See Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007).

To the extent an issue involves a question of statutory interpretation, we likewise apply a de novo standard of review. *See In re Panchakarla*, 602 S.W.3d 536, 540 (Tex. 2020). In interpreting a statute, “[w]e presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted.” *Id.* “We construe statutes and related provisions as a whole, not in isolation, and as a general proposition, we are hesitant to conclude that a trial court’s jurisdiction is curtailed absent manifestation of legislative intent to that effect.” *Id.* (internal citations omitted).

We rely on the plain meaning of a statute’s text “as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results.” *Fort Worth Transp. Authority v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018). And it is inappropriate to use extrinsic aids to construe unambiguous statutory language. *Id.*; *but see* TEX.

GOV'T CODE ANN. § 311.023 (permitting courts to consider legislative history and other construction aids regardless of ambiguity).

“[A]ny person accused of committing a felony offense between his tenth and seventeenth birthdays is subject to the exclusive original jurisdiction of a juvenile court, meaning that the juvenile court has the power to hear and decide matters pertaining to the juvenile offender’s case . . . .” *Moon v. State*, 451 S.W.3d 28, 38 (Tex. Crim. App. 2014), *overruled on other grounds by Ex parte Thomas*, --- S.W.3d ---, 2021 WL 1204352 (Tex. Crim. App. Mar. 23, 2021); *see* TEX. FAM. CODE ANN. §§ 51.02(2)(a), 51.03(a)(1), 51.04(a). When a juvenile is committed to the TJJD under a determinate sentence for conduct constituting a first-degree felony offense, the TJJD may not release the juvenile “without approval of the juvenile court that entered the order of commitment” until the juvenile has served at least three years. *See* TEX. HUM. RES. CODE ANN. § 245.051(c)(2).

On January 29, 2019, the juvenile court imposed a determinate sentence of commitment for ten years against appellant. Appellant received credit for “307 days in detention” before he was committed to the TJJD. Because the delinquent conduct that appellant stipulated he had committed constituted a first-degree felony offense under the Texas Penal Code, the juvenile court assessed against appellant a minimum period of confinement in the TJJD of three years. *See id.* His three-year minimum period of confinement would be completed as of March 28, 2020. But

appellant turned nineteen years old in June 2019 and was not eligible to complete his minimum period of confinement in the TJJD. *See id.* § 245.151(d).

For this reason, the TJJD referred appellant to the juvenile court for a release-or-transfer hearing. *See* TEX. FAM. CODE ANN. § 54.11. On receipt of a referral from the TJJD for a juvenile between the ages of sixteen and nineteen who has been committed to the TJJD under a determinate sentence but has not completed that sentence, the juvenile court “shall set a time and place for a hearing on the possible transfer or release” of that person. *Id.* § 54.11(a). At the release-or-transfer hearing, “the court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, employees of [the TJJD], or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses.” *Id.* § 54.11(d).

In its referral, the summary report, and the testimony of Bennett, the court liaison for the TJJD’s Department of Sentence Offender Disposition, the TJJD recommended that appellant be released on parole under TDCJ-PD supervision, but the juvenile court did not adopt that recommendation and ordered appellant returned to TJJD custody and then transferred to the TDCJ-CID to serve the remainder of his determinate sentence.

Appellant argues that the juvenile court could not order his transfer to the TDCJ-CID because Texas Family Code section 54.11, subsections (i) and (j) limit

the juvenile court's authority to decide the appropriate disposition for "a [juvenile] referred for transfer" to either approve or disapprove of the TJJD's recommendation. (Internal quotations omitted). Texas Family Code section 54.11, subsections (i) and (j) provide:

(i) On conclusion of the hearing on a person who is referred for transfer under Section 152.0016(j) or 244.014(a), Human Resources Code, the court may, as applicable, order:

- (1) the return of the person to the [TJJD] or post-adjudication secure correctional facility; or
- (2) the transfer of the person to the custody of the [TDCJ-CID] for the completion of the person's sentence.

(j) On conclusion of the hearing on a person who is referred for release under supervision under Section 152.0016(g) or 245.051(c), Human Resources Code, the court may, as applicable, order the return of the person to the [TJJD] or post-adjudication secure correctional facility:

- (1) with approval for the release of the person under supervision; or
- (2) without approval for the release of the person under supervision.

*Id.* § 54.11(i), (j). According to appellant, if the TJJD recommends the juvenile's transfer to the TDCJ-CID, under section 54.11(i), the juvenile court must either approve the TJJD's recommendation and transfer the person to the TDCJ-CID or return the person to the TJJD. If the TJJD recommends the juvenile's release on parole under the supervision of TDCJ-PD, appellant reads section 54.11(j) as

requiring the juvenile court to return the person to the TJJD either with or without approving the person's release on parole. Because the TJJD recommended appellant's release on parole under TDCJ-PD supervision, appellant argues, the juvenile court did not have the authority to order his transfer to the TDCJ-CID.

