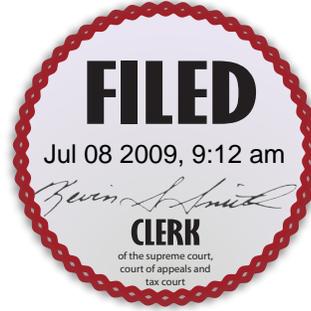


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

D.R.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0901-JV-21
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Gary Chavers, Magistrate
Cause No. 49D09-0809-JD-2698

July 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

D.R. appeals the true finding that he committed an act that would constitute the offense of Dangerous Possession of a Firearm, a class A misdemeanor. On appeal, D.R. presents the following issue for review: Did the juvenile court have jurisdiction over a delinquency petition filed under Ind. Code Ann. § 35-47-10-5 (West, PREMISE through 2008 2nd Regular Sess.), setting out the offense of dangerous possession of a firearm by a child?

We affirm.

The facts favorable to the true finding are that on June 28, 2008, Romund McConis confronted his step-son, D.R., when McConis discovered that money was missing from his truck. When confronted, D.R. left. McConis then reported the missing money to the police and searched D.R.'s bedroom. During the search, McConis found a handgun and ammunition under D.R.'s dresser. When confronted by McConis, D.R. acknowledged that the handgun belonged to him and claimed he had received the handgun from family members in Gary. Meanwhile, Officer Jeremy Messer was dispatched to the scene for the initial theft report. After Officer Messer arrived at the home, McConis presented the handgun and ammunition to Officer Messer. Officer Messer ran the serial number on the handgun, which came back as reported stolen out of Gary.

On September 5, 2008, the State filed a delinquency petition alleging that D.R. committed an act that would constitute the crime of dangerous possession of a firearm, a class A misdemeanor. D.R. moved to dismiss the petition, arguing that the juvenile court did not have jurisdiction over the case. The juvenile court denied the motion. D.R. re-asserted his jurisdictional challenge at the denial hearing. Once again, it was denied. After an

evidentiary hearing, the court entered a true finding, but declined to impose any further sanction and closed the case because of D.R.'s age, history, and the fact that his family and current living situation are of a positive nature and conducive to developing a constructive, law-abiding future.

D.R. argues that the juvenile court does not have jurisdiction over this offense under Ind. Code Ann. § 31-30-1-1 (West, PREMISE through 2008 2nd Regular Sess.), which prescribes the jurisdictional limits for juvenile courts. Pursuant to this statute, juvenile courts have jurisdiction only over status offenses and charges that a juvenile committed an act that would constitute a criminal offense if committed by an adult. D.R. contends that this offense does not fall into either category. The State counters that a misdemeanor firearm charge falls within the jurisdiction of the juvenile court based upon the language of the relevant statutes and the clear intent of the legislature. We agree with the State.

In a recent opinion, this court held that the offense of dangerous possession of a firearm under I.C. § 35-47-10-5 does in fact fall within the jurisdiction of the juvenile court. *See C.C. v. State*, Cause No. 49A02-0812-JV-1067, _N.E.2d_ (Ind. Ct. App. June 5, 2009). I.C. § 35-47-10-5 states in relevant part that “[a] child who knowingly, intentionally, or recklessly . . . possesses a firearm for any purpose other than a purpose described in section 1 of this chapter . . . commits dangerous possession of a firearm, a Class A misdemeanor. The offense is a class C felony, however, if the child has a prior conviction under this section.” Ind. Code Ann. § 31-37-1-2 (West, PREMISE through 2008 2nd Regular Sess.) states: “A child commits a delinquent act if, before becoming eighteen (18) years of age, the child

commits an act that would be an offense if committed by an adult, except an act committed by a person over which the juvenile court lacks jurisdiction under I.C. § 31-30-1.” I.C. § 31-30-1-4 (West, PREMISE through 2008 2nd Regular Sess.) indicates that the juvenile court does not have jurisdiction over individuals at least sixteen years old who are charged with certain crimes, including dangerous possession of a firearm by a child, “if charged as a felony[.]” In *C.C.*, the appellant argued that “neither a misdemeanor nor a felony violation of I.C. § 35-47-10-5 qualifies as a ‘delinquent act’ because they would not be considered crimes if committed by an adult.” Slip op. at 4-5. The appellant argued that the word “child” limits the statute’s application to persons under the age of eighteen. *Id.* Further, the appellant argued that if the violation is charged as a felony, then it is automatically removed from the juvenile court and placed under the jurisdiction of the criminal court pursuant to I.C. § 31-30-1-4. *C.C. v. State*, N.E.2d. D.R. asserts the same arguments in this appeal.

In rejecting these arguments, the *C.C.* panel stated “[i]t is a rule of statutory interpretation that courts will not presume the legislature intended to do a useless thing or to enact a statute that is a nullity.” *Id.* at 6 (quoting *N. Indiana Bank & Trust Co. v. State Bd. of Fin.*, 457 N.E.2d 527, 532 (Ind. 1983)). The relevant language of I.C. § 31-30-1-11 (West, PREMISE through 2008 2nd Regular Sess.) provides, “if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age, the court shall immediately transfer the case . . . to the juvenile court.” Furthermore, I.C. § 31-30-1-1 lists the various types of proceedings over which the juvenile court has exclusive original jurisdiction. Included in this list is the category, “[o]ther

proceedings specified by law,” which clearly indicates the legislature recognized that the list was not exhaustive and intended the jurisdiction of the juvenile courts to extend to other laws applicable to children. *C.C. v. State*, N.E.2d (quoting I.C. § 31-30-1-11). “By specifically excluding the felony portion of I.C. § 35-47-10-5 from juvenile jurisdiction, it follows that the misdemeanor portion is not excluded and thus is subject to juvenile jurisdiction. As discussed above, it is one of the “[o]ther proceedings specified by law” over which the juvenile court has exclusive jurisdiction. I.C. § 31-30-1-1.

For the above reasons, we conclude that the juvenile court did not err in exercising jurisdiction in this case.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.