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IN THE
COURT OF APPEALS OF INDIANA

S.N.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 47A01-0905-JV-236
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Andrea K. McCord, Judge
Cause Nos. 47C01-0709-JS-424, 47C01-0710-JS-494
47C01-0711-JS-627 and 47C01-0712-JD-571

October 14, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, S.N., appeals the juvenile court's adjudication to commit him to the Indiana Department of Correction (DOC).

We affirm.

ISSUES

S.N. raises three issues for our review, which we state as:

(1) Whether S.N.'s waiver of counsel was proper;

(2) Whether the trial court abused its discretion by excluding evidence relating to S.N's mental health; and

(3) Whether the juvenile court abused its discretion by committing him to the DOC.

FACTS AND PROCEDURAL HISTORY

S.N., who was fourteen years old at the time, lived with his mother, C.H., and four younger siblings in Bedford, Indiana. S.N. had a history of disobeying his mother's rules and his behavior became increasingly disruptive to his siblings. On September 12, 2007, the State filed a petition alleging S.N. to be a delinquent child by habitually disobeying his mother, in violation of Ind. Code § 31-37-2-4. During the initial hearing, the juvenile court asked S.N., in the presence of his mother, if he wanted to proceed without counsel. S.N. consented and then admitted the allegations in the petition.

On November 5, 2007, the State filed a second petition, alleging that S.N. was a runaway, in violation of I.C. § 31-37-2-2. The juvenile court asked S.N., who was present with his mother, whether he wanted to proceed without counsel: "It's my understanding that you and your mother have decided that you're going to proceed without [an attorney]. Is that still correct? Yes or no?" (Transcript pp.13-14). S.N. responded in the affirmative. On November 19, 2007, the State filed a third petition, alleging again that S.N. was a runaway. On December 5, 2007, the juvenile court entered an order of probation in each of the three causes, ordering S.N. to participate in the Juvenile Detention Alternative Program (JDAP).

On December 18, 2007, the State filed a fourth petition, alleging that S.N. stole a camera from a neighbor and was found to be in possession of a controlled substance, which would have been theft; a Class D felony, if committed by an adult, I.C. § 35-43-4-2; and possession of a controlled substance, which would have been a Class D felony if committed by an adult, I.C. § 35-48-4-7. On December 20, 2007, during the initial hearing and after an advisement of S.N.'s right to counsel, both S.N. and his mother waived that right. S.N. entered an admission as to all allegations against him.

On June 9, 2008, during the initial hearing to modify probation in all four cause numbers because S.N. was alleged to have violated the terms of his probation, S.N. and his mother waived S.N.'s right to counsel. S.N. then admitted to the violations and the juvenile court entered a finding that he violated the terms of his probation. Later that

month, the probation department filed a Request for Taking Child into Custody in all four causes. The probable cause affidavit alleged that while in JDAP, S.N. admitted to smoking marijuana and stealing money from his step-father's wallet.

During the detention hearing on June 25, 2008, the juvenile court noted that S.N. could not waive his right to counsel by himself, but that "any waiver must be made by the child's custodial parent, guardian, or custodian, or a guardian ad litem." (Tr. pp. 99-100). When the juvenile court asked his mother if she had any interest against S.N., she initially said she did, but after the court rephrased the question, she stated that she did not have an interest against S.N. However, later during the detention hearing, S.N. stated he wanted an attorney, and the hearing was set for another date.

The rescheduled detention hearing was held on June 30, 2008. S.N., represented by counsel, agreed to extended probation of 45 to 90 days of electronic monitoring, suspended commitment to Indiana Boys' School (Boys' School),[1] and 40 hours of community service.

On August 25, 2008, an initial hearing was held to modify S.N.'s probation again because the probation department alleged that S.N. continued to disobey his mother and repeatedly violated his JDAP case plan. When discussing S.N.'s right to counsel, the judge asked C.H. if she had "anything to gain by him not being represented," to which

[1] The Indiana Boys' School is now the Pendleton Juvenile Correctional Facility, located in Pendleton, Indiana. *See:* Indiana Department of Correction home page, *available at*: http://www.in.gov/idoc/ (last visited September 30, 2009).

she responded that she did not. (Tr. p. 118). The juvenile court took the issue under advisement for 30 days.

