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**IN THE
COURT OF APPEALS OF INDIANA**

C.P.,)
)
Appellant-Respondent,)
)
vs.) No. 49A05-0602-JV-73
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Magistrate
Cause Nos. 49D09-0508-JD-3404 & 49D09-0409-JD-4516

September 11, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

C.P., a juvenile, appeals his commitment to the Indiana Department of Correction (“DOC”) in two cause numbers. Because C.P. was given the opportunity to enjoy two less restrictive forms of discipline—probation and suspended commitment—and did not take advantage of either of them despite the magistrate’s stern warning that if he violated any of the terms, he would be sent to the DOC, the juvenile court did not abuse its discretion in committing C.P. to the DOC for a period of six months for later violating the terms of his probation and suspended commitment in both cause numbers. We therefore affirm the juvenile court.

Facts and Procedural History

On October 4, 2004, the State filed a petition alleging that C.P., who was born on June 20, 1990, was a delinquent child by committing acts that, had he been an adult, would have been Class D felony criminal mischief and Class A misdemeanor resisting law enforcement under Cause Number 49D09-0409-JD-4516 (“Cause No. 4516”). C.P. entered into a plea agreement with the State admitting the criminal mischief allegations in exchange for dismissal of the resisting law enforcement allegations, and the juvenile court placed C.P. on probation.

On April 2, 2005, the State filed an information alleging that C.P. had violated his probation in Cause No. 4516 by committing the act of runaway on that day. This information was later dismissed. However, the State filed a new information on July 31, 2005, alleging that C.P. had violated his probation in Cause No. 4516 by committing new acts, which were charged in a second cause number.

On August 1, 2005, under Cause Number 49D09-0508-JD-3404 (“Cause No. 3404”), the State filed a petition alleging that C.P. was a delinquent child by committing acts that, had he been an adult, would have been Class D felony auto theft, Class A misdemeanor carrying a handgun without a license, and Class A misdemeanor dangerous possession of a handgun. C.P. entered into a plea agreement with the State admitting the auto theft allegations in exchange for dismissal of the remaining allegations. On August 26, 2005, in Cause No. 3404, the juvenile court ordered C.P. committed to the DOC but suspended his commitment and placed him on probation subject to several conditions. Also on August 26, in Cause No. 4516, the State dismissed the information alleging that C.P. had violated his probation by committing new acts, and C.P. was placed on informal home detention.

On September 30, 2005, the State filed an information in both cause numbers alleging that C.P. had violated his probation in Cause No. 4516 and the terms of his suspended commitment in Cause No. 3404 by running away from home on September 26, 2005. Thereafter, C.P. admitted to the allegations in both of the informations, and in exchange, the State agreed to make no recommendation as to disposition. On December 28, 2005, a magistrate conducted a dispositional hearing in both cause numbers. At the dispositional hearing, the magistrate reminded C.P. about what he had told him in Cause No. 3404 when he placed him on suspended commitment. Specifically, the magistrate said, “[In August,] I said you’re on Suspended Commitment and what that means is that if you get arrested for any new offenses, if you fail to complete your Probation rules, and if these things are found to be true, you will be sent to [the] Department of Correction[.]”

Do you remember me saying that, sir?" Tr. p. 9. C.P. answered affirmatively. Following the dispositional hearing, the magistrate recommended that C.P. be committed to the DOC for a period of six months, a recommendation that the juvenile court later adopted. C.P. now appeals his commitment to the DOC.

Discussion and Decision

C.P. appeals his commitment 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 and will be reversed only if there has been an abuse of that discretion. *D.B. v. State*, 842 N.E.2d 399, 404 (Ind. Ct. App. 2006). The juvenile court's discretion 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.* 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 deductions to be drawn therefrom. *Id.* at 404-05.

Indiana Code § 31-10-2-1 explains the policy and purpose of the juvenile code:

It is the policy of this state and the purpose of this title to:

- (1) recognize the importance of family and children in our society;
- (2) recognize the responsibility of the state to enhance the viability of children and family in our society;
- (3) acknowledge the responsibility each person owes to the other;
- (4) strengthen family life by assisting parents to fulfill their parental obligations;
- (5) ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- (6) remove children from families only when it is in the child's best interest or in the best interest of public safety;

- (7) provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- (8) provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- (9) use diversionary programs when appropriate;
- (10) provide a judicial procedure that:
 - (A) ensures fair hearings;
 - (B) recognizes and enforces the legal rights of children and their parents; and
 - (C) recognizes and enforces the accountability of children and parents;
- (11) promote public safety and individual accountability by the imposition of appropriate sanctions; and
- (12) provide a continuum of services developed in a cooperative effort by local governments and the state.

Indiana Code § 31-37-18-6 delineates the factors the juvenile court must consider in making a juvenile disposition:

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.

This section requires the juvenile court to select the least restrictive placement in most situations. *D.B.*, 842 N.E.2d at 405. However, the statute contains language that reveals that under certain circumstances, a more restrictive placement might be appropriate. *Id.* The statute requires placement in the least restrictive setting only if such a placement is

“consistent with the safety of the community and the best interest of the child.” *Id.* (quoting I.C. § 31-37-18-6). In other words, “the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement.” *Id.* at 406 (quoting *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied sub nom. Almay v. State*, 783 N.E.2d 704 (Ind. 2002)).

Here, before finally being committed to the DOC for a period of six months, C.P. was given several chances to conform his behavior to societal norms but chose not to. After admitting to what would have been Class D felony criminal mischief in Cause No. 4516, the State filed an information alleging that C.P. had violated his probation for committing the act of runaway, which was dismissed. The State filed another information alleging that C.P. had violated his probation again in Cause No. 4516 by committing the new acts in Cause No. 3404. However, C.P. was allowed to continue on probation in Cause No. 4516 and was given suspended commitment in Cause No. 3404 after admitting to the auto theft allegations. At that time, the magistrate specifically warned C.P. that he would be committed to the DOC if he violated any terms of his probation or suspended commitment. Nevertheless, C.P. ran away from home one month after that warning, violating the terms of his probation and suspended commitment. At the dispositional hearing, C.P. acknowledged that he remembered the magistrate’s warning. He then told the magistrate, “I got no excuse for [violating the terms of my probation and suspended commitment].” Tr. p. 10. The bottom line is that C.P. was given the opportunity to enjoy two less restrictive forms of discipline—probation and suspended commitment—and he simply did not take advantage of either of them, even

when faced with the magistrate's warning. The juvenile court's dispositional order provides that commitment to the DOC "is the least restrictive alternative to insure [C.P.'s] welfare and the safety and welfare of the community." Appellant's App. p. 89. Given C.P.'s history, the juvenile court did not abuse its discretion in committing him to the DOC.

Affirmed.

BAKER, J., and CRONE, J., concur.