

2011 IL App (2d) 090841-U
No. 2-09-0841
Order filed November 15, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ADRIAN B., a minor)	Appeal from the Circuit Court
)	of Lake County.
)	
)	No. 06-JD-392
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Adrian B.,)	Sarah P. Lessman,
Respondent-Appellant.))	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: The admission under the statute (725 ILCS 5/115-10 (West 2006)) of hearsay statements made to victim's mother and police officer who interviewed victim was not manifestly erroneous.

The trial court did not err when it ruled that the statutorily privileged DCFS report was inadmissible. The "Rape Shield" statute absolutely bars the introduction of evidence of the complainant's "prior sexual activity" unless one of the two exceptions enunciated in the statute is applicable; neither was applicable here.

Respondent's Fifth Amendment right against self-incrimination was not violated by the requirement that he participate in "denial intervention therapy" prior to sentencing.

The issue regarding of the constitutionality of section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2010)) is controlled by *People v.*

Kitch, 239 Ill. 2d 452 (2011) (Illinois supreme court found the statute constitutional on its face).

Although juvenile proceedings have evolved to resemble criminal proceedings, with added emphasis on punishment and the protection of the public, the supreme court in *In re Jonathan C.B.*, 2011 WL 2572541 (subject to revision or withdrawal), declined to hold that the Illinois Constitution's right to a jury trial extends to juveniles.

¶ 1 The minor-respondent, Adrian B., was adjudicated delinquent in the circuit court of Lake County, the trial court having found that he violated section 5/12-13(a)(2) (criminal sexual assault) and section 5/12-16(c)(2)(1) (aggravated criminal sexual abuse) of the Criminal Code of 1961. 720 ILCS 5/12-13(a)(2), 5/12-16(c)(2)(1) (West 2006)). He now appeals, arguing that (1) the trial court erred by admitting hearsay statements under section 5/115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 West 2006)); (2) the trial court erred in granting the State's motion to keep DCFS records sealed under the "Rape Shield" statute; (3) he was denied effective assistance of counsel when his trial attorney failed to object to court-ordered denial intervention therapy; (4) 725 ILCS 5/115-10 is unconstitutional; and (5) the Juvenile Court Act provision forbidding juveniles the right to a jury trial is unconstitutional under the Illinois and United States constitutions as applied to juveniles charged with sex offenses. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On July 24, 2006, the State filed a petition for adjudication of wardship, charging respondent with criminal sexual assault of G.S. (720 ILCS 5/12-13(a)(2) (West 2006)); criminal sexual abuse of G.S. (720 ILCS 5/12-16(c)(2)(I) (West 2006)); and aggravated criminal sexual abuse of G.S. (720 ILCS 5/12-16(c)(2)(I) (West 2006)). On July 14, 2008, at the close of the State's case, the State was allowed to amend the wording of count 1 (criminal sexual assault).

¶ 4 On July 18, 2007, the trial court held a hearing pursuant to section 115-10 of the Code for the purpose of determining the admissibility of hearsay testimony offered by the State. Three witnesses testified at the hearing: Linda M., G.S.'s mother; Linda's daughter, Kendra; and Zion Police Officer Matt Thornton. Linda M. testified at the hearing that on March 19, 2006, she was home cooking dinner while G.S. showered. When G.S. got out of the shower, she asked him if he had properly cleaned himself, and she started to wash him. She then saw that "his butt was open." Linda asked him if anyone had touched him, and G.S. started to cry. He told her that he was afraid to tell her because he had lied and thought he was going to get in trouble. Linda named several adult and teenage males, and when she named respondent, G.S. "shook his head yeah."

¶ 5 Office Thornton testified that he spoke to Linda M. and G.S. at their residence on March 19, 2006. He first spoke to Linda and then to G.S. alone in a bedroom. He asked G.S. what a good touch and a bad touch was. G.S. indicated that a bad touch was where his penis was. He told Thornton that "his cousin" had "stuck his thing in G.S.'s butt, quote unquote." Thornton stated that G.S. also told him that respondent had "touched his thing" and that respondent made him touch respondent's "thing with his hand." Thornton stated that G.S. indicated his own penis when asked what he meant by "thing." This occurred when he was spending the night at respondent's house. G.S. stated that he remained silent about the incident because he was told he would get video games if he did not talk about it.

¶ 6 Kendra M., Linda's daughter and G.S.'s sister, testified that on March 19, 2006, she asked G.S. questions about what had happened. She asked him if respondent had touched him, and G.S. responded yes. She asked G.S. if respondent had touched him; G.S. said yes. Then she asked if respondent put his private parts next to G.S.'s private parts; G.S. said yes. G.S. told her this had occurred on the bed while he was sleeping at Kendall K.'s house.

¶ 7 The trial court found that there were insufficient safeguards of reliability for the statements that G.S. made to Kendra, but found that there were “sufficient safeguards of reliability as to the time, content, and totality of the circumstances” of the statements made by G.S. to Linda M. and Officer Thornton. The trial court ruled that the statements of these two witnesses were admissible pursuant to section 115-10.

