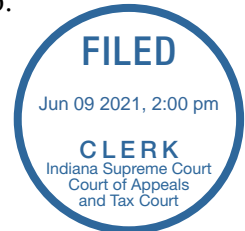


In the  
Indiana Supreme Court

K.P.,  
Appellant(s),  
  
v.  
  
State Of Indiana,  
Appellee(s).

Court of Appeals Case No.  
20A-JV-01431

Trial Court Case No.  
45D06-1911-JD-643



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 6/9/2021.

FOR THE COURT

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush

Chief Justice of Indiana

Massa, J., Slaughter, J., and Goff, J., vote to deny transfer.

David, J., dissents to the denial of transfer with separate opinion in which Rush, C.J., joins.

## **David Justice, dissenting from the denial of transfer.**

I respectfully dissent from the denial of transfer because I believe K.P. should have been afforded a hearing as *required* by the statute prior to the extension of his probation.

Here, K.P. was adjudicated a delinquent for committing various offenses. He was placed on probation and placed on house arrest, among other things. Thereafter, he violated the terms of his probation with multiple violations and the probation department filed a request to extend his house arrest. The probation department spoke with K.P.'s mother who agreed to extending his house arrest and the trial court so ordered without a hearing. Thereafter, K.P. was alleged to commit further violations of his probation, culminating in his ultimate detention in the Lake County Juvenile Center.

Indiana Code section 31-37-22-1 provides that while the juvenile court retains jurisdiction, the juvenile court may modify any dispositional decree upon the motion of the child, child's parent, probation officer, prosecutor, or a service provider. Under Indiana Code section 31-37-22-3(b), if the motion seeking modification of the dispositional decree is not an emergency, the "probation officer shall give notice to the persons affected and the juvenile court **shall** hold a hearing on the question." (emphasis added).

Here, the probation officer gave notice of the request to extend K.P.'s house arrest but no hearing was held. Our Court of Appeals disposed of this issue in just a few sentences noting the mother's agreement to the extension and K.P.'s failure to appeal. But the statute is clear that a hearing **shall** be held. It provides no language including exceptions or qualifiers. Every juvenile in K.P.'s shoes is entitled to a hearing. I also note that K.P. did not have counsel and suffers from a borderline intellectual disability. As such, the expectation that he would know to challenge the trial court's order is just not reasonable.

K.P. and all juveniles deserve that the law be followed. Even though I note that K.P. has now been released to his mother's custody, I would

grant transfer to make clear that the trial court should have held a hearing as required by the statute and I would remand to the trial court to vacate the January 21, 2020 order extending K.P.'s house arrest.

Rush, C.J., joins.