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**IN THE
COURT OF APPEALS OF INDIANA**

T.P.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-0705-JV-434
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0702-JD-000506

NOVEMBER 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Respondent-Appellant T.P. appeals his commitment to the Indiana Department of Correction following his admission to a petition of delinquency for the charge of auto theft, as a Class D felony. Ind. Code § 35-43-4-2.5.

We affirm.

T.P. presents one issue for our review: whether the juvenile court abused its discretion by committing T.P. to the Department of Correction.

In February 2007, fifteen-year-old T.P. stole a car and went joy-riding with his friends. Based upon this incident, a juvenile delinquency petition was filed against T.P. for auto theft, a Class D felony; criminal trespass, a Class A misdemeanor; and unlawful entry of a motor vehicle, a Class B misdemeanor if committed by an adult. Pursuant to a plea agreement, T.P. admitted to the auto theft, in exchange for which the State dismissed the two misdemeanor charges, as well as a petition of violation of suspended commitment. Disposition of this cause was left to the court's discretion. At the disposition hearing, the probation department recommended continuing T.P.'s suspended commitment to the Department of Correction. The juvenile court declined to follow the probation department's recommendation and, instead, committed T.P. to the Department of Correction for six months. It is from this dispositional order that T.P. now appeals.

T.P. contends that the trial court abused its discretion by ordering his commitment to the Department of Correction because a less restrictive alternative was available. The disposition of a juvenile adjudicated to be delinquent is within the sound discretion of the juvenile court. *C.C. v. State*, 831 N.E.2d 215, 216 (Ind. Ct. App. 2005). The discretion of the juvenile court 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.* We will reverse a juvenile disposition only for an abuse of discretion, which 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 against the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* at 217.

Ind. Code § 31-37-18-6 sets forth several factors a trial court must consider when entering a juvenile dispositional decree. It 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.

Although this section requires the juvenile court to select the least restrictive placement, this requirement is not without limits. *D.B. v. State*, 842 N.E.2d 399, 405 (Ind. Ct. App. 2006). The statute requires assignment in the least restrictive placement only if such assignment is “consistent with the safety of the community and the best interest of the child.” Ind. Code § 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. *D.B.*, 842 N.E.2d at 406.

Here, before finally being committed to the Department of Correction for a period of six months, T.P. was given several chances to conform his behavior to the laws and standards of society but chose not to do so. T.P.'s history of juvenile delinquency began in 2001 when he was only 9 years old. T.P. was placed on formal probation and received counseling for committing acts that would have constituted disorderly conduct and criminal mischief if committed by an adult. During that term of probation, a probation violation was filed which resulted in a true finding. In 2003, T.P. was again placed on formal probation with home detention for committing acts that would constitute disorderly conduct if committed by an adult. Eight probation violation petitions were filed against T.P. during this term of probation, two of which resulted in true findings. Subsequently in 2005, a true finding was entered against T.P. for committing acts that would constitute child molesting if committed by an adult. As a result of that finding, T.P. was given a suspended commitment to the Department of Correction. However, the State later filed three violations of the suspended commitment, two of which resulted in true findings. Moreover, at the time T.P. committed the instant offense, he was still serving the suspended commitment for child molesting.

The juvenile court based its disposition on (1) T.P.'s prior delinquent activity and true findings; (2) previous dispositional alternatives had been exercised (docket fees, probation, probation fees, placement in the home, placement out of the home, counseling, and suspended commitment to the Department of Correction); and (3) the delinquent act is not heinous or of an aggravating character. Appellant's Appendix at 9-10. The transcript of the disposition hearing reveals that the probation department's

recommendation changed from commitment to the Department of Correction to suspended commitment to the Department of Correction, including several other requirements. The probation officer explained to the court that the recommendation was changed because T.P.'s Dawn project case manager had presented a structured plan for each day of the week, including counseling, and that T.P. had been doing much better in school.¹ T.P.'s mother declined to comment at the disposition hearing. The court then stated:

I have considered his history with the Court and I have considered what is contained in the addendum report. I have considered the nature of the services that have been offered and available to him. I have taken into account that people tell me that he is doing well. I have also taken into account the fact that, well he had a court date today. And that is his modus operandi, where he does well for a short amount of time. I am very unsatisfied with mother's ability to supervise. I do not believe that, that [sic] continued placement in the home at this time is in his best interest. I do not believe that I or the probation department were given accurate representation of how he's actually doing. I think the people who will be working with him would be hiding his, his [sic] inappropriateness, and would be hiding and not coming to me and letting me know where he's having problems. I don't think that the Court would be fully apprised of the difficulties that he's been having at school. So I am unsatisfied with continued suspended commitment. He stole a car while he was on a suspended commitment. You cannot do things like that and expect that absolutely nothing will happen. So in light of that, I believe that anything short of a commitment to the Department of Correction[] will not have a change [sic] of rehabilitating you and impressing upon you the serious nature of your actions. You stole a car. Put your hand down. If you continue to go down this path that you have gone down, nothing good awaits you. If you continue to not follow the rules and Court orders, and the services that we have put into place, and society's rules, nothing good will hurt [sic] you. I believe that placement at the Department of

¹ Pursuant to Ind. Code § 12-22-4-1, the "Dawn project" refers to a local program that is responsible for developing a coordinated, family-centered, and community-based system of services for children with serious emotional disturbances and their families.

Correction is consistent with your best interest and the safety of the community.

Transcript at 14-15. It is clear from the transcript of the disposition hearing that after reviewing T.P.'s juvenile history, including probation violations and failed efforts of rehabilitation, the juvenile court determined that anything less than commitment with the Department of Correction would not be in T.P.'s best interest.

Moreover, although the probation department submitted an addendum report to the court in which it changed its recommendation to suspended commitment to the Department of Correction, it noted in the report that T.P.'s mother reported that T.P. "generally does as he pleases at home and usually goes out with friends, unless on the electronic monitor." Appellant's App. at 52. The report further noted, "Mother does not report [T.P.] as a behavioral problem, just that he is not home very much to cause a problem." Appellant's App. at 52. Additionally, the report further observed that T.P. was involved with the Dawn project, and, although he had been given several opportunities to comply with the activities and safety plans, he had participated only minimally. The probation department reported: "DAWN has put homebased counseling into place, as well as a social/recreational mentor, and educational mentor, has moved [T.P.] to a relative's home for better supervision, and has attempted to get [T.P.] involved in more positive social activities (i.e., boxing, karate, YMCA) and [T.P.] has refused to participate. [T.P.] shows interest in participation when he has a court date coming up, however, tends to go back to same negative behaviors afterwards." "[T.P.] has had

several services offered to him by this Court, however, does not seem to show interest in taking advantage of those.” Appellant’s App. at 53.

In some cases, confinement may be one of the most effective rehabilitative techniques available. *B.K.C. v. State*, 781 N.E.2d 1157, 1172 (Ind. Ct. App. 2003). ““A delinquent child's first exposure to the consequences he will face should he continue to break the law may indeed be the best treatment available in helping a young person readjust his values and priorities in life.”” *Id.* (quoting *Madaras v. State*, 425 N.E.2d 670, 672 (Ind. Ct. App. 1981)). Accordingly, given T.P.’s history in the present case, we cannot say the juvenile court abused its discretion in committing him to the Department of Correction.

Based upon the foregoing discussion and authorities, we conclude that the juvenile court acted within its discretion when it ordered T.P. committed to the Department of Correction.

Affirmed.

MATHIAS, J., and CRONE, J., concur.