Appellant's position ignores the purpose of a release-or-transfer hearing. A release-or-transfer hearing is a "second chance hearing" after a juvenile has already been sentenced to serve a determinate period of time in state custody. *In re C.D.T.*, 98 S.W.3d 280, 282 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) (internal quotations omitted). Section 54.11 does not cede the juvenile court's jurisdiction to the TJJD—an administrative agency—by authorizing the TJJD to refer a juvenile for a release-or-transfer hearing and to recommend a disposition other than that previously ordered by the court.<sup>12</sup> A referral for a release-or-transfer hearing is no more than a request that the juvenile court reconsider its judgment. *See id.* And here, because appellant had not completed his minimum period of confinement, the juvenile court retained the sole authority to decide whether to leave appellant's determinate sentence in place. *See* TEX. HUM. RES. CODE ANN. § 245.051(c)(2).

The Austin Court of Appeals addressed the same argument made by appellant in *In re C.B.*, No. 03-14-00028-CV, 2015 WL 4448835 (Tex. App.—Austin July 15,

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<sup>12</sup> *See* 37 TEX. ADMIN. CODE §§ 341.100–.812.

2015, no pet.) (mem. op.). There, the trial court had assessed a determinate sentence, and it was not possible for C.B. to complete his minimum period of confinement before his nineteenth birthday. *See In re C.B.*, 2015 WL 4448835, at \*1. The TJJD recommended C.B.’s “release on adult parole under TDCJ-PD supervision,” but the juvenile court “did not approve that recommendation and ordered C.B. returned to the TJJD and thereafter transferred to the TDCJ-[C]ID to serve the remainder of his [determinate] sentence.” *Id.* at \*2.

Like appellant here, C.B. asserted that the juvenile court could order a transfer if it had received a referral for transfer from the TJJD but not when the TJJD recommended release. *Id.* The Austin Court of Appeals rejected that assertion, pointing out that the interplay among the various statutory provisions applicable to C.B.’s situation made his proposed interpretation of Texas Family Code section 54.11, subsections (i) and (j), untenable. *See id.*

The TJJD is prohibited from releasing a juvenile under TDCJ-PD supervision who has not served the minimum period of confinement without the juvenile court’s approval. TEX. HUM. RES. CODE ANN. §§ 245.051(c), 245.151. Yet the TJJD cannot retain custody of a juvenile beyond that person’s nineteenth birthday. *Id.* § 245.151(d). The juvenile court, on the other hand, continues to have jurisdiction over that juvenile in conducting a hearing for transfer to the TDCJ-CID or release on parole under the supervision of the TDCJ-PD. TEX. FAM. CODE ANN. §§ 51.04,

51.0411. Read together, these provisions make clear that the decision whether to transfer or release a juvenile in appellant’s situation belongs exclusively to the juvenile court. *See In re P.S.*, 02-19-00261-CV, 2020 WL 4359401, at \*3 (Tex. App.—Fort Worth July 30, 2020, no pet.) (mem. op.) (juvenile court was not bound by TJJD’s recommendation). Appellant’s proposed interpretation would reduce the release-or-transfer hearing to a pointless exercise: even if the juvenile court had been constrained to either approve or disapprove the TJJD’s decision, the TJJD would nevertheless lack the authority to implement its recommendation to release appellant to the TDCJ-PD’s supervision without the juvenile court’s approval.

The juvenile court’s authority to consider other sources of information also shows that the TJJD’s recommendation alone is not necessarily sufficient to support a juvenile court’s decision in a release-or-transfer hearing. *See* TEX. FAM. CODE ANN. § 54.11(d) (juvenile “court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, [TJJD] employees, or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses”); *In re C.B.*, 2015 WL 4448835, at \*3. Because the applicable provisions of the Texas Family Code and the Texas Human Resources Code, considered as a whole, do not support appellant’s proposed interpretation of Texas Family Code section 54.11, subsections (i) and (j),

we need not consider his arguments about the legislative history of those subsections. *See* TEX. R. APP. P. 47.1.

We hold that the juvenile court had jurisdiction to order appellant's transfer to the TDCJ-CID.

We overrule appellant's first issue.

### **Due Process**

In his second issue, appellant argues that his constitutional rights to due process and due course of law were violated because he was provided insufficient notice of the release-or-transfer hearing which transferred him from the TJJD to the TDCJ-CID for the remainder of his determinate sentence of commitment for ten years. *See* U.S. CONST. amends. V, XIV; TEX. CONST. arts. I, §§ 10, 19.