On March 23, 2009, the juvenile court conducted a detention hearing to modify probation on all four cause numbers, but because of the possibility that S.N. could be sentenced to Boys' School, the juvenile court appointed counsel for S.N. (Tr. p. 180). The juvenile court conducted a continuation of the detention hearing on March 26, 2009, with S.N. represented by counsel, and found there was probable cause that S.N. violated the terms of his probation. The juvenile court also ordered a psychological evaluation by Dr. Jill A. Christopher (Dr. Christopher) prior to the dispositional hearing.

On April 8, 2009, the juvenile court held a dispositional hearing. The juvenile court considered the psychiatric evaluation performed by Dr. Christopher, but ultimately, the juvenile court stated it "was out of options" and ordered S.N. to the Department of Correction for placement in Boys' School. (Tr. p. 326).

S.N. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Waiver of Counsel*

S.N. argues that the trial court erred by accepting his waiver of counsel during the first three dispositional hearings. Specifically, he contends that he was not competent to unilaterally waive his right to counsel. Additionally, he argues that because his mother's interest was adverse to his, she could not waive his right to counsel. The State counters

that S.N. waived his right to raise this argument on appeal because S.N. did not raise it during the dispositional hearing when he was represented by counsel. We agree with the State.

In this case, S.N.'s counsel never raised an objection to the juvenile court with respect to S.N.'s waiver of counsel in previous hearings. A party may not raise an issue on appeal that was not first presented to the juvenile court. *Mitchell v. Stevenson*, 677 N.E.2d 551, 558 (Ind. Ct. App. 1997), *trans. denied*. When an issue is not raised before the trial court, it is waived for review. *Id*. Because S.N. did not raise this argument before the trial court, it is waived on appeal.

II. *Offer of Proof*

Second, S.N. argues that the juvenile court abused its discretion by denying him the opportunity to allow him to make an offer of proof regarding his mental health. The purpose of an offer of proof is to preserve for appeal the trial court's allegedly erroneous exclusion of evidence. *Duso v. State*, 866 N.E.2d 321, 324 (Ind. Ct. App. 2007). The offer of proof can also aid the trial court in ruling on the objection. *Id*. As noted in *Nelson v. State*, 792 N.E.2d 588, 594 (Ind. Ct. App. 2003), *trans. denied*, "[w]e cannot very well require trial counsel to make an offer of proof to preserve error on appeal, while at the same time we allow the trial court to deny counsel the opportunity to make such a record." In general, "a party has a right to make an offer of proof," and "it is reversible error for a trial court to deny a party the opportunity to explain the substance, relevance,

and admissibility of excluded evidence with an offer of proof." *Id*. at 595. However, such an error may be subject to a harmless error analysis. *Id*. An error will be found harmless if its probable impact on the fact finder, in light of the evidence in the case, is sufficiently minor as not to affect the substantial rights of the parties. *Fleenor v. State*, 656 N.E.2d 1140, 1141 (Ind. 1995).

S.N. was initially diagnosed with Bipolar Disorder; however Dr. Christopher diagnosed S.N. with Major Depressive Disorder Single Episode (Depressive Disorder) and recommended that S.N. be placed at home with his family and continue therapy instead of committing him to Boys' School, as the probation officer suggested in her report. During the probation officer's cross-examination, S.N.'s counsel attempted to demonstrate that the probation officer was unaware that S.N. had been diagnosed with a new disorder. However, the juvenile court denied S.N. the opportunity to make an offer of proof regarding the various types of medication available to treat depression. The record reveals the following colloquy:

> [S.N.'S COUNSEL]: There's been a different diagnosis made by Dr. Christopher versus what Meadows diagnosed him with a year ago, correct?
>
> [PROBATION OFFICER]: Yes
>
> [S.N.'S COUNSEL]: So the medication that he was on for Bipolar Disorder probably is no longer applicable, provided that a current psychiatrist agrees with Dr. Christopher's report, correct?

