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IN THE
COURT OF APPEALS OF INDIANA

B.B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-1012-JV-791
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0904-JD-206

June 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

B.B. appeals the trial court's modification order awarding wardship of B.B. to the Indiana Department of Correction. B.B. raises several issues, which we revise and restate as follows:

I. Whether the trial court violated his due process rights; and

II. Whether a double jeopardy violation exists.

We affirm.

In June 2006, the State alleged B.B., who was born June 11, 1994, was a child in need of services (CHINS), and B.B. was found to be a CHINS, made a ward of the St. Joseph County Office of Family and Children, and ordered to foster care. On April 15, 2009, the State filed a Petition Alleging Delinquency which alleged that B.B. committed battery as a class A misdemeanor if committed by an adult. On April 22, 2009, B.B. admitted the allegations, and on July 7, 2009, pursuant to a dispositional order B.B. was placed on strict and indefinite probation and returned to placement at Pierceton Woods Academy ("Pierceton").[1]

On May 17, 2010, the State filed a verified information for rule to show cause alleging that B.B. had three episodes of violent and assaultive behavior toward staff and other residents at Pierceton, and on June 16, 2010, the State filed a verified petition for modification based upon the three episodes. Also on June 16, 2010, the court held a status hearing, issued an order on rule to show cause finding that B.B. was "not in

[1] According to the dispositional order, B.B. had been previously placed at Pierceton, as well as Bashor, Madison Center, and three foster homes. B.B. also received services through Families First, Kidspeace, Lincoln Therapeutic Partnership, Lifeline, and the CASA program, and B.B. had been prescribed psychotropic medications to assist in managing his behaviors.

compliance" and "in violation of his probation terms," and issued a status hearing order finding that it was "in the best interest of [B.B.] to be detained" and ordered B.B. detained "at the St. Joseph County Juvenile Justice Center." Appellant's Appendix at 34-35.

On August 23, 2010, the State filed a verified petition for modification based upon the three episodes at Pierceton and recommended that B.B. be placed at Southwest Indiana Regional Youth Village ("Southwest"). On August 24, 2010, the court held a hearing, at which B.B.'s father and public defender were present, and entered an order of modification finding that B.B.'s actions placed himself and the community at risk of harm, that he was already placed in a facility designed to address his needs, that his continued aggressive behaviors warrant more secure placement, and that B.B. was "an appropriate candidate for placement in a private child caring facility, i.e. Southwest . . . ." Id. at 45. On September 2, 2010, B.B. was transferred to Southwest.

While at Southwest, B.B. was involved in three incidents, two of which resulted in placement in secure detention at Southwest for a period of five days each. Specifically, on October 10, 2010, during a group disturbance B.B. left his cottage without permission, refused to return to the unit after several prompts by staff, and became combative with staff while they were trying to restrain him. As a result, B.B. was placed in secured detention for five days. On December 4, 2010, B.B. became upset when staff was not readily available to speak with him, walked out of his cottage, and refused to return when prompted by staff. B.B. was sitting by a female and made threatening remarks to staff saying "if you touch her, I will back open your head. That is a promise. I will bust stuff

up." December 21, 2010 Transcript at 5. As a result, B.B. was placed in detention for five days. On December 13, 2010, B.B. assaulted a staff member as the person was trying to restrain another peer. B.B. walked up to the staff member and kicked the person in the back of the head and the neck area.

On December 14, 2010, the State filed a verified petition for modification alleging that, based upon the three incidents at Southwest, B.B. failed placement at Southwest and recommended that B.B. be committed to the Indiana Department of Correction ("DOC"). On December 21, 2010, the trial court held a hearing and issued a modification order granting the State's petition and awarding wardship of B.B. to the Indiana Department of Correction for housing in any correctional facility for children or any community-based correctional facility for children. B.B. appeals the trial court's December 21, 2010 modification order.

I.

The first issue is whether B.B.'s due process rights were violated. B.B. argues, with respect to the June 16, 2010 hearing, that the record does not reflect service on B.B. or his father prior to the hearing, that B.B.'s father was not present for the hearing, that B.B. was not advised of his right to counsel, that he was deprived of his right to confront and cross-examine opposing witnesses, and that he did not have adequate notice of the charges. B.B. also argues, with respect to his secure detentions while at Southwest, that he did not receive a hearing and did not have the opportunity to present a defense in connection with his October 11, 2010 and December 7, 2010 detentions.

