

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

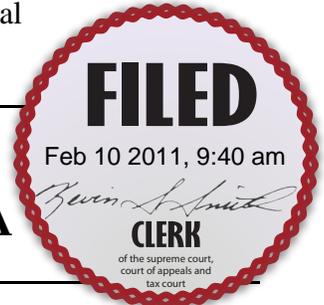
JOEL M. SCHUMM
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIQUEZ, II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



L.P.,)
)
Appellant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee/)

No. 49A02-1006-JV-766

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0909-JD-2368

February 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

L.P. appeals the juvenile court's order modifying his probation and suspended commitment.

We reverse and remand.

ISSUE

Whether the modification cannot stand because the juvenile court elicited admissions from L.P. without advising him of his right to counsel or advising him regarding the dangers and pitfalls of self-representation.

FACTS

On August 4, 2009, the State filed a delinquency petition alleging that L.P. had committed acts that would have been crimes if committed by an adult. On November 6, 2009, after admitting that he had committed burglary, L.P. was placed on probation on a suspended commitment to the Department of Correction.

On March 3, 2010, the State alleged that L.P. had violated his probation and suspended commitment. On April 5, 2010, L.P. admitted having violated his probation and suspended commitment. His suspended commitment was continued, however, with an added requirement.

On May 3, 2010, the State alleged that L.P. had violated his probation and suspended commitment. On June 2, 2010, the State again alleged L.P.'s violation – based on a probation officer's finding marijuana and a handgun in L.P.'s bedroom.

On June 10, 2010, the juvenile court convened a violation hearing. According to

the transcript, the juvenile court confirmed with L.P. his identity and age of fourteen; and it elicited from L.P. that the reason for the hearing was “probation violation.” (Tr. 1). The juvenile court then engaged L.P. in a discussion, during which L.P. made various admissions: that he had obtained the handgun from his father’s gun cabinet; and that he had bought the marijuana and had used marijuana daily for “like a year.” *Id.* at 3.

The juvenile court then stated that it would “appoint a public defender on your behalf.” *Id.* at 5. At this point, “P.D. Johnson” asked to “make a brief record” that L.P. was “entering a denial to the violation.” *Id.* Johnson asked the matter “be set for a contested modification hearing,” and that it be set before another judge “who hasn’t already heard some of the admissions that have been made by [L.P.] today.” *Id.* at 6. The State argued that L.P. “did admit to having these things found in his home by probation” and that the matter should “proceed straight to modification.” *Id.* The Probation Department expressed its recommendation that L.P. be placed in the Lutherwood residential treatment center. Johnson stated that L.P. was “not in agreement,” and renewed his request for “a contested hearing” to “ensure” L.P.’s rights. *Id.* at 7.

The juvenile court “adopt[ed] probation’s recommendations.” *Id.* at 9. It ordered L.P.’s placement at Lutherwood and that he “successfully complete the plan of care, treatment and rehabilitation” there. *Id.*

DECISION

L.P. argues that he was denied his right to counsel, inasmuch as the juvenile court failed to give him “any meaningful advisement” in that regard. L.P.’s Br. at 5. We must agree.¹

Pursuant to the United States Constitution, the juvenile in a juvenile court proceeding is entitled to the assistance of counsel. *In re Gault*, 387 U.S. 1, 41 (1967); *see also J.W. v. State*, 763 N.E.2d 464, 467 n.1 (Ind. Ct. App. 2002). Moreover, Indiana has codified this right. *See* Ind. Code § 31-32-4-1. Before a juvenile can validly waive his right to counsel, he must have been “advised of the nature, extent, and importance of the right to counsel and the consequences of waiving that right.” *J.W.*, 763 N.E.2d at 467. Further, before allowing a juvenile to proceed *pro se*, the trial court must have warned him “of the dangers and pitfalls of self-representation.” *Id.*

The juvenile court failed to inform L.P. that he was entitled to counsel; to advise him of the importance of that right and the consequences of its waiver; and to warn him of the dangers and pitfalls of self-representation. Therefore, the admissions made by L.P. at the hearing did not follow a valid waiver by L.P. of his right to the assistance of counsel. Accordingly, we reverse the juvenile court’s modification order and remand for further proceedings.

Reversed and remanded.

BAILEY, J., and NAJAM, J., concur.

¹ The State concedes that “the record does not disclose that the trial court” provided L.P. with the necessary advisements. State’s Br. at 5.