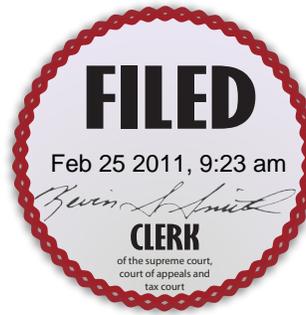


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**MICHELLE LAUX**  
St. Joseph County Public Defender's Office  
South Bend, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**GARY R. ROM**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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C.C., A Minor, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 71A03-1008-JV-440  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-1002-JD-112

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**February 25, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

This case involves a teenager who has had multiple run-ins with the law. By the time he reached age sixteen, the State had filed nine juvenile petitions against him. While he was in juvenile detention awaiting his hearing on the ninth petition, which alleged that he had committed battery and resisting law enforcement, he committed another battery by repeatedly punching a detention officer who was trying to return him to his cell.

A week later, the juvenile court entered a true finding and placed him in the Indiana Department of Correction (“DOC”) for six months based on his admission to the charges contained in the ninth petition. Following his release, the State filed a tenth petition against him for battery against the detention officer. He admitted to the battery charge, and the juvenile court entered another true finding and placed him back in the DOC.

C.C. now appeals, claiming that the juvenile court erred by placing him in the DOC rather than in a less restrictive setting. Finding no abuse of discretion, we affirm.

## **Facts and Procedural History**

On July 12, 2009, sixteen-year-old C.C. was in detention at the St. Joseph County Juvenile Justice Center awaiting a hearing on his ninth juvenile referral. While returning to his cell, he became aggressive with the detention staff and had to be subdued with pepper spray. During the incident, he punched detention officer Ron Mullins on the chin multiple times.

At the July 17, 2009 dispositional hearing for his ninth referral, C.C. admitted to charges of battery and resisting law enforcement, both class D felonies if committed by an

adult. On July 21, 2009, the juvenile court committed him to the DOC, where he remained until his release on January 25, 2010.

On February 23, 2010, the State filed a delinquency petition against C.C. for the incident involving Officer Mullins. At a March 22, 2010 initial hearing, C.C. admitted to the charge of battery, a class D felony if committed by an adult. It was his tenth referral.<sup>1</sup> While awaiting his dispositional hearing on the battery referral, he tested positive for marijuana on May 25 and June 2, 2010. On August 17, 2010, the juvenile court held a dispositional hearing and committed him to the DOC. This appeal ensued. Additional facts will be provided as necessary.

### **Discussion and Decision**

C.C. challenges the juvenile court's dispositional order committing him to the DOC. "[S]ubject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition," the placement decision for a child adjudicated a delinquent is a matter left to the juvenile court's sound discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). Thus, we review such a disposition using an abuse of discretion standard. *Id.* An abuse of discretion occurs when the juvenile court's action is clearly against the logic and effect of the facts and circumstances before it or the reasonable, probable, and actual inferences drawn therefrom. *Id.*

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<sup>1</sup> C.C.'s juvenile history includes a total of ten referrals, three of which resulted in adjudications for offenses that would have been felonies if committed by an adult. The first was his 2007 adjudication for class D felony conspiracy to commit theft/receiving stolen property, for which he ended up in the DOC after probation and anger management failed. Appellant's App. at 14. The other two adjudications, resulting from his ninth and tenth referrals, are discussed above. Of the remaining referrals, two resulted in warnings, two were dismissed, and three were labeled "Action Withheld." *Id.* at 14-15.

The goal of the juvenile process is rehabilitation rather than punishment. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). Accordingly, juvenile courts have a variety of placement options for juveniles with delinquency problems, none of which are considered sentences. *Id.* Indiana Code Section 31-37-18-6 states,

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.

C.C. argues that by committing him to the DOC, the trial court disregarded the statutory directive to select the least restrictive placement. We disagree. "Without question, the statute requires the juvenile court to select the least restrictive placement in most situations; however, the statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances." *J.S.*, 881 N.E.2d at 28-29. In other words, the least restrictive placement is required "[i]f consistent with the safety of the community and the best interest of the child." Ind. Code § 31-37-18-6 (emphasis added). "Thus, the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement." *J.S.*, 881 N.E.2d at 29.

