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 I. COX
The Mark I. Cox Law Office, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

FILED
Aug 30 2011, 9:39 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

D.W.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A03-1104-JV-176
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Darrin M. Dolehanty, Judge
Cause Nos. 89D03-1010-JD-73 & 89D03-1102-JD-6

August 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

D.W. appeals his commitment to the Indiana Department of Correction. Specifically, he contends that it is not the least restrictive and most appropriate placement for him. In light of D.W.'s growing juvenile history, conduct while detained, and failure to participate in treatment and services offered to him, we conclude that the juvenile court did not abuse its discretion in committing him to the DOC. We therefore affirm the juvenile court.

Facts and Procedural History

In December 2010, the State filed a petition alleging that D.W., who was then fifteen years old, was a delinquent child. The petition alleged eleven offenses, ten of which would be crimes if committed by an adult: (1) class A misdemeanor possession of marijuana; (2) class B misdemeanor criminal mischief; (3) class A misdemeanor resisting law enforcement; (4) leaving home without reasonable cause and without the permission of a parent, guardian, or custodian who requests his return; (5) class D felony theft; (6) class D felony attempted auto theft; (7) class D felony auto theft; (8) class D felony theft; (9) class B misdemeanor leaving the scene of an accident; (10) class D felony intimidation; and (11) class B misdemeanor disorderly conduct. The offenses spanned the time period from August to December 2010.

At the initial hearing on the delinquency petition, D.W. admitted to three of the eleven counts, specifically, possession of marijuana, theft, and auto theft. The State dismissed the remaining allegations. The juvenile court then adjudicated D.W. a

delinquent child and ordered a pre-dispositional report. In January 2011, the court sentenced D.W. to a ninety-day suspended sentence and six months of probation.

One month later, the State filed a second delinquency petition. The petition alleged three offenses: (1) habitual disobedience of the reasonable and lawful commands of the child's parent, guardian, or custodian; (2) leaving home without permission of parent, guardian, or custodian who requests his return; and (3) possession of marijuana, which would be a class A misdemeanor if committed by an adult. In another cause number, the State filed a petition to revoke or modify D.W.'s probation based on the offenses described in the second delinquency petition.

At the consolidated initial hearing of both petitions, D.W. admitted to possession of marijuana and leaving home without permission of parent, guardian, or custodian who requests his return. D.W. also admitted that his actions violated the terms of his probation. The juvenile court then adjudicated D.W. a delinquent child, ordered him to secure placement at the Henry County Youth Center and requested another pre-disposition report. At disposition, the court said:

> There's some diagnosis in [D.W.'s] past of ADHD and bi-polar, and some depression issues, and learning disability issues. There was an application made by the Probation Officer to the Wernle Children's Home Psychiatric Residential Treatment Program but Medicaid didn't authorize the placement. . . . The child was then put on a waiting list for wrap-around intensive services and was assigned to an ind…, individual therapist, name is Childress, who h[as] reported to the Probation Officer that the juvenile was rude and disrespectful to his parents during family therapy sessions, and refused to follow any adult-redirection. And it should be noted also from the Modification Report filed by the Probation Officer that once the juvenile was returned to the home of the parents in January of two thousand eleven, he again started to run from the home for lengthy periods of time, continued to be un-medicated, until he was placed in custody at the Henry County Youth Center by order of this court. . . . And while at the Henry

> County Youth Center, by all reports, [D.W.] has been a very difficult resident. He's belligerent with the supervising staff, indicates to staff frequently that he knows that there won't be much that happens to him if he doesn't follow their directives. . . . [D.W.] was on probation for two weeks when he called his Probation Officer and told the officer to just lock him up because he could not do the probation thing. And would not come in by curfew as his parents were requesting. The Probation Officer submitted a recommendation to the DCS Service Console requesting placement at the Wernle Children's Home, in the private secure unit. The DCS service consultant did not authorize that placement. Did make an alternative recommendation of staff secured. . . . And it's the Court's opinion that placement into the staff secured unit probably would not be in [D.W.'s] best interest.

Id. at 3-5. The court then ruled, "[W]ardship over the juvenile should be granted to the Indiana Department of Correction." *Id.* at 9. D.W. now appeals his commitment to the DOC.

Discussion and Decision

D.W. argues that the juvenile court erred by committing him to the DOC because it is not the least restrictive and most appropriate placement. Rather, he argues that he should have been placed in a residential treatment program. In determining whether the juvenile court properly placed D.W. 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 be reversed only 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 section 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, D.W. is "rapidly accumulating a significant juvenile record." Appellant's App. p. 171. In August

2009, D.W. was lectured and released for a theft charge. He was placed in a residential program at Richmond State Hospital for several months in late 2009 but was removed from the program against medical advice in early 2010. In June 2010, D.W.'s parents took him to Whitewater Valley Care Pavilion, a psychiatric residential treatment facility, but D.W. was combative and did not receive care after he made threats to staff members. The initial delinquency petition in this case was filed six months later and contained eleven counts covering seven incidents that spanned from August to December 2010. In February 2011, just six weeks after D.W. was placed on probation, the State filed a second delinquency petition.

D.W. has been involved in other trouble. D.W.'s school records show a history of violence, theft, and making threats against fellow students. In total, D.W. was suspended from school thirteen times in just over a three-year period. After he was placed on probation in January 2011, D.W. ran away from home for long periods of time, during which he was un-medicated. When D.W. was home, frequent calls were made to police regarding D.W.'s disobedience, hygiene, temper tantrums, incorrigibility, and mischief to the home. After just two weeks on probation, D.W. informed his Probation Officer that he should be locked up because he could not comply with the terms of his probation.

D.W. has been detained at the Henry County Youth Center on numerous occasions, most recently in February 2011, pending disposition on the State's second delinquency petition. D.W.'s conduct while in detention was reprehensible. He made threats of physical violence to staff members and other youth. He caused property damage. He used profane language consistently. He refused to participate in programs

offered to him. Perhaps most telling, he stated that few consequences would come from his behavior. D.W. argues that this behavior warrants placement in a residential program offered at Wernle Children's Home. However, the probation department noted:

> His nearly daily behavior referrals despite upcoming Court review, shows the probation department that placement at Wernle is likely just a delay in treatment that he needs in a secure setting. At this time his non cooperation at the detention center results in a lack of privileges, non cooperation in a residential facility results in delayed treatment and time away from this community.

Pre-dispositional Report p. 8 (Mar. 18, 2011).

As noted by the juvenile court, D.W. has significant mental health issues. He has been diagnosed with bi-polar disorder, oppositional defiant disorder, attention hyperactivity deficit disorder, and depression. He has also been diagnosed as learning disabled. The pre-dispositional report states that there has been ongoing difficulty in determining whether D.W.'s conduct stems from these diagnoses or is behavioral in nature. While living with his parents and while in detention, D.W. has regularly refused medication and therapy for these issues. The report states that "with a Department of Correction placement, [D.W.] will be stabilized in a secured environment, while he gets schooling and treatment." *Id.*

Given D.W.'s behavior while on probation and in detention, his pattern of refusing treatment for his serious mental health issues, and his self-expressed inability to comply with the law, we conclude that the juvenile court did not abuse its discretion in committing D.W. to the DOC for housing in a correctional facility for children.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.