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ATTORNEY FOR APPELLANT:

MICHELLE LAUX
St. Joseph Co. Public Defender's Office
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANDREW R. FALK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

K.S.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-1105-JV-252
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-1102-JD-000126

November 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

K.S. appeals the dispositional order following his adjudication as a juvenile delinquent, for committing an act that would have been theft, if committed by an adult. We affirm.

Issue

K.S. presents a single issue for review: whether the court abused its discretion by ordering K.S. to be placed in a juvenile facility in Vincennes.

Facts and Procedural History

On March 11, 2011, K.S. admitted he is delinquent for having committed an act that would be theft if committed by an adult, specifically, the taking of his father's handgun. At the conclusion of a dispositional hearing conducted on April 26, 2011, the court committed K.S. to the Southwest Regional Youth Village, a juvenile facility located in Vincennes, Indiana ("the Youth Village") for an indeterminate period of time. This appeal ensued.

Discussion and Decision

K.S. contends that the court's dispositional order constitutes an abuse of discretion because the Youth Village was neither the least restrictive placement nor the most appropriate setting available. More specifically, K.S. suggests that placement with his father or an unspecified facility closer to St. Joseph County would have been more appropriate.

The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the court and will only be reversed if there has been an abuse of that discretion. J.S. v. State, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). However, the

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 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. Accordingly, the court is accorded wide latitude and great flexibility in fashioning dispositional orders. Id.

Indiana Code section 31-37-18-6 sets forth the following factors that a 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.

As such, the statute requires the court to select the least restrictive juvenile placement in most situations. In re J.S., 881 N.E.2d at 28-29. Nonetheless, our legislature has recognized that a more restrictive placement may be appropriate under certain circumstances. Id. at 29.

In this case, fourteen-year-old K.S. stole a pistol and magazine with live rounds in it, placing himself and the community at risk of harm. He admitted he is a gang member and also admitted to use of marijuana, alcohol, cocaine, Adderall, Vicodin, Ecstasy, Xanax, Oxycontin, other painkillers and mushrooms. During his sixty days in secure custody awaiting disposition, K.S. received nine incident reports. The juvenile probation department recommended that K.S. be placed in a structured and secure setting where he could receive substance abuse services as part of his rehabilitation.

There is abundant evidence that placement with one of his parents was not in K.S.'s best interests. K.S. had lived with his father for most of his life, but had more recently been in the custody of his mother, a recovering crack cocaine addict. K.S.'s mother admitted to her lack of control over K.S., and also admitted that she had a history of cocaine and marijuana use. Although she denied any recent drug use, she tested positive for marijuana, cocaine, and amphetamines in the month of the dispositional hearing. Her husband, K.S.'s step-father, had a significant criminal history including dealing in methamphetamine. K.S. reported that his father had been physically abusive to him.[1] Also, the predisposition report reveals that K.S.'s father tested positive for creatinine on April 12, 2010, regularly uses marijuana, and drinks a case of beer daily. According to the predisposition report, "unless

[1] For example, K.S.'s father allegedly had duct-taped K.S.'s mouth and head to a toilet after K.S. failed to clean the toilet to his father's satisfaction. K.S. also reported that his father had a history of punching him. K.S.'s father characterized this behavior as "a parent trying to keep his kid in line." (App. 19.) K.S.'s mother also reported that K.S.'s father is physically abusive.

both parents totally transform their lives, this department will not be looking at reunifying [K.S.] with either parent." (App 22.)

Under these circumstances, we cannot say that the court abused its discretion by ordering that K.S. be placed in the Youth Village.

Affirmed.

BAKER, J., and DARDEN, J., concur.