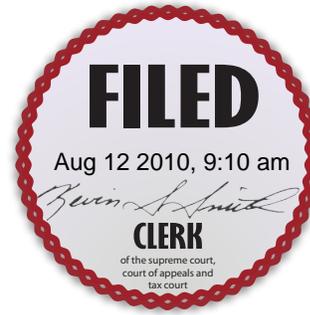


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK F. JAMES
Anderson, Agostino & Keller, P.C.
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

T.D.J.,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-1001-JV-78
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Harold E. Brueseke, Magistrate
Cause No. 71J01-0910-JD-619
Cause No. 71J01-0907-JD-437

August 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

T.D.J. was adjudicated a delinquent child after admitting to the allegation of committing an act that would constitute disorderly conduct as a class B misdemeanor if committed by an adult. T.D.J. presents the following restated issue for review: Did the juvenile court abuse its discretion by awarding wardship of T.D.J. to the Department of Correction?

We affirm.¹

On September 10, 2009, T.D.J. challenged another person to a fight while riding a city bus. He yelled that he would bring a gun to school the next day. T.D.J. refused to sit down when instructed to do so by the bus driver. At the time, T.D.J. was on electronic monitoring as a result of having admitted committing an act that would constitute battery as a class B misdemeanor. The juvenile court had continued the disposition of the battery case on November 24, 2009 pending the completion of a diagnostic evaluation. In response to the bus incident, the State filed a delinquency petition alleging T.D.J. had committed an act that would constitute disorderly conduct as a class B misdemeanor if committed by an adult. T.D.J. admitted the allegation.

On January 19, 2010, the juvenile court conducted a dispositional hearing concerning both the battery and disorderly conduct cases. At that hearing, referring to the predispositional report prepared by the probation department, the State noted that although only thirteen years old at the time, T.D.J. had received five juvenile referrals, the last one while on electronic monitoring for the preceding referral. He has a history of disciplinary problems at school. After transferring from one school to another during the previous year,

T.D.J. received ten write-ups, mostly for insubordination and disrespectful behavior. More recently, while on release from the latest referral, he had received four “write-ups”, two in-school suspensions, and two lunch detentions at school. The State noted that T.D.J.’s behavior while in detention was poor and that he had a substance abuse problem with respect to marijuana. T.D.J.’s diagnostic evaluation revealed that he had a severe conduct disorder and “Developing Cluster B Personality Characteristics (most notably anti-social)” and that he was “demonstrating many of the characteristics consistent with the psychopathic personality structure.” *Appellant’s Appendix* at 12. T.D.J.’s parents lack insight into his behavior and “will have to make significant changes themselves” in order to facilitate change in T.D.J.’s behavior. *Transcript of 1/19/2010 Hearing* at 5. Finally, the diagnostic testing revealed that T.D.J. “presented as high to very high risk to re-offend with low protective factors.” *Appellant’s Appendix* at 13.

At the conclusion of the hearing, the trial court committed T.D.J. to the Department of Correction “for housing in any correctional facility for children or any community-based correctional facility for children.” *Id.* at 17. T.D.J. contends 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 committed to 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); *see*

¹ T.D.J. does not challenge the adjudication of delinquency.

also Ind. Code Ann. § 31-37-18-6 (West, Westlaw through 2010 2nd Regular Sess.). A juvenile disposition will not be reversed absent a showing of an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26. 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.*

I.C. § 31-37-18-6 governs juvenile dispositional decrees, providing as follows:

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.

Although this statute generally requires placement in the least restrictive setting, it 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 required 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.” *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied*.

The predispositional report, which was reviewed and adopted by the juvenile court when making its disposition, reveals that T.D.J. has a significant history of behavioral problems at school, as well as an escalating pattern of poor behavior in the community at large. While confined to a facility pending release on electronic monitoring, “he continued to act out and received incident reports for his poor behavior.” *Appellant’s Appendix* at 17. He also has an ongoing substance abuse problem involving alcohol and marijuana that is in need of remediation. Diagnostic testing reveals that T.D.J. has significant psychological and emotional issues to confront and overcome if he is to alter his problematic behavior. Unfortunately, it appears that his parents are unable or unwilling to fully appreciate the implications of T.D.J.’s conduct and how their own conduct and parenting style might exacerbate his behavioral problems and impede any attempt at reform on his part.

Although less restrictive options, such as probation, were available to the juvenile court and had not been previously utilized with T.D.J., 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 T.D.J. 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.

BARNES, J., and CRONE, J., concur.