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IN THE
COURT OF APPEALS OF INDIANA

P.R.A.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0704-JV-163
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0609-JD-783

September 5, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, P.R.A., appeals the juvenile court's decision to commit him to the Department of Correction based on its adjudication of him as a delinquent.

We affirm.

ISSUE

P.R.A. raises one issue on appeal, which we restate as: Whether the juvenile court abused its discretion in ordering P.R.A. to be committed to the Department of Correction.

FACTS AND PROCEDURAL HISTORY

On April 8, 2006, P.R.A., seventeen years old, touched K.S.'s penis. K.S., who is developmentally disabled, was fourteen years old at the time. After further investigation, it was determined that P.R.A. inappropriately touched K.S. in a sexual manner on multiple occasions over a period of several years.

On September 8, 2006, the State filed a delinquency petition charging P.R.A. with Count I, sexual battery, a Class D felony if committed by an adult, Ind. Code § 35-42-4-8; and Count II, battery, a Class B misdemeanor if committed by an adult, I.C. § 35-42-2-1(1). On December 6, 2006, the State filed an amended delinquency petition, adding Count III, sexual battery, a Class D felony if committed by an adult, I.C. § 35-42-4-8.

On December 8, 2006, P.R.A. admitted to Count III.[1] In a pre-dispositional report, Probation Officer Ross Maxwell (Officer Maxwell) recommended P.R.A. be placed at the Department of Correction and participate in the Community Transition Program. On March 13, 2007, the juvenile court held a dispositional hearing. At its

[1] The record does not make clear the juvenile court's disposition as to Counts I and II.

conclusion, the juvenile court ordered P.R.A. committed to the care and custody of the Department of Correction. On the same date, the juvenile court entered its Dispositional Order, stating in pertinent part:

> [P.R.A.] having admitted the delinquent act(s) . . . . alleged in the petition filed herein, the [c]ourt now finds that [P.R.A.] did commit . . . [sexual battery, a Class D felony,] when committed by an adult[.]
>
> . . . the [c]ourt makes the following findings of fact:
>
> > The statements in the Probation Officer's Report and all attachments are adopted as findings and incorporated by reference herein.
> >
> > ***
> >
> > Reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home.
> >
> > The court has investigated or has made provisions for the delivery of the most appropriate services from those available to prevent the child's placement out of the child's home or to reunify the child and family.
> >
> > Said child is in need of supervision, care, treatment and services which are NOT available in the local community.
> >
> > [P.R.A.] is in need of services beyond those which can be provided through probation services.
> >
> > There is no available person or facility in St. Joseph County which can provide [P.R.A.] with the necessary services.
> >
> > Suitable relative placement was explored and could not be found.
> >
> > [P.R.A.] should be removed from the home because continuation in the home would not be in the best interest of the child.
>
> The [c]ourt further finds its Disposition is the least restrictive alternative to insure P.R.A.'s welfare and rehabilitation and the safety and welfare of the community.

Pursuant to [I.C. § 31-37-19-6(A)(i),] the [c]ourt now awards wardship of [P.R.A.] to the Indiana Department of Correction for housing in any correction facility for children or any community-based correctional facility for children. The [c]ourt's Disposition Order is entered for the following reasons:

> [P.R.A.] has failed to abide by [court-ordered] terms of probation.
>
> The present offense is serious in nature warranting placement in a secure facility.
>
> [P.R.A.'s] past history of delinquent acts, even though less serious, warrants placement in a secure facility.
>
> Lesser restrictive means of [controlling P.R.A.'s] behavior have been investigated or tried.

Furthermore, [P.R.A.'s] right to personal freedom is outweighed by the community's right to protection.

* * *

[P.R.A. and his] parents are also concurrently ordered to participate in and complete the Community Transition Program (CTP) while [P.R.A.] is in the Department of Correction and during the transition and after-care period following incarceration.

* * *

Upon [P.R.A.'s] completion of the four growth phases of the CTP Program, [P.R.A.'s Probation Officer] shall arrange a Re-Entry Court Placement Review Hearing to determine if this court will resume jurisdiction.

[P.R.A.] shall participate in sexual offender therapy while at the Department of Correction.

(Appellant's App. pp. 57-59).

P.R.A. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

P.R.A. argues the juvenile court abused its discretion in ordering him committed to the Department of Correction. Specifically, P.R.A. contends the juvenile court ignored strong evidence that placement at home with his family, along with outpatient treatment, would have been in his best interest.

Determining the disposition of a juvenile is within the sound discretion of the juvenile court "subject to the statutory considerations of the welfare of the child, the community's safety, and the Indiana Code's policy of favoring the least harsh disposition." *E.H. v. State*, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), *reh'g denied, trans. denied*. A juvenile disposition will not be reversed absent a showing of an abuse of discretion. *Id*. A juvenile court abuses its discretion if its 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*.

