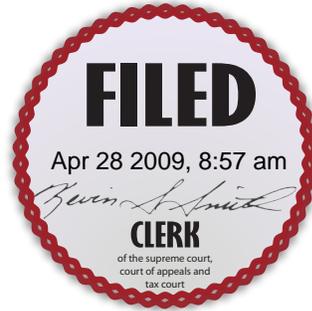


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

J.D.C., II,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

No. 89A01-0811-JV-536

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Darrin M. Dolehanty, Judge
Cause No. 89D03-0809-JD-49

April 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

J.D.C. II appeals his commitment to the Indiana Department of Correction (“DOC”). Specifically, he contends that the juvenile court should have placed him in a less restrictive secure detention facility. Given J.D.C. II’s extensive history of delinquent behavior, which includes periods of informal adjustment, lecture and release, counseling, and monitoring, and other services provided to him, including substance abuse counseling, a ten-month stay in a residential treatment center, and alternative school, we conclude that the juvenile court did not abuse its discretion in committing J.D.C. II to the DOC. We therefore affirm the juvenile court.

Facts and Procedural History

J.D.C. II was born on May 22, 1992. On October 3, 2008, the State filed a petition alleging that he was a delinquent child. The petition includes nine counts stemming from five separate incidents.

First, on April 16, 2008, J.D.C. II appeared at The Find Center, a school, intoxicated. When a police officer tested him, his BAC was 0.18%. The State charged J.D.C. II with illegal consumption of alcohol by a minor for this incident.

Second, on July 10, 2008, a police officer noticed two juveniles in the street pushing each other, one of whom was J.D.C. II. The officer spoke to J.D.C. II, who was agitated. The officer noticed that J.D.C. II appeared to be intoxicated and administered a breath test, which revealed that he had a BAC of 0.114%. The officer told J.D.C. II several times to stop yelling, but he continued. The State charged J.D.C. II with public

intoxication, illegal consumption of alcohol by a minor, and disorderly conduct for this incident.

Third, on August 28, 2008, police were called to Richmond High School to assist with handling J.D.C. II, who was refusing to comply with the principal's instructions. The officer instructed J.D.C. II to go into the principal's office, but J.D.C. II began yelling and cussing. The officer warned J.D.C. II that he would be arrested if he did not calm down, but J.D.C. II responded that he did not care and refused to calm down. J.D.C. II physically resisted when the officer attempted to place him under arrest. It took two officers to place J.D.C. II in handcuffs and move him into the squad car. The State charged J.D.C. II with resisting law enforcement and disorderly conduct for this incident.

Fourth, on September 14, 2008, police officers responded to a call at a house for a possible fight. The officers spoke to J.D.C. II, who had a strong odor of alcohol on his breath. The State charged him with illegal consumption of alcohol by a minor for this incident.

Finally, on September 19, 2008, J.D.C. II's mother, V.T., reported to police that J.D.C. II and his stepfather, R.T., had a verbal argument that escalated to a physical struggle after R.T. slapped J.D.C. II on the mouth. When V.T. attempted to call 911, J.D.C. II pulled the phone cord out of the wall. The State charged J.D.C. II with interference with the reporting of a crime and criminal mischief for this incident.

During the initial hearing on the delinquency petition, J.D.C. II admitted to three of the nine counts, specifically, disorderly conduct (July 10, 2008), resisting law enforcement (August 28, 2008), and interference with the reporting of a crime

(September 19, 2008). The juvenile court then adjudicated J.D.C. II a delinquent child for these counts and proceeded to disposition. After the parties made their recommendations, the trial court said:

