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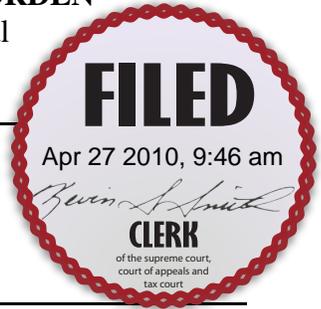
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**IN THE  
COURT OF APPEALS OF INDIANA**

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T.W., )  
)  
Appellant-Respondent, )  
)  
vs. ) No. 71A04-0912-JV-697  
)  
STATE OF INDIANA, )  
)  
Appellee-Petitioner. )

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-0811-JD-856

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**April 27, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

T.W., a juvenile, appeals the juvenile court's modification of its dispositional order. On appeal, she raises the following restated issue: whether the juvenile court abused its discretion when it committed her to the Indiana Department of Correction ("DOC").<sup>1</sup>

We affirm.

## FACTS AND PROCEDURAL HISTORY<sup>2</sup>

On August 29, 2008, T.W. and a female classmate got into a physical altercation at their high school, and both were suspended. Two-and-a-half months later, on November 10, 2008, the State filed a petition alleging that T.W., who was sixteen years old at the time, was a delinquent child for "recklessly, knowingly, or intentionally engag[ing] in fighting or tumultuous conduct." *Appellant's App.* at 8. Specifically, the delinquency petition alleged that T.W. had engaged in disorderly conduct,<sup>3</sup> a Class B misdemeanor if committed by an adult. At her initial hearing on December 8, 2008, T.W. waived her right to counsel and admitted to the disorderly conduct allegation. Based on this admission, T.W. was adjudicated a delinquent child.

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<sup>1</sup> It has come to our attention that T.W. was released from DOC on February 8, 2010. Although neither party raises the issue, we note that there is some question whether T.W.'s release from DOC makes this appeal moot. "Our courts 'have long recognized that a case may be decided on its merits under an exception to the general rule when the case involves questions of "great public interest."'" *D.S. v. State*, 829 N.E.2d 1081, 1083 n.1 (Ind. Ct. App. 2005) (quoting *R.A. v. State*, 770 N.E.2d 376, 378 (Ind. Ct. App. 2002)). "Issues that are likely to recur generally fall within the public interest exception." *Id.* It is likely that in the future juveniles will continue to be placed with DOC for short enough periods of time that these sentences will avoid review through mootness. Therefore, we address the issue on the merits.

<sup>2</sup> The State recognizes, and we agree, that there is a paucity of evidence in the record before this court. Therefore, the facts of this case are primarily found in T.W.'s pre-dispositional report and that report's supporting documents.

<sup>3</sup> See Ind. Code § 35-45-1-3.

In preparation for T.W.'s March 24, 2009 dispositional hearing, the St. Joseph County Probation Department ("Probation") prepared a pre-dispositional report, which included information obtained through T.W.'s "Individual Education Plan" and her "Madison Center" counseling report. *Appellant's Br.* at 3. The pre-dispositional report addressed T.W.'s behavior issues and her learning disabilities and noted that T.W., who has received therapy since she was five years old, "can be confused about the consequences of her actions, has difficulty understanding that there are other points of view, and lacks the skills to develop realistic goals." *Appellant's App.* at 18. Additionally, the report noted: (1) T.W. takes three separate medications to help control her behavior; (2) she is in the special education program at her high school; (3) she has learning disabilities and behavioral problems, including sporadic behavior in the classroom; (4) she has problems attending school; and (5) her grades fluctuate constantly.

Following the March 2009 dispositional hearing, the juvenile court placed T.W. on strict and indefinite probation and ordered her to attend school regularly with no unexcused absences, tardies, or suspensions, obey all school rules, abstain from illegal substances, participate in individual and family counseling, and obey city, county, state, and federal laws. *Id.* at 11. The juvenile court's dispositional order also directed T.W. and her family to participate in the above-delineated probation plan.