Due process requires, at a minimum, that before being deprived of a constitutionally protected interest, a person must be afforded reasonable notice and a hearing. *See Univ. Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995). Appellate courts presume that trial courts will hear cases only after proper notice to the parties. *Osborn v. Osborn*, 961 S.W.2d 408, 411 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). To rebut this presumption, an appellant must affirmatively show a lack of notice, which generally requires affidavits or other competent evidence showing that he did not receive proper notice. *Blanco v. Bolanos*, 20 S.W.3d 809, 811 (Tex. App.—El Paso 2000, no pet.); *Osborn*, 961 S.W.2d at 411.



When the TJJD refers a juvenile who is serving a determinate sentence to the juvenile court for a possible transfer to the TDCJ-CID, the court must set a release-or-transfer hearing. *See* TEX. FAM. CODE ANN. § 54.11(a); *In re A.M.*, No. 02-17-0029-CV, 2017 WL 2812452, at \*4 (Tex. App.—Fort Worth June 29, 2017, no pet.) (mem. op.). As a “second chance hearing,” the release-or-transfer hearing is not part of the guilt-innocence determination and, as a result, does not have the extensive due process requirements of an actual trial. *In re C.D.T.*, 98 S.W.3d at 282 (internal quotations omitted). The Texas Family Code provides that the juvenile court shall notify the juvenile to be transferred or released of the time and place of the hearing. TEX. FAM. CODE ANN. § 54.11(b)(1). The statute does not specify the manner of notification or the minimum time to notify the juvenile before the hearing. *See In re J.B.*, No. 12-13-00270-CV, 2014 WL 2601716, at \*2 (Tex. App.—Tyler June 11, 2014, no pet.) (mem. op.); *In re G.R.*, No. 01-98-01142-CV, 1999 WL 351138, at \*1 (Tex. App.—Houston [1st Dist.] Jun. 3, 1999, no pet.) (not designated for publication). Appellant does not assert that he was not notified of the time and place of the release-to-transfer hearing.

Under Texas Family Code section 51.10(h), appellant’s counsel was entitled to ten days’ notice of the release-or-transfer hearing. *See* TEX. FAM. CODE ANN. § 51.10(h) (“Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this

title.”). Appellant’s counsel did not object at the hearing that he did not receive sufficient notice of the hearing, and his announcement of “ready” at the start of the hearing indicates that he did. *See generally* TEX. R. APP. P. 33.1(a) (generally to preserve complaint for appellate review, party must present timely request, objection, or motion to trial court). Nor does appellant complain that his counsel did not receive the required access to the materials to be considered by the juvenile court “[o]n or before the fifth day before the date of the [release-or-transfer] hearing.” *See* TEX. FAM. CODE ANN. § 54.11(d).

In the Stipulation of Evidence, appellant stipulated that he received a summons and petition when he entered his plea of true, which gave the juvenile court personal jurisdiction over him. *See* TEX. FAM. CODE ANN. § 53.06; *In re J.C.W.G.*, 613 S.W.3d 560, 570 (Tex. App.—San Antonio 2020, no pet.); *In re G.A.T.*, 16 S.W.3d 818, 822–23 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The juvenile court continued to have jurisdiction over appellant for the release-or-transfer hearing. *See* TEX. FAM. CODE ANN. § 51.0411 (juvenile court retains jurisdiction over juvenile who is referred to the court for transfer to TDCJ-CID or release under supervision of TDCJ-PD). And appellant received notice of his “possible transfer” to the TDCJ-CID in the Stipulation of Evidence he signed and in the juvenile court’s January 29, 2018 Determinate Sentencing Judgment and Order of Commitment.

Appellant complains that there was no “written pleading, plea or written motion on file” providing notice of the release-or-transfer hearing. The statute gives the TJJD the responsibility to refer the juvenile with a determinate sentence to the juvenile court for the release-or-transfer hearing. *See* TEX. HUM. RES. CODE ANN. § 244.014. But it does not require the referral to be presented to the juvenile court in the form of a motion or other pleading. *Compare id.* (TJJD “may refer” juvenile to court for release-or-transfer hearing), *with* TEX. HUM. RES. CODE ANN. § 244.0125 (providing TJJD “may petition” juvenile court “for the initiation of mental health commitment proceedings,” and explaining that such petition “shall be treated as a motion” under Texas Family Code section 55.11).