We have often reiterated our supreme court's explanation of the nature of the juvenile justice system:

> The nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will not later become a criminal. For this reason the statutory scheme of dealing with minors is vastly different than that directed to an adult who commits a crime. Juvenile judges have a variety of placement choices for juveniles who have delinquency problems, ranging from a private home in the community, a licensed foster home, a local juvenile detention center, to State institutions such as the Indiana Boys School and Indiana Girls School. None of these commitments are considered sentences. A child can become a juvenile delinquent by committing acts that would not be a violation of the law if committed by an adult, such as incorrigibility, refusal to attend public school, and running away from home. A child can also become a delinquent by committing acts that would be a crime if committed by an adult. In the juvenile area, no distinction is made between these two categories. When a juvenile is found to be delinquent, a program is attempted to deter him from going further in

> that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant determinant to society is realized.

B.K.C. v. State, 781 N.E.2d 1157, 1170-71 (Ind. Ct. App. 2003) (quoting *Jordan v. State*, 512 N.E.2d 407, 408-09 (Ind. 1987), *reh'g denied*).

I.C. § 31-37-18-6 provides:

> 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.

P.R.A. now asserts that the juvenile court should have placed him a less restrictive setting for rehabilitation. In support of this contention, P.R.A. emphasizes the opinions of two mental health providers who recommended he receive outpatient therapy, rather than be placed at the Department of Correction. Our review of the record confirms testimony by Todd Hime (Hime) of the Holy Cross Counseling Group, stating that he did not think placing P.R.A. in the Department of Correction would be beneficial. Hime had previously interviewed P.R.A. and completed a psychosexual assessment of P.R.A. In

addition, the record reveals a letter submitted by clinical psychologist, Gary Elliott, Ph.D. (Dr. Elliott), also expressing doubt as to the Probation Officer's recommendation that P.R.A. be committed to the Department of Correction. Specifically, Dr. Elliott noted that placement in the Department of Correction would not represent the "best fit" for P.R.A. and would not be in P.R.A.'s best interests as far as his treatment needs. (Appellant's App. p. 22).

Without question, we agree I.C. § 31-37-18-6 requires the juvenile court to select the least restrictive placement in most situations. *See K.A. v. State*, 775 N.E.2d 382, 386 (Ind. Ct. App. 2002), *trans. denied*. However, the statute also clearly contains language indicating that under certain circumstances a more restrictive placement may be appropriate. *Id*. at 386-87. Specifically, the statute requires placement in the least restrictive setting only "[i]f consistent with the safety of the community and the best interest of the child." I.C. § 31-37-18-6; *see also M.R. v. State*, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992) (noting that, while commitment to the Indiana Boys School "should be resorted to only if less severe dispositions are inadequate, there are times when such commitment is in the best interests of the juvenile and society in general"). "In some instances, confinement may be one of the most effective rehabilitative techniques available," as it exposes the juvenile to the type of placement he would encounter were he to continue his poor behavior. *K.A.*, 775 N.E.2d at 387.

In the instant case, we believe the circumstances warranted the trial court's placement of P.R.A. in the Department of Correction's Community Transition Program. First, the record shows that in making this disposition, the trial court was following the

recommendation of Officer Maxwell, P.R.A.'s probation officer. Further, even though P.R.A. had no prior juvenile criminal history, the offense in this case - sexual battery - occurred over a period of many years; thus, P.R.A. was engaged in this behavior since he was approximately eleven years old. In addition, we cannot ignore the severity of P.R.A.'s offense. In sexually battering K.S., P.R.A. took advantage of a younger, developmentally disabled child who has little ability to make decisions for himself. Testifying at the dispositional hearing, K.S.'s father described his son as "naïve, gullible, and easily influenced." (Transcript p. 23). Moreover, the record reveals that in outpatient therapy, P.R.A. continued to blame others for his actions, as well as minimize the seriousness of his behavior.

Therefore, in our view, especially in light of the fact that P.R.A. was months from being an adult, the trial court opted for the disposition most likely to have a substantial impact in the shortest amount of time. If P.R.A. were to continue down the path he was headed, he could face much harsher punishment in the Department of Correction in the future. Accordingly, we conclude the trial court did not abuse its discretion in following the recommendation of P.R.A.'s Probation Officer and placing P.R.A. in a program in the Department of Correction.

CONCLUSION

Based on the foregoing, we conclude the trial court properly entered a Dispositional Order requiring P.R.A. to complete the Community Transition Program in the Department of Correction.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.