On July 16, 2009, Probation filed a verified petition for modification on the grounds that T.W. "ha[d] not been obeying household rules, she ha[d] refused to

participate in several counseling sessions, and she tested positive for marijuana.”<sup>4</sup> *Id.* at 3. An emergency modification hearing was completed on July 17, 2009. Upon finding that T.W. had violated the terms of her probation, the juvenile court ordered her to serve forty-five days at the Juvenile Justice Center in St. Joseph County. *Id.* T.W. received one day of good time credit for each day served and was released from the Juvenile Center after serving eighteen days.

On September 28, 2009, Probation again filed a verified petition for modification. The petition alleged that T.W. “has violated the terms of her probation, as she has missed, been tardy, or left school without permission 17 of the first 21 days of school; she has been disrespectful to her mother; and she refused to participate in a counseling session and proceeded to engage in disorderly behaviors at the Madison Center.” *Id.* at 2.<sup>5</sup> Following a brief hearing, the juvenile court granted the wardship of T.W. to DOC. T.W. now appeals that placement. Additional facts will be added as necessary.

## **DISCUSSION AND DECISION**

T.W. contends that the juvenile court abused its discretion in placing her with DOC. The choice of a specific disposition of a juvenile adjudicated a delinquent child is generally within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community’s safety, and the policy of

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<sup>4</sup> The record before us does not contain a copy of the July 2009 petition for modification. Additionally, while the chronological case summary (the “CCS”) notes that a half-hour emergency modification hearing was held on July 17, 2009, the record before us contains no documents pertaining to that hearing and no written order on that July 2009 petition.

<sup>5</sup> Because the record before us does not contain a copy of the September 2009 petition for modification, we cite to the description of the petition found in the CCS.

favoring the least-harsh disposition. *R.S. v. State*, 796 N.E.2d 360, 364 (Ind. Ct. App. 2003), *trans. denied*. A juvenile disposition will not be reversed absent a showing of an abuse of discretion. *Id.* An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

When a person under the age of eighteen commits an act that would be an offense if committed by an adult, the person is adjudicated a "delinquent child." Ind. Code § 31-37-1-2. Juvenile adjudications do not constitute criminal convictions. *Jordan v. State*, 512 N.E.2d 407, 408 (Ind. 1987). Upon finding that a child is delinquent, the juvenile court enters a dispositional decree providing for the placement of the child and other sanctions and treatment. *R.J.G. v. State*, 902 N.E.2d 804, 806 (Ind. 2009). Dispositional decrees are intended to promote rehabilitation. *Id.*

The statutory scheme for dealing with juveniles who commit illegal acts is vastly different from the statutory scheme for sentencing adults who commit crimes. *E.H. v. State*, 764 N.E.2d 681, 685 (Ind. Ct. App. 2002). "American society [has] rejected treating juvenile law violators no differently from adult criminals in favor of individualized diagnosis and treatment." *In re G.B.*, 709 N.E.2d 352, 354 (Ind. Ct. App. 1999) (quoting *State ex rel. Camden v. Gibson Circuit Court*, 640 N.E.2d 696, 697 (Ind. 1994)). It is therefore the policy of this State to "ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation." Ind. Code § 31-10-2-1(5).

Specifically, 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.

T.W. contends that the juvenile court abused its discretion because placement with DOC was punitive rather than rehabilitative, was a poor fit in light of T.W.'s emotional needs, was not near her parents' home, and was not the least restrictive setting.

On September 29, 2009, the juvenile court held a modification hearing on this matter. During the hearing, Probation explained:

[T.W.] is before the Court today for modification because she has failed to abide by the rules at school. She has been absent, tardy or left school without permission seventeen of the first twenty-one days of school in high school. There is, also, an issue with counseling. She stormed out of a counseling session, approximately, two weeks ago with the therapist. She left after about five minutes because she didn't want to discuss the issue at hand. When she left she was in the Madison Center area causing quite a scene, swearing, disrupting the function of the Madison Center.

*Tr.* at 3.

