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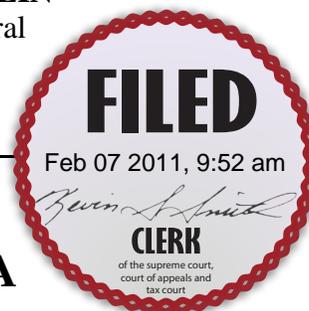
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**IN THE  
COURT OF APPEALS OF INDIANA**

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S.S., )  
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Appellant-Respondent. )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Petitioner. )

No. 49A02-1004-JV-493

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-1002-JD-444

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**February 7, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

## **BAKER, Judge**

Appellant-respondent S.S. appeals the juvenile court's disposition order committing him to the Indiana Department of Correction (DOC). Specifically, S.S. argues that the juvenile court abused its discretion because there was a less restrictive disposition available. Concluding that less restrictive placements have failed, we affirm the decision of the juvenile court.

### FACTS

At around 10:30 a.m., on February 18, 2010, sixteen-year-old S.S. and an accomplice attempted to break into the home of Joanne Griffin in Indianapolis. Griffin's neighbor, Julia Kane, watched from next door and called the police. When the police arrived on the scene, S.S. ran away after being ordered to stop. After S.S. was apprehended a short time later, he was identified by Kane.

On February 19, 2010, the State filed a petition alleging that S.S. was a delinquent child for committing acts that would have been attempted residential entry, a class D felony, and resisting law enforcement, a class A misdemeanor, if committed by an adult. On March 18, 2010, the juvenile court held an evidentiary hearing and entered true findings on both allegations.

On April 8, 2010, the juvenile court held a dispositional hearing. In the disposition report, the probation department recommended that S.S. be released to his mother, that he receive a suspended commitment to the DOC, that he continue participation in the Transition from Restrictive Placement Program, that he receive

substance abuse treatment, and that he enroll in school. S.S. presented evidence that he had been accepted into the Cross Roads Children's Home in Fort Wayne, which is an open residential facility with a secure component.

The State, however, requested that S.S. be sent to the DOC. The State noted that S.S. had prior true findings for what would have been theft and possession of marijuana if committed by an adult. Additionally, the State pointed out that despite the variety of rehabilitative services that had been offered to S.S., including probation, suspended commitment, the Cross Care System, various forms of counseling, and placement at the Kokomo Academy, he continued to reoffend.

After hearing all the evidence, the juvenile court entered a disposition order committing S.S. to the DOC "until the age of 21, unless sooner released by the [DOC]," but recommended that he be committed for six months. Appellant's App. p. 9. The juvenile court concluded that it was in S.S.'s best interests to be removed from the home and that "[d]etention is essential to protect the community." *Id.* S.S. now appeals.

### DISCUSSION AND DECISION<sup>1</sup>

S.S. argues that the juvenile court abused its discretion when it committed him to the DOC when there was a less restrictive disposition available. Initially, we observe that

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<sup>1</sup> The State has filed a Motion to Strike, contending that S.S. has waived the arguments that he makes for the first time in the Reply Brief, namely, that by not waiving him into adult court, the State was foreclosed from punishing him and that the juvenile court abused its discretion by failing to properly account for his statement to the juvenile court. It is a well established rule that "Appellants are not permitted to present new arguments in their reply briefs, and any argument an appellant fails to raise in his initial brief is waived for appeal." *In re Paternity of P.B.*, 932 N.E.2d 712, 725 n.12 (Ind. Ct. App. 2010); see also Ind. Appellate Rule 46(C). Accordingly, S.S. has waived these arguments, and we grant the State's Motion to Strike.

the goal of the juvenile process is rehabilitation, and to that end, juvenile courts have a variety of placement options for juveniles who have delinquency problems, none of which are considered sentences. Jordan v. State, 512 N.E.2d 407, 408 (Ind. 1987).

The disposition of a juvenile adjudicated a delinquent is a matter committed to the sound discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition. A.M.R. v. State, 741 N.E.2d 727, 729 (Ind. Ct. App. 2000). On review, we may overturn the juvenile court's disposition order if we find that it abused its discretion, which occurs if its actions are clearly against the logic and effect of the facts and circumstances before it or the reasonable inferences that may be drawn therefrom. Id.

Indiana Code section 31-37-18-6 provides:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

This Court has recognized that although this statute “requires the juvenile court to select the least restrictive placement in most situations . . . the statute contains language which reveals that under certain circumstances a more restrictive placement might be appropriate.” K.A. v. State, 775 N.E.2d 382, 386-87 (Ind. Ct. App. 2002). More particularly, as stated above, the statute requires placement in the least restrictive placement “[i]f consistent with the safety of the community and the best interest of the child.” I.C. § 31-37-18-6.

Here, before the instant adjudications, S.S. had formal adjudications for possession of marijuana and theft and had contacts with the juvenile justice system for being a runaway, resisting law enforcement, burglary, residential entry, and theft. Additionally, S.S. has received numerous services since 2007, including home-based counseling, cross-care coordination, substance abuse counseling, informal home detention, formal probation, and placement at the Kokomo Academy and Muncie Diagnostic and Reception.

While at the Kokomo Academy, from October 2008 to January 2009, S.S.'s participation was inconsistent, he was disruptive, had problems following directives from staff, his peer interactions were negative, and he became increasingly more aggressive toward staff and peers. In December 2008, S.S. had approximately sixty-three rule

violations. S.S.'s placement at Kokomo Academy ended with his commitment to the DOC from February 2009 to October 2009.

Following his release from the DOC, S.S. received home-based counseling services through the Transition from Restrictive Placement Program, but S.S. did not actively participate and was unruly and belligerent. His mother was unable to control him at home, he violated curfew, smoked marijuana daily, and failed his last two drug screens in November 2009 and January 2010. S.S. skipped classes, was failing in school, and roaming the streets during school hours. S.S. was eventually suspended from school on February 1, 2010, and refused to take a drug test for readmission.

Four months after his release from the DOC in October 2009, S.S. committed the instant delinquent acts. While in the Marion County Juvenile Detention Center, S.S. earned two incident reports.

Over a three-year period, despite multiple opportunities at rehabilitation through lenient dispositions, S.S. continued to commit delinquent acts. Under these facts circumstances, we cannot say that the juvenile court was required to place S.S. in a less restrictive setting than the DOC, and we affirm the decision of the juvenile court.

The judgment of the juvenile court is affirmed.

VAIDIK, J., and BARNES, J., concur.