Here, the juvenile court entered a detailed order indicating its reasons for placing C.C.

in the DOC. The court's findings include the following:

Reasonable efforts were made to prevent or eliminate the need for removal, including:

[C.C.] has been provided with standard probation supervision, anger management counseling, Madison Center Day Treatment services, Electronic Monitoring, drug testing, and placement at the [DOC].

These efforts did not prevent removal of the child because [C.C.] has continued to abuse illicit substances and commit delinquent acts that are harmful to himself and the community.

These efforts were reasonable because: Despite the varies [sic] services provided by probation and also the [DOC], [C.C.] continues to engage in behaviors which require more restrictive placement.

....

Said child is in need of supervision, care, treatment and services which are NOT available in the local community.

The child is in need of services beyond those which can be provided through probation services.

....

Suitable relative placement was explored and could not be found.

Said child should be removed from the home because continuation in the home would not be in the best interest of the child.

....

This Dispositional Order is consistent with the safety and the best interest of the child and is the least restrictive and most appropriate setting available close to the parents' home, least interferes with the family's autonomy, is least disruptive of family life, imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The Court further finds its Disposition is the least restrictive alternative to

insure the child's welfare and rehabilitation and the safety and welfare of the community.

Pursuant to IC 31-37-19-6 the Court now awards wardship of the child to the Indiana [DOC] for housing in any correctional facility for children or any community-based correctional facility for children. The Court's Dispositional Order is entered for the following reasons:

The child has failed to abide by Court ordered terms of probation.

The present offense is serious in nature warranting placement in a secure facility.

The child's past history of delinquent acts, even though less serious, warrants placement in a secure facility.

The child continues to engage in substance use.

Lesser restrictive means of controlling the child's behavior have been investigated or tried.

Furthermore, the child's right to personal freedom is outweighed by the community's right to protection.

Appellant's App. at 10-12.

Moreover, the probation officer's report, which was incorporated by reference into the juvenile court's dispositional order, defines C.C.'s problem areas as follows:

**Legal History:** [C.C.] has 10 referrals to the Probation Department and three adjudications for felony level offenses. He was sent to the Indiana [DOC] on two separate occasions and he is currently on parole. Also of concern, the offense currently before the Court is serious in nature in nature, as a member of the Juvenile Justice Center (JJS) detention staff was assaulted. **Attitudes:** [C.C.] accepts little responsibility for his delinquent behavior. He expresses an [sic] neutral attitude toward authorities and believes verbal aggression or violence is sometimes appropriate or necessary. When asked how he could better handle situations like the one he is going to Court for, [C.C.] responded by saying "It depends on who the person is and how much tolerance I have for them." **Alcohol/Drugs:** [C.C.] has abused marijuana and alcohol and admitted to trying other illicit substances. He has tested positive for marijuana

on two occasions since his initial hearing on March 22, 2010. A report from the Indiana [DOC] in February 2010, indicated that [C.C.] has a high probability for a substance dependence disorder based on [substance abuse screening] scores.

*Id.* at 15. The probation officer's report concludes with a recommendation that C.C. be placed in the DOC, as the DOC "will provide a structured setting, educational opportunities, and treatment to address his substance abuse issues." *Id.* at 18.

C.C. contends that his placement in the DOC was punitive rather than rehabilitative. As support for his argument, he cites steps that he has taken to improve himself since his second release from the DOC in January 2010. For example, he has attended home bound school, held two short-term summer jobs, participated in individual and family therapy, and now plans to play football to channel his anger. While these efforts are laudable, we nevertheless note that he failed two marijuana screenings administered as recently as May and June 2010. Far from indicating that his placement was a punitive one based merely on past violations, the record indicates that the juvenile court and the probation department thoroughly considered each of the statutory factors and determined that commitment to the DOC was in the best interests of both C.C. and the community.<sup>2</sup> We agree and find no abuse

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<sup>2</sup> To the extent C.C. claims that the State acted improperly by waiting until he was released from the DOC on the ninth referral before it filed the tenth petition, we note that the only statutory requirement concerning the timing of a petition limits the amount of time that a child may be held in custody before the State must file a petition for that particular delinquent act. *See* Ind. Code § 31-37-11-1 ("If a child is in detention, a petition alleging delinquency must be filed not later than seven (7) days, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody"). Thus, because C.C. was in custody on a different referral (his ninth) and a petition had already been filed for that referral, the statute does not apply to the filing of a subsequent referral (his tenth).

of discretion here. Accordingly, we affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.