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IN THE
COURT OF APPEALS OF INDIANA

D.P.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-1006-JV-391
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-1003-JD-203

December 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D.P., a juvenile, appeals the trial court's disposition committing him to the custody of the Indiana Department of Correction ("DOC") following a delinquency adjudication. We affirm.

Issues

The sole issue before us is whether the trial court abused its discretion when it entered a dispositional order committing D.P. to the custody of the DOC.

Facts

On March 24, 2010, fourteen-year-old D.P. was apprehended by police in South Bend, along with another juvenile, A.C., and taken to the St. Joseph County Juvenile Justice Center ("JJC"). D.P. and A.C. had broken into a residence where A.C. used to live. A.C. still had personal belongings inside, and he and D.P. were attempting to get some of A.C.'s clothes. D.P. was charged with criminal trespass, a Class A misdemeanor when committed by an adult. At the initial hearing held on April 9, 2010, D.P. admitted to the charge. D.P. continued to be detained in secure custody at the JJC pending disposition.

The probation officer assigned to D.P.'s case testified at his dispositional hearing held on May 25, 2010. He reported that D.P. had been in secure custody at the JJC for a total of sixty-two days and had accumulated thirty-five incident reports during that time. The incident reports resulted from battery on a peer, riotous behavior, disrespect to staff,

failure to follow staff instructions, disorderly conduct, possession of contraband, gang promotion, and destruction of property, among other matters. Additionally, D.P.'s urine had tested positive for marijuana at his intake.

The probation officer also reported that D.P. had been living with his grandmother in South Bend. She had been recently arrested for disorderly conduct and has had two substantiated cases of "neglect for environment, health endangerment, and lack of supervision." App. p. 17. D.P.'s father was described as an alcoholic and has a lengthy criminal history. D.P.'s mother also has a criminal history and is addicted to crack cocaine.

Aside from D.P.'s behavior in detention, the probation officer also noted his poor behavior at school. Specifically, D.P. was failing all but one of his classes, had numerous behavior problems and suspensions, and several unexcused absences. The probation officer concluded that D.P. was not a candidate for community supervision or residential treatment. The trial court ordered that D.P. be placed in the custody of the DOC. D.P. now appeals.

Analysis

D.P. argues that the trial court abused its discretion in entering the dispositional order committing him to the DOC. A trial court has wide discretion when choosing the specific disposition of a juvenile, subject to the statutory considerations of the welfare of the child, the community's safety, and Indiana's policy of favoring the least harsh disposition. D.S. v. State, 829 N.E.2d 1081, 1084 (Ind. Ct. App. 2005). We will reverse

the dispositional order of a trial court only upon finding an abuse of 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 deductions to be drawn therefrom." Id. (quoting E.H. v. State, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), trans. denied).

A trial court has wide latitude in choosing an appropriate juvenile disposition, but the goal should be rehabilitation and not punishment. Id. at 1085. The Indiana Code sets out several factors a juvenile court must consider before entering a disposition 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.

Ind. Code § 31-37-18-6. This court has held that, although there may be less restrictive means available than an institution, "there are times when commitment to a suitable

public institution is in the 'best interest' of the juvenile and of society." D.S., 829 N.E.2d at 1085 (quoting S.C. v. State, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002), trans. denied).

D.P. argues that because this was his first delinquency adjudication, first offense, first time being detained, and first time in front of the court that the dispositional decree placing him with the DOC was erroneous and against the logic and effect of the facts and circumstances. D.P. argues that the holding of E.H. should apply here. In E.H., this court held that the trial court abused its discretion in placing E.H. with the DOC rather than placing the juvenile in foster care. E.H. first became involved in the juvenile system after he brought a gun to school in an effort to end his life. E.H.'s parents were abusive and used drugs. Over the course of several years, E.H. received medical care for his behavioral problems and his suicidal tendencies. E.H. was eventually placed in foster care. The trial court entered a dispositional order placing E.H. in the DOC after E.H. stole a necklace from another student at school. This court held that the disposition decree placing E.H. with the DOC was erroneous because E.H. had a less restrictive treatment option—the continuation of his foster care and his participation in a social services program. E.H., 764 N.E.2d at 686.

This case is considerably different than E.H. Here, although D.P. had not previously been involved in the juvenile system, he has already shown that he needs to be rehabilitated within a highly structured environment. During his two months in the JJC awaiting disposition, he received thirty-five citations for violations of various institutional rules. In the dispositional decree, the trial court also found that D.P. had

joined a gang, abuses drugs regularly, and has had numerous behavioral problems. The court did consider alternative placements, but concluded that "[t]here is no available person or facility in St. Joseph County Indiana which can provide the child with the necessary services." App. p. 12. D.P.'s placement at home with his grandmother would not be appropriate, in light of her criminal record and past findings of neglect. Both of D.P.'s parents have criminal records and substance abuse problems.

The E.H. case is not analogous. E.H. had severe emotional and behavioral problems, which most likely stemmed from his poor home environment. E.H. was already in foster care, and other than the instance of stealing a necklace, had done well. The trial court in that case did not make any findings as to why it was sending E.H. to the DOC, other than that it was the next step in the process.

By contrast, D.P. poses a threat to his community. He joined a gang, used illegal drugs, and demonstrated a complete lack of respect for authority during his detention in the JJC. This is an instance where the child's commitment to the DOC is in the best interest of the child and the community.

Conclusion

The trial court did not abuse its discretion in when it entered a dispositional order committing D.P. to the DOC. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.