These are the major considerations that the record should reflect from the pre-dispositional report. We had a six month informal period of probation dating back to October of 2005. It was extended six months in April of 2006. Uh, we had a couple lecture and release situations in 2006, late months of 2006. In April there is the referral to the Department of Child Services. Uh, there was an extended placement as is already been noted by counsel at the Kokomo Academy. Uh, [J.D.C. II] does not always do well at home. He does not always do well at school. Other departments have been involved, uh, with [him], uh, beyond the Department of Child Services and Kokomo Academy. Uh, there's been referrals and services provided by Positive Alternative School. Uh, Lifeline while he was on informal. Dunn Center. Boys and Girls Club. The Richmond State Hospital, and the Whitewater Care Pavilion. Uh, [J.D.C. II] is to be in the tenth grade this year, he's currently under expulsion. He was on, or up for expulsion, excuse me. He was on a ten-day suspension and was referred to Positive Alternative School, and according to the reports attached to the pre-dispositional report, he only attended three out of those ten days. Uh, according to the information in the pre-dispositional report, [J.D.C. II] has been arrested now thirteen times, twenty-two different offenses. Now you have to take that with a big grain of salt because there have not been adjudications on each of those but it is of some note that he's been arrested that many times, uh, for that many different offenses. The placement at Kokomo Academy was for a ten month duration. You know and just looking at the admissions that [J.D.C. II] made as far as they're all misdemeanors and everything but when you look at the reports and the pre-dispositional report, particularly, the supplement, the one dealing with the resisting law enforcement, uh, [his] needs go beyond a placement at the Henry County Youth Center. That's just a weigh station. That's not gonna be any place where he will be provided services, and he's got some behavioral issues that simply have to be addressed. Uh, so it's the determination of the Court that the best interests for [J.D.C. II] lie in awarding wardship over him to the Indiana Department of Correction.

Tr. p. 14-16. J.D.C. II now appeals his commitment to the DOC.

Discussion and Decision

J.D.C. II argues that the juvenile court erred by committing him to the DOC because it is not the least restrictive placement. Rather, he argues that he should have been placed in a secure detention facility. In determining whether the juvenile court properly placed J.D.C. II in the DOC, we note that the choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. *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 the reasonable, probable, and actual inferences that can be drawn therefrom. *Id.* Hence, the juvenile court is accorded wide latitude and great flexibility in dealing with juveniles. *Id.*

Indiana Code § 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree:

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.

“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. That is, the statute requires placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child.” I.C. § 31-37-18-6. 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.

This case presents one of those situations where the best interest of the child is better served by a more restrictive placement. As the juvenile court summarized, J.D.C. II has an extensive history of delinquent behavior. In August 2005, J.D.C. II was referred for failure to attend school and being incorrigible, and in September 2005, he was referred for felony theft. His disposition was an informal adjustment of six months. In December 2005, J.D.C. II was referred for illegal consumption of alcohol by a minor and felony theft, and in January 2006, he was referred for failure to attend school and disobedience. As a result, his informal adjustment was extended by six months. In September 2006, J.D.C. II was referred for leaving home, and he was lectured and released with counseling. In October 2006, J.D.C. II was referred for misdemeanor battery and disobedience, and he was lectured and released after being held open to monitor. In April 2007, J.D.C. II was referred for misdemeanor battery, and he was referred to the Department of Child Services. The delinquency petition in this case was

filed in October 2008 and contained nine counts covering five incidents that spanned from April to September 2008.

In addition to the above, J.D.C. II has been involved in other trouble. In September 2005, he was taken to the hospital for an overdose of Dramamine. He tested positive for marijuana four times while on informal adjustment. He has been involved with six different service providers to address his substance abuse problems, including Whitewater Valley Care Pavilion, Dr. Vecera, Dunn Mental Health Center, Lifeline, Kokomo Academy, and Living Pathways. In January 2007, J.D.C. II suffered serious burns and bruises when he was set on fire by two people after passing out at a friend's house. Thereafter, he was adjudicated to be a child in need of services and was placed in a residential treatment center, Kokomo Academy, for ten months. In early September 2008, the high school initiated expulsion proceedings against him. He was referred to an alternative school for a ten-day suspension, but he only reported for three days.

It is apparent that J.D.C. II has not responded to any of the prior interventions of law enforcement and the other agencies that have offered various kinds of resources to help him, and he continues to reoffend at a steady pace. J.D.C. II stresses that the juvenile court should have placed him in a secure detention facility, not the DOC, because “[a] period of secure detention has not been tried with [him]” yet. Appellant's Br. p. 12. Given that J.D.C. II has failed at informal dispositions, counseling, residential placement, and the many other services offered to him and given the juvenile court's belief that his needs go beyond placement at a secure detention facility, we conclude that

the court did not abuse its discretion in committing J.D.C. II to the DOC for housing in a correctional facility for children.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.