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IN THE
COURT OF APPEALS OF INDIANA

R.S.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A05-1106-JV-309
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle P. Gaughan, Judge Pro Tem
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-1007-JD-1832

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

R.S. appeals from the juvenile court's modification of its dispositional order. On appeal, R.S. argues that the juvenile court abused its discretion when it committed him to the Indiana Department of Correction ("the DOC"). We affirm.

Facts and Procedural History

On July 6, 2010, the State filed a petition alleging that then sixteen-year-old R.S. was a delinquent child for committing an act that would be Class D felony possession of marijuana if committed by an adult. On August 17, 2010, R.S. entered into an admission agreement[1] pursuant to which he admitted to the delinquency allegation and, in return, the State recommended a suspended commitment and probation. On the same date, the juvenile court accepted the admission agreement, entered a true finding on the delinquency petition, and committed R.S. to the DOC, but suspended the commitment and placed R.S. on probation.

On January 26, 2011, the State filed a petition alleging that R.S. had violated the terms of his suspended commitment. Specifically, the petition alleged that R.S. had left his mother's home and his whereabouts were unknown, that he had failed to attend GED classes as required by the Probation Department, that he had tested positive for marijuana on November 24, 2010 and failed to submit to drug screens on numerous other occasions, that he had refused substance abuse treatment, that he had failed to appear for three probation appointments, and that he had failed to make a good faith effort toward paying

[1] The record reflects that R.S. entered into a "plea agreement." Appellant's App. pp. 10, 42. But as our supreme court recently noted, "juveniles do not plead guilty or not guilty, but rather admit or deny allegations." D.C. v. State, ___ N.E.2d ___, No. 49S02-1102-JV-116, slip op. at 2 n.1 (Ind. Nov. 17, 2011). Accordingly, "[u]se of a document titled 'plea agreement' should yield in favor of use of a document titled 'admission agreement' or something similar." Id.

court-ordered fees. The juvenile court issued a detention order on January 28, 2011, but R.S.'s whereabouts remained unknown until he was arrested almost three months later, on April 11, 2011.

On May 11, 2011, R.S. entered into a second admission agreement pursuant to which he admitted to violating the conditions of his probation and agreed to a modification of the juvenile court's dispositional decree. In exchange, the State made no recommendation regarding the juvenile court's disposition of the matter. At a dispositional hearing on May 26, 2011, the Probation Department recommended that R.S. be committed to the DOC. Sophia Mustaklem, a juvenile alternative placement coordinator with the Marion County Public Defender Agency, testified that R.S. had been accepted into the Resource Shape Program, a secure facility with individual, group, and family therapy, an on-ground school, and a substance abuse program. At the conclusion of the hearing, the juvenile court ordered R.S. committed to the DOC until he reaches the age of twenty-one, unless released earlier released by the DOC. The juvenile court recommended that R.S. be committed for a period of six months. R.S. now appeals.

Discussion and Decision

As an initial matter, we note that the State has not filed an appellee's brief in this case. Accordingly, we apply a less stringent standard of review and will reverse if the appellant establishes prima facie error, which is error "at first sight or on the face of it." State v. Moriarty, 832 N.E.2d 555, 558 (Ind. Ct. App. 2005). However, this rule is not intended to benefit the appellant, but rather to relieve this court of the burden of

developing arguments on the appellee's behalf. Id. The burden of demonstrating trial error remains with the appellant. State v. Combs, 921 N.E.2d 846, 850 (Ind. Ct. App. 2010).

R.S. argues that the trial court abused its discretion by committing him to the DOC. The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the discretion of the juvenile court. J.S. v. State, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). Accordingly, we will only reverse where the juvenile court has abused that 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 the reasonable, probable, and actual inferences that can be drawn therefrom." Id. Thus, the juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles. Id. However, juvenile court's discretion is subject to the following statutory considerations:

> 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 (2008). Accordingly, while the statute requires the juvenile court to select the least restrictive placement in most circumstances, it also allows for a more restrictive placement where appropriate. J.S., 881 N.E.2d at 28-29. That is, the statute requires placement in the least restrictive setting only where "consistent with the safety of the community and the best interest of the child." I.C. § 31-37-18-6. "Thus, the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement." J.S., 881 N.E.2d at 29.

On appeal, R.S. contends that the juvenile court's placement was punitive and not in his best interests or in the interest of the community's safety. He argues that the Resource Shape Program was a less restrictive alternative and that placement there would help him "become a better young man" and "a more productive member of society upon his release." Appellant's Br. at 5. However, the existence of a less restrictive alternative does not mean the juvenile court is required to order that placement. J.S., 881 N.E.2d at 29.

Our review of the record in this case reveals that R.S. has a long history of juvenile delinquency preceding the adjudication for possession of marijuana that ultimately led to his commitment to the DOC in this case. Specifically, R.S.'s history of juvenile delinquency includes two true findings for acts that would have been Class C felony burglary if committed by an adult, three true findings for acts that would have been Class D felony theft if committed by an adult, a true finding for an act that would have been Class D felony criminal mischief if committed by an adult, and a true finding

for an act that would have been Class A misdemeanor criminal mischief if committed by an adult.

Moreover, R.S. violated his probation in this case by failing to participate in substance abuse treatment, failing to attend GED classes, testing positive for marijuana, failing to submit to drug screens, failing to appear for multiple probation appointments, and, very importantly in this case, running away and concealing his whereabouts for over two months. We note further that R.S. has been offered less restrictive alternatives to commitment to the DOC in the past, including community-based services and placement at Valle Vista Hospital, but he has continued to reoffend and failed to remain substance-free. Indeed, the Probation Department conducted a risk assessment and determined that R.S. was at a high risk to reoffend. For these reasons, the Probation Department recommended that R.S. be committed to the DOC, and Dr. Jim Dalton, a psychologist who evaluated R.S. for purposes of the dispositional hearing, supported that level of intervention. Appellant's App. p. 81. In light of all of this evidence, the juvenile court concluded that its disposition was "consistent with the safety and best interest of the child[.]" Id. at 16.

In light of the extent and seriousness of R.S.'s history of juvenile delinquency, his failure to abide by court orders, his failure to respond to less restrictive alternatives, his history of running away, the likelihood that he will reoffend, and the juvenile court's determination regarding R.S.'s best interests, we cannot conclude that the juvenile court abused its discretion in committing R.S. to the DOC.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.