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IN THE
COURT OF APPEALS OF INDIANA

C.M.O.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0906-JV-259
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Harold Brueske, Magistrate
Cause No. 71J01-0903-JD-181

October 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

C.M.O. appeals the juvenile court's dispositional decree which remanded him to the custody of the Indiana Department of Correction ("DOC"). We affirm.

On January 11, 2009, sixteen-year-old C.M.O. struck his eighteen-year-old sister with a shoe and pushed her. He then grabbed her by the throat and slammed her against the wall three times. The State filed a delinquency petition on March 20, 2009, alleging that C.M.O. committed acts that would be class B misdemeanor battery if committed by an adult. C.M.O. admitted the allegation of delinquency during a continued initial hearing on April 15, 2009. The probation department filed its predispositional report recommending that C.M.O. be awarded to the care and custody of the DOC. Following a dispositional hearing held on May 26, 2009, the juvenile court adopted the findings and recommendations of the probation department and granted wardship of C.M.O. to the DOC.

C.M.O. asserts that the trial court abused its discretion when it remanded him to the custody of the DOC. Specifically, C.M.O argues that the DOC is not the least restrictive and most appropriate setting for him. We disagree.

The juvenile court is accorded wide latitude and great flexibility in its dealing with juveniles. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). 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 we will reverse only in the case of an abuse of that discretion. *Id*. An abuse of discretion occurs when the 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. *C.C. v. State*, 831 N.E.2d 215, 216-17

(Ind. Ct. App. 2005). The juvenile court's discretion is subject to statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. *Id.*

Specifically, regarding dispositional decrees, Indiana Code Section 31-37-18-6 provides 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.

While the statute requires the juvenile court to select the least restrictive placement in most situations, the language also clearly provides that a more restrictive placement may be appropriate under certain circumstances. *J.S.*, 881 N.E.2d at 28-29. Indeed, the statute requires placement in the least restrictive setting only if "consistent with the safety of the community and the best interest of the child." Ind. Code § 31-37-18-6. If a child is a delinquent child, the juvenile court may award wardship to the department of correction for

housing in a correctional facility for children. Ind. Code § 31-37-19-6(b)(2)(A)(i). As this court has noted, "'there are times when commitment to a suitable public institution is in the best interest of the juvenile and society.'" *See J.S.*, 881 N.E.2d at 29 (quoting *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005)).

In asking that we find an abuse of discretion, C.M.O. makes much of the fact that the instant battery offense is his first juvenile adjudication and that his only prior history was a warning in 2006 that he was "ungovernable." Appellant's App. at 19. However, our inquiry does not end there. While this may be his first adjudicated offense, C.M.O. has been in need of constant intervention and services during the last several years. As noted in the predispositional report, C.M.O. has had an "extensive" history with the Madison Center for Children. *Id*. at 20. He has been hospitalized at the Center numerous times due to odd behaviors and threats. He has been diagnosed with bipolar disorder, oppositional defiant disorder, and post-traumatic stress disorder. Although offered treatment and prescribed numerous medications, he has been noncompliant in both receiving treatment and taking his medications.

The record further reflects that C.M.O. refuses to attend school or participate in counseling. He has continually rejected services offered through the South Bend School Corporation. C.M.O. is openly affiliated with the Gangster Disciple gang, leaving home whenever he feels like it and remaining gone for several days at a time. Most of his time outside the home is spent with drug dealers, and C.M.O. admits that he is a heavy marijuana user. His mother reports that he has been ungovernable for many years and that she has now

sought court intervention as a result. As specifically noted by the juvenile court, when he was detained for battery, C.M.O. was given the chance to conform to the rules of detention but instead continued to engage in high-risk behaviors. During his detention, he obtained numerous incident reports which included threatening staff members and promoting his gang affiliation. Due to C.M.O's violent nature and demonstrated low amenability to rehabilitative services, the juvenile court determined that less restrictive correctional or mental health placement was not appropriate.

Under the circumstances, it was clearly within the juvenile court's discretion to conclude that commitment to the DOC is in the best interest of C.M.O. and society. C.M.O.'s interests cannot be served in his home, and other services offered to C.M.O. through the Madison Center for Children, the South Bend School Corporation, and the probation department, have all been essentially rejected by C.M.O. Placement in the DOC will ensure that C.M.O. can address his mental health, substance abuse, and behavior issues in a secure environment. We find no abuse of discretion.

Affirmed.

MAY, J., and BROWN, J., concur.