At the hearing, T.W.'s counsel, Michelle Laux, requested that T.W. be allowed to go home on electronic monitoring. Laux explained that T.W.'s school absences were due to stomach issues, an ear infection, and a sinus infection, and offered T.W.'s medical

chart as documented proof. Laux further explained that “[a] lot of the absences were excused” and offered attendance reports to support this claim. *Tr.* at 4; *Appellant’s App.* at 29-30.

Probation requested that T.W. be detained for the protection of the community, that it be allowed to staff her case, and that “a modification hearing be set out for, approximately, one month.” *Tr.* at 4. The State agreed with Probation’s recommendation. *Id.* at 6.

Following the hearing, the juvenile court’s modification order stated as its bases for disposition:

Reasonable efforts were made to prevent or eliminate the need for removal, including: [T.W.] has been provided with services through Madison Center and the Probation Department.

These efforts did not prevent removal of the child because [T.W.] continues to engage in behaviors which place herself and others at risk for harm.

These efforts were reasonable because: Despite the array of services provided by Madison Center and the Probation Department, [T.W.] continues to engage in behaviors which require more restrictive placements.

....

The court has investigated or has made provision for the delivery of the most appropriate services from those available to prevent the child’s placement out of the child’s home or to reunify the child and family.

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.

There is no available person or facility in St. Joseph County Indiana which can provide the child with the necessary services.

Suitable relative placement has been 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.

The St. Joseph County Probation Department has the responsibility for placement and care of the child.

*Appellant's App.* at 13-14.

Thereafter, the juvenile court granted wardship of T.W. to DOC, stating 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.

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.

*Id.* at 14.

T.W. argues that the juvenile court abused its discretion in placing her with DOC because, while "a juvenile court has wide latitude and great flexibility in dealing with juveniles, its goal is to rehabilitate rather than to punish." *E.H. v. State*, 764 N.E.2d 681, 685 (Ind. Ct. App. 2002). T.W. contends that this court has vacated commitment to DOC in similar cases, specifically relying on *E.H.* In *E.H.*, the juvenile was adjudicated a delinquent for the theft of a necklace. The juvenile court placed E.H. under the wardship

of DOC for a recommended one-year commitment. This court held that the one-year commitment to DOC was punitive and did not further the rehabilitative goals of the juvenile justice system. *Id.* at 685.

E.H. is distinguishable from the instant case. In E.H., the juvenile had been forced to change foster homes several times, but, at the time of the latest offense, had been placed in a foster home and was making significant improvements with adjustment issues. *Id.* at 686. The E.H. court noted that the juvenile had been making considerable progress in programs assisting with reunification with his family and with home-based counseling. *Id.* Finally, the court stated that, other than being the next step after a suspended commitment, the juvenile court provided no explanation for committing E.H. to DOC. *Id.*

In the present case, the juvenile court adjudicated T.W. a delinquent and initially placed her on probation. Less than four months later, an emergency modification hearing was held, after which the juvenile court found T.W. had violated the terms of her probation by failing to obey household rules, refusing to participate in several counseling sessions, and testing positive for marijuana. *Appellant's App.* at 3. The juvenile court did not order her committed to DOC, but instead, ordered her committed to the St. Joseph Juvenile Justice Center for forty-five days. T.W. was released eighteen days later on the basis of her good time credit. Just two months later, T.W. was again before the juvenile court on the charges that T.W. had violated her probation by missing, being tardy, or leaving school seventeen of the first twenty-one days of the fall semester, had been disrespectful to her mother, and had been uncooperative at a Madison Center counseling

session, refusing to participate and engaging in disorderly behavior as she left the center.

*Id.* at 2.

Following a brief hearing, the juvenile court determined the following: that reasonable efforts were made to prevent T.W.'s removal from home; that she had been given an array of services by Probation and the Madison Center; that she was in need of services not available in the local community; and that lesser restrictive means of controlling her behavior had been investigated or tried, yet T.W. continued to engage in behaviors that placed herself and others at risk for harm. *Id.* at 13. T.W. was placed with DOC only after the juvenile court had tried the lesser means of probation and the Juvenile Justice Center. We cannot say that, after giving T.W. two previous chances, it was an abuse of discretion for the juvenile court to place her with DOC.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.