The State argues that B.B. was disciplined under the doctrine of *parens patriae* and cannot seek criminal review of every punishment he receives while in custody, that B.B. has no freestanding right to a hearing for every punishment, that the initial detention was an administrative punishment not a final judgment, that the court did not abuse its discretion by ordering B.B. to be detained prior to disposition, and that B.B. suffered no prejudice from his initial detention.

We first observe that B.B. did not timely appeal the court's June 16, 2010 orders that he was not in compliance and in violation of his probation terms or the court's subsequent August 24, 2010 order of modification which provided that B.B. was an appropriate candidate for placement at Southwest.[2] See Ind. Appellate Rules 9(A), 14. B.B. appeals only the court's December 21, 2010 modification order.

Further, B.B. does not argue that he was denied due process with respect to the December 14, 2010 petition for modification, which was based upon the incidents at Southwest, or the December 21, 2010 hearing after which the court awarded wardship of B.B. to the DOC. Also, B.B. does not argue that the December 21, 2010 order fails to comply with the provisions governing modification of dispositional decrees found at Ind. Code § 31-37-22 or that the court abused its discretion in awarding wardship to the DOC. Nevertheless, we note that B.B., his public defender, and his father were present at the December 21, 2010 hearing, that at the hearing B.B.'s public defender questioned B.B.'s assigned therapist at Southwest regarding the October 10, 2010, December 4, 2010, and

[2] We also observe that the record shows that B.B.'s public defender and father were present at the August 24, 2010 hearing at which the court determined that he be transferred to Southwest.

December 13, 2010 incidents involving B.B., and that B.B. and his father presented arguments to the court.

B.B. has not shown that his due process rights were violated.[3]

II.

The next issue is whether any double jeopardy violation exists. B.B. argues that a violation of his Indiana constitutional rights occurred because he was punished on October 11, 2010 for violating rules of placement and was again punished on December 7, 2010 for violating the rules of placement. B.B. argues that the verified petition for modification filed on December 14, 2010 alleged violations of the rules of placement on October 11, 2010, and December 7, 2010, and that "[b]y giving [him] consequences on October 11, and December 7, he was already punished for his behavior." Appellant's Brief at 9. The State argues that B.B. was not punished twice for the same offense, that violations of a condition of probation are not offenses within the purview of double jeopardy analysis, and that "B.B. was not prosecuted for his violent behavior, he simply had the terms of his probation modified." Appellee's Brief at 7.

We agree with the State. The constitutional prohibition of double jeopardy applies only to criminal prosecutions. State v. Mullins, 647 N.E.2d 676, 678 (Ind. Ct. App. 1995) (citing Williams v. State, 493 N.E.2d 431, 433 (Ind. 1986)); see also McQueen v.

[3] To the extent that B.B. argues that his due process rights were violated in connection with his secure detentions while at Southwest, we note that B.B. does not point to authority or develop an argument to support the assertion that he was entitled to a hearing before the private placement facility was permitted to impose some disciplinary measures in response to his involvement in the October 10, 2010 and December 4, 2010 incidents/altercations. As a result, this argument is waived. See Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority").

State, 862 N.E.2d 1237, 1243-1244 (Ind. Ct. App. 2007) (holding that a violation of a condition of community corrections does not constitute an offense within the purview of double jeopardy analysis, that community corrections revocation proceedings are based upon violations of community corrections rules rather than upon the commission of a crime, and that the finding of whether a defendant has complied with the rules is not an adjudication of guilt). In addition, we have stated that an administrative punishment by prison officials does not preclude a subsequent prosecution arising out of the same act and that the Department of Correction is authorized to administratively punish actions done within the prison walls by imposing disciplinary sanctions. Mullins, 647 N.E.2d at 678. However, the Department may not lengthen a person's term in prison. Id. Here, B.B. does not argue that his term of incarceration was lengthened as a result of any of the disciplinary sanctions at Southwest. Under the circumstances, B.B. cannot establish a double jeopardy violation. See McQueen, 862 N.E.2d at 1243-1244 (holding that the defendant could not establish a double jeopardy violation where the defendant was found to have violated community corrections placement rules).

For the foregoing reasons, we affirm the court's modification order.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.