Appellant was present at the release-or-transfer hearing. He does not assert that he did not have actual notice of it. At the start of the release-or-transfer hearing, appellant’s counsel announced that appellant was “ready” for the hearing, and appellant did not object to any lack of notice in the juvenile court. *See generally* TEX. R. APP. P. 33.1(a). And the juvenile court’s Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice recites that, in compliance with Texas Family Code section 54.11, “due notice had been issued on all parties as required” and appellant “appeared at the time required” “in person with his attorney.” *See In re R.O.*, No. 06-16-00040, 2017 WL 382420, at \*1 (Tex. App.—Texarkana Jan. 27, 2017, pet. denied) (mem. op.) (noting transfer order

recited “due notice [of the transfer hearing was] issued on all parties as required by [s]ection 54.11” and “[r]ecitals contained in [a] judgment are presumed true unless there is a conflict between the judgment and [the] record” (first alteration in original) (internal quotations omitted); *In re D.B.*, 457 S.W.3d 536, 538–39 (Tex. App.—Texarkana 2015, no pet) (“Since there [was] no evidence in the record to controvert the recitations in the transfer order that notice was given to all parties as required under [s]ection 54.11, [juvenile] . . . failed to show that the [juvenile] court acted contrary to the requirements of the statute.”); *In re J.B.*, 2014 WL 2601716, at \*2 (“We may presume the regularity of recitations . . . in transfer orders.”).

Based on the record, we conclude that appellant received the required notice of the release-or-transfer hearing. We hold that the juvenile court’s transfer proceeding did not violate appellant’s constitutional rights of due process and due course of law under the United States Constitution and the Texas Constitution.

We overrule appellant’s second issue.

### **Transfer Order**

In his third issue, appellant argues that the juvenile court erred in ordering appellant transferred to the TDCJ-CID because the court “enter[ed] an order that exceeded [its] [authority] granted by the Legislature” and the evidence is insufficient to support the court’s Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice.

We apply the abuse-of-discretion standard to review a juvenile court's decision to transfer a juvenile from the TJJD to the TDCJ-CID. *In re C.D.T.*, 98 S.W.3d at 283. The juvenile court abuses its discretion when it acts in an arbitrary and unreasonable manner, without reference to any guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *In re R.O.*, 2017 WL 382420, at \*2. We examine the entire record to determine if the juvenile court acted without reference to guiding rules and in an arbitrary manner. *In re C.D.T.*, 98 S.W.3d at 283. If some evidence exists to support the juvenile court's decision, there is no abuse of discretion. *Id.*

In determining whether to transfer a juvenile to the TDCJ-CIJ, the juvenile court:

may consider the experiences and character of the person before and after commitment to [the TJJD] or post-adjudication secure correctional facility, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of [the TJJD], county juvenile board, local juvenile probation department, and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

TEX. FAM. CODE ANN. § 54.11(k). The juvenile court is not required to consider all of the factors, and the court is expressly allowed to consider any unlisted but relevant factors. *In re J.J.*, 276 S.W.3d 171, 178 (Tex. App.—Austin 2008, pet. denied). The juvenile court may assign different weights to the factors it considers. *Id.*

We have already rejected appellant’s assertion that the juvenile court lacked authority and jurisdiction to order his transfer to the TDCJ-CID; as a result, we likewise reject appellant’s argument that the juvenile court erred in ordering him transferred to the TDCJ-CID because the court “enter[ed] an order that exceeded [its] [authority] granted by the Legislature.”

Appellant also asserts that the evidence is insufficient to support the juvenile court’s Dispositional Order to Transfer to the Institutional Division of the Texas Department of Criminal Justice and directs this Court to the evidence that the TJJD relied on in recommending his referral to the TDCJ-PD, including his successful completion of the Capital and Serious Violent Offender Treatment Program and his attainment of the “Stage YES-Active” level. *But see In re L.G.*, 398 S.W.3d 852, 859 (Tex. App.—Corpus Christi—Edinburg 2012, no pet.) (affirming juvenile court’s transfer order to TDCJ-CID even though juvenile had completed Capital and Serious Violent Offender Treatment Program and reached “the highest level of achievement possible in . . . the ‘Youth Empowerment Stage’”). But the juvenile court was entitled to give greater weight to appellant’s significant history of delinquent behavior and the delinquent conduct that led to his juvenile commitment. *See In re P.S.*, 2020 WL 4359401, at \*3 (juvenile court “may assign different weights to the factors it considers[] and the court need not consider every factor” (internal quotations omitted)); *In re L.G.G.*, 398 S.W.3d at 856. And the juvenile court could

have given weight to the complainant's testimony of the emotional impact the aggravated robbery had on her and her family because of appellant's violent and threatening conduct toward them. *See K.L.M. v. State*, 881 S.W.2d 80, 85 (Tex. App.—Dallas 1994, no writ) (explaining violent nature of offense may be considered in determining whether to transfer juvenile to TDCJ-CID); *see also* TEX. FAM. CODE ANN. § 54.11(k). Because some evidence supports the juvenile court's decision, we hold that the juvenile court did not err in ordering appellant transferred to the TDCJ-CID.

We overrule appellant's third issue.

### **Conclusion**

We affirm the judgment of the juvenile court.

Julie Countiss  
Justice

Panel consists of Justices Countiss, Rivas-Molloy, and Guerra.