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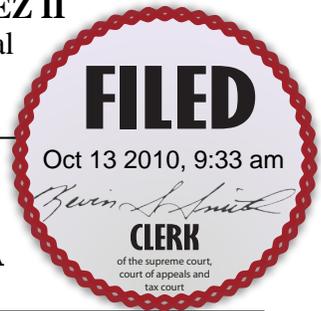
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**IN THE  
COURT OF APPEALS OF INDIANA**

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M.B., )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-1002-JV-241

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-0711-JD-3716

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**October 13, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

M.B. appeals the juvenile court's modification of his probation to the Department of Correction. M.B. raises one issue, which we revise and restate as whether the juvenile court violated M.B.'s due process rights when it modified his probation without conducting an evidentiary hearing. We reverse and remand.

The relevant facts follow. On December 28, 2007, M.B. entered into a plea agreement with the State in which he agreed to plead guilty to battery as a class C felony if committed by an adult. On January 18, 2008, the juvenile court entered a dispositional order pursuant to the plea agreement and ordered M.B. to probation. The juvenile court scheduled M.B.'s probation to end on July 18, 2008, but noted that if the "Court orders have not been completed the end date may be extended." Appellant's Appendix at 13. M.B.'s probation was extended numerous times for M.B.'s failure to successfully complete the juvenile court's orders.

On January 8, 2010, the State filed an Information of a Delinquent Child Technical Violation of Probation/Suspended Commitment and alleged that M.B. committed two violations which were that he "failed to submit to a urine drug screen on 12/14/09," and that he "was not home during 7pm curfew checks" on January 6 and January 7, 2010. *Id.* at 95. On January 29, 2010, the juvenile court held an initial hearing on the alleged violations. At the hearing, the following exchange occurred:

THE COURT: Thank you. Is there, can we just modify today? Do we need [a] separate modification hearing for this?

[M.B.'s Counsel]: Judge my, my client has a number of concerns with the allegations in the violation. Particularly, he, he, we

may be at a point where he's gonna want to challenge the violation, as stated in the violation that I have here.

THE COURT: What's he challenging?

[M.B.'s Counsel]: My understanding is that he went to a drug screen the next day, 12/14. The allegation's [sic] here is that he didn't submit it. He did, my understanding is that he went the next day and then mother has some issues with the curfew call. So.

THE COURT: Is he challenging this Court's right to modify his disposition?

[M.B.'s Counsel]: He would like the opportunity to challenge the violation judge.

THE COURT: *There's no right to an evidentiary hearing on a violation of probation.*

Transcript at 6 (emphasis added). After the court noted that M.B. has "had at least eight (8) positive marijuana screens," *id.* at 7, the following exchange occurred:

THE COURT: I mean is there a need to set this for another modification?

[M.B.'s Counsel]: Judge my concern then becomes that we're, we're modifying, we'd be modifying his sentence based upon information not alleged in the technical violation of probation against him.

THE COURT: . . . [T]he Court is free to modify if the Court sees fit, to, to give this young man what he needs.

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[M.B.'s Counsel]: I would ask for another hearing but also not trying to make things more difficult but, but hopefully to address the situation with Fairbanks [Adolescent Treatment Center] specifically, also.

THE COURT: I, I can order that today. I can order that today.

Id. at 8-9. Soon after, however, the court decided that it saw “no point in delaying treatment any longer,” and ordered M.B. placed “in a residential treatment facility, Fairbanks Adolescent Treatment Center . . . .” Id. at 11, 13.

The sole issue is whether the juvenile court violated M.B.’s due process rights when it modified his probation without conducting an evidentiary hearing. Generally, the choice of a specific disposition of a juvenile adjudicated a delinquent child is within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community’s safety, and the policy of favoring the least-harsh disposition. R.S. v. State, 796 N.E.2d 360, 364 (Ind. Ct. App. 2003), reh’g denied, trans. denied. 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 against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

M.B. argues, citing a recent case of this court, that “[d]ue process requires the State to prove the violation of the terms and conditions of the dispositional decree before the trial court can modify the decree.” Appellant’s Brief at 6 (citing M.T. v. State, 928 N.E.2d 266, 271 (Ind. Ct. App. 2010), trans. pending). M.B. further argues that in this case “the trial court expressly stated on the record that M.B. had ‘no right to an evidentiary hearing on a violation of probation’ despite the repeated objections of defense

counsel.” Id. The State argues that “the Court of Appeals incorrectly decided [M.T.] . . . because an evidentiary hearing is not required prior to the modification of a juvenile’s placement.” Appellee’s Brief at 3. The State argues that “[t]he juvenile court in M.B. did not rely on a probation violation to modify M.B.’s placement. Rather, the juvenile court modified M.B.’s placement because of a serious drug addiction.” Id. at 7 (citation omitted).

In M.T., the juvenile court held a modification hearing and “heard argument about appropriate placements for M.T., but the State presented no evidence of the probation violations it alleged.” M.T., 928 N.E.2d at 268. On appeal, we discussed Ind. Code § 31-37-22-3, which governs juvenile modifications and states in part that “the probation officer shall give notice to the persons affected and the juvenile court shall hold a hearing on the question.” We concluded that “[w]hile the statute does not explicitly define the type of hearing required, our consideration of basic due process principles instructs us an evidentiary hearing is required.” Id. at 269. We also concluded that “basic due process principles and case law precedent lead us to conclude a trial court may not modify a juvenile’s disposition without a hearing at which the State presents evidence supporting the allegations listed in the revocation petition.” Id. at 271.

The reasoning expressed in M.T. applies with equal force to M.B.’s case. Indeed, as noted by M.B., at the hearing the juvenile court stated that “[t]here’s no right to an evidentiary hearing on a violation of probation.” Transcript at 6. Also, the State presented no evidence of the alleged violations that M.B. “failed to submit to a urine drug

screen on 12/14/09” or that he “was not home during 7pm curfew checks” on January 6 and January 7, 2010. Appellant’s Appendix at 95. Accordingly, we conclude that it was a due process violation to remove M.B. from probation and send him to a residential treatment facility.

For the foregoing reasons, we reverse the modification ruling of the juvenile court and remand for an evidentiary hearing.

Reversed and remanded.

DARDEN, J., and BRADFORD, J., concur.