> [PROBATION OFFICER]: Seroquel has been prescribed for depressive disorder, according to what I've read in the physician's desk reference, that sometimes it can be given for that.
>
> [S.N.'S COUNSEL]: What other types of anti-depressants are there available to a person . . .
>
> [PROBATION OFFICER]: There are quite a few.
>
> [S.N.'S COUNSEL]: List them for me, [].
>
> [STATE]: Objection your honor.
>
> [TRIAL COURT]: Sustained.
>
> [S.N.'S COUNSEL]: May I be heard on that . . .
>
> [TRIAL COURT]: No. Continue. I don't care what she lists, the medication, I don't care.
>
> [S.N.'S COUNSEL]: Offer proof?
>
> [TRIAL COURT]: No. Keep going.

(Tr. pp. 292-93). While the juvenile court should have allowed S.N to make an offer of proof, the error here is harmless. *Fleenor*, 656 N.E.2d at 1141. S.N. argues that he was denied the right to confront and examine the witness.[2] It is unclear, though, how the elicited information is relevant in any way. The juvenile court did not deny S.N. the opportunity to submit Dr. Christopher's evaluation into evidence; instead, it could be inferred that the juvenile court found that a list of antidepressants not prescribed to S.N. as immaterial. S.N. has failed to show how his substantial rights were prejudiced.

[2] Additionally, it is unlikely that a probation officer would be competent to discuss the pharmacological treatments for depression.

III. *Commitment to the DOC*

Finally, S.N. argues that the juvenile court erred in committing him to Boys' School. In particular, he alleges that the juvenile court's disposition did not take into consideration Dr. Christopher's recommendations to treat his newly diagnosed disorder and thus the commitment is not appropriate to treat his condition.

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 only be reversed if there has been an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). 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 deductions to be drawn therefrom. *C.C. v. State*, 831 N.E.2d 215, 216 (Ind. Ct. App. 2005). 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*.

I.C. § 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree, namely the disposition that:

> (1) is:
> > (A) in the least restrictive (most family like) and 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.

In our review of the case, we cannot agree with S.N. that the juvenile court abused its discretion in ordering him to Boys' School. In its dispositional order, the juvenile court found:

> That Lawrence County Juvenile Probation has exhausted what means they have for rehabilitation for [S.N.], including but not limited to Juvenile Detention Alternative Program, Home Detention with Electronic Monitoring, Jackson County Juvenile Detention Facility, Teen Issues through Life Solutions [], Parent Class through Life Solutions [], Ireland Home Based Services in home therapeutic services and juvenile mentoring, psychosocial assessment [], psychological evaluations [] . . . .

(Appellant's App. p. 20). Even after the multiple opportunities granted to S.N. to be rehabilitated at home with his family he "continue[d] to not comply with the orders of [the juvenile court], his mother, or probation." (Tr. p. 203). His mother testified that whenever S.N. returned home from the Jackson County Detention Center, he completely ignored "the rules that have been put down by me and the court and done what he's wanted to . . . ." (Tr. p. 44). S.N. caused disruption in his family and has acted out in a destructive manner, such as chasing his sister with a butcher knife and using vulgar language around his younger brothers and sisters. (Tr. pp. 44, 197).

It is apparent that S.N. has not responded to any of the prior interventions and he continued to disobey his mother and the juvenile court; essentially, the court exhausted its

options. Given that S.N. has failed at all other dispositions, counseling, residential placement and other services offered to him by the juvenile court, we conclude that the court did not abuse its discretion in committing S.N. to the DOC for housing in a correctional facility for children.

CONCLUSION

Based on the foregoing, we conclude that : (1) S.N. waived his right to argue that he improperly waived his right to counsel; (2) S.N. was not prejudiced by the juvenile court's denial of making his offer of proof; and (3) the juvenile court did not err in committing him to the DOC.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.