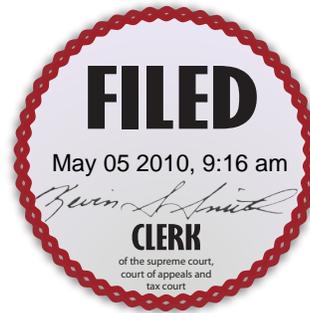


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.S., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 71A05-0911-JV-628  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE SAINT JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
The Honorable Harold E. Brueseke, Magistrate  
Cause No. 71J01-0908-JD-516

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**May 5, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

D.S. was adjudicated a delinquent child after entering into a plea agreement with the State in which he admitted to the allegation of committing an act that would constitute battery against a family member as a class A misdemeanor if committed by an adult. D.S. raises the following restated issue for review: Did the juvenile court abuse its discretion by awarding wardship of D.S. to the Department of Correction?

We affirm.<sup>1</sup>

In August 2009, D.S. struck his grandmother. The State filed a petition of delinquency alleging D.S. was a delinquent child for having committed battery of a family member as a class A misdemeanor and conversion as a class A misdemeanor if committed by an adult. D.S. entered a plea agreement in which he agreed to enter an admission to the battery allegation in exchange for the State's dismissal of the conversion allegation.

On October 20, 2009, the juvenile court held a dispositional hearing. During this hearing, the probation officer who prepared the pre-dispositional report informed the juvenile court that seventeen-year-old D.S. was not an appropriate candidate for community supervision and recommended that the juvenile court place D.S. in the Department of Correction. The probation officer based her recommendation on D.S.'s "history of violent behavior toward his own family members" (specifically, his mother and grandmother), substance abuse, lack of remorse, and refusal to attend school. *Transcript* at 4. The probation officer explained that although this was D.S.'s first disposition, he had previously been detained in a juvenile center for a similar battery offense in May 2009 but that the

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<sup>1</sup> D.S. does not challenge the adjudication of delinquency.

matter was dismissed upon a request from D.S.'s mother. As soon as D.S. was released, he assaulted his grandmother and continued to abuse substances. The probation officer explained that D.S., who had received four incident reports during his two months in secure custody, was considered a high risk to reoffend and noted that placement at the Department of Correction would provide the education, structure, and supervision that D.S. needed.

Also during the dispositional hearing, D.S.'s father, who lived in Nevada and was D.S.'s legal guardian, informed the juvenile court that when D.S. lived in Nevada with him, D.S. refused to go to school, disappeared for days, and refused to attend therapeutic counseling. His father opined that D.S.'s mother was not capable of supervising D.S. and stated he wanted D.S. to be placed somewhere where D.S. could complete his high school education.

The juvenile court awarded wardship of D.S. to the Department of Correction for housing in a correctional facility for children or a community-based correctional facility for children. D.S. now appeals.

D.S. argues the juvenile court abused its discretion by placing him in the Department of Correction because it was not the least restrictive setting.

The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within 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 of favoring the least harsh disposition. *J.S. v. State*, 881 N.E.2d 26 (Ind. Ct. App. 2008). 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 the reasonable, probable, and actual inferences that can be drawn therefrom. *Id.* Thus, the juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles. *Id.*

Indiana Code Ann. § 31-37-18-6 (West, Westlaw through 2009 1st Special Sess.), which governs juvenile dispositional decrees, 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.

While this statute generally requires placement in the least restrictive setting, the statute also contains language indicating that a more restrictive placement might be appropriate under certain circumstances. *J.S. v. State*, 881 N.E.2d 26. Placement in the least restrictive setting is only required "[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.” *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied*.

D.S. struck his grandmother and had a history of physical violent behavior against his mother and grandmother. The predispositional report, which was reviewed and adopted by the juvenile court when making its disposition, reveals that D.S. demands money from his mother and grandmother and becomes angry and aggressive when he does not get his way. While D.S. was in secure custody on this adjudication, he accrued four incident reports, including one for threatening a peer. D.S. has a history of substance abuse, including alcohol and marijuana, and he tested positive for marijuana at the time he was arrested for battering his grandmother. Additionally, D.S. has a pattern of refusing to attend school, and his behavior toward his parents shows a lack of respect for authority.

Although less restrictive options, such as probation, were available to the juvenile court and had not been previously utilized with D.S., the juvenile court was not required to impose one of those options. “In some instances, confinement may be one of the most effective rehabilitative techniques available when a juvenile is exposed to the type of placement [he] would encounter were [he] to continue with [his] poor behavior. *K.A. v. State*, 775 N.E.2d at 387. Given the circumstances of this case, the juvenile court did not abuse its discretion by committing seventeen-year-old D.S. to the Department of Correction. *See, e.g., M.R. v. State*, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992) (explaining that “[t]here are times in juvenile proceedings when the best interest of the juvenile and society require commitment to the Boys School”).

Dispositional decree affirmed.

KIRSCH, J., and ROBB, J., concur.