¶ 8 On May 22, 2008, the parties appeared in court for a status hearing. Respondent’s counsel indicated that while talking to respondent’s “uncle”¹, he learned “there was a prior DCFS report alleging some type of sex abuse as to Keandra [K. M.],” G.S.’s stepsister. Respondent’s counsel subpoenaed the records for the court to conduct an *in camera* inspection. On May 20, 2008, the trial court denied defense counsel’s motion to view the records because they were “not relevant” and there was “no information in there would assist the defense.” The trial court then ordered the records sealed and impounded, to remain part of the record until further court order.

¶ 9 On June 3, 2008, the trial commenced. G.S. testified that he was nine years old and in third grade. He testified that during the summer of 2005, he remembered staying overnight at Kendall King’s house with respondent and “Tony.”² He testified that he fell asleep while watching television on a mattress on the floor in the living room. He stated that respondent woke him up by “pushing” him and that respondent touched his buttocks with his “private.” G.S. was lying on his side. Respondent also had G.S. touch him with his hand. G.S. stated that he told his mother about the incident, but not right away, because respondent told him not to tell and offered him a game. On

¹Kendall K., respondent’s father.

²Kendall K.’s son.

cross-examination, G.S. stated that he told his mother later, after she asked him once if anyone had touched him.

¶ 10 Linda M. testified that on March 19, 2006, G.S. was taking a shower and, after he got out of the shower too quickly, she told him to get back in and get cleaner. She then saw that “[h]is butt crack was open.” This appeared unusual and she began to ask him “all kinds of questions.” G.S. started crying and told her that he didn’t want her to be mad at him. She stated that she talked to him about “the good, the bad touch” and she “started naming names [of] different males that had been around us, you know, in recent months.” G.S. finally told her that respondent had touched him when he had a sleepover with respondent at Kendall K.’s house. G.S. told her that respondent put his penis “in his butt” and that respondent promised G.S. a Nintendo game so that he would not tell. G.S. also said that respondent made him touch his penis with his hand. She stated that, when he was talking to her, he was afraid because he didn’t want to tell on respondent and he didn’t know what her reaction would be.

¶ 11 Linda M. testified that before March 19, 2006, when G.S. told her about the incident, she had noticed that his behavior had changed since July 2005. She stated that:

“[h]e started acting out at school, started urinating all over himself, the bed like every day, every night. He wouldn’t go to the washroom, just would wet himself. He got really angry really quick. He started touching his little sister in the process. At the time, she was two and a half or three because she is five now.”

Defense counsel’s objection to the last part of her testimony was overruled. After further discussion, the trial court interrupted Linda M.’s testimony in order to again review the sealed DCFS reports.

¶ 12 Linda M. later testified that she and Kendall K. were “friends” and had a “pretty good relationship.” She stated that they talked on the telephone “about four times a week.” She also

stated that, after G.S. told her about the incident, she went to respondent's mother's house to talk to her about what had happened. While there, she saw Kendall K. with another woman, and she admitted she was angry with him because he had lied to her about this. She denied making any threats.

¶ 13 Zion police officer Matt Thornton testified that on March 19, 2006, he investigated a sexual assault of G.S. Thornton met with G.S. and his mother, Linda M.. At this meeting, G.S. told him that "when he spent the night at his cousin's house that he was touched inappropriately" by respondent, who was his cousin. G.S. told Thornton that he didn't report what had happened because respondent had promised him a video game system. G.S. also told Thornton that "this type of incident had happened only once."

¶ 14 On June 19, 2008, a hearing was held for argument on the State's motion regarding past sexual conduct and/or sexual reputation of G.S. The State argued that under *People v. Sandoval*, 135 Ill. 2d 159 (1994), and pursuant to the "Rape Shield" statute (725 ILCS 5-115-7 (West 2006)), such evidence was irrelevant and collateral, and, therefore, inadmissible. The trial court found, after again reviewing the subpoenaed information (the DCFS report), that nothing relevant for purposes of cross examination was included in the subpoenaed information, and ordered that its prior ruling would stand.

¶ 15 On the same date, the State requested leave to amend count 1 of the petition to "knowingly made contact between his penis and the anus of [G.S.]" On July 14, 2008, leave was granted.

¶ 16 Kendall K. testified that respondent was his nephew. He stated that he and Linda M. lived together for a couple of years and had a child, Keandra M. They were living together in 2005 and broke up in February or March, 2006. At that point, he was staying with his sister, respondent's mother, and was seeing another woman. He stated that Linda M. came to his sister's house and saw

them all there, and as she left she said “I’m going to get you all back.” King stated that he heard about the complaint against respondent about a week or two later.

¶ 17 Respondent testified that Kendall K. was his uncle, and Kendall K.’s son, Tony, was his cousin. He stated that, in 2005, he, Tony and G.S. spent the night at Kendall K.’s house playing Xbox video games in Tony’s bedroom. Around one a.m. they sent G.S. to bed in the living room where an inflatable mattress was set up. Later, respondent went to sleep on the floor next to Tony’s bed. He denied touching G.S. in any way. He stated that in the morning M. and King arrived to pick up G.S., and later they all went to a church breakfast. After the breakfast he gave G.S. some Nintendo games that he no longer used. He also stated that sometime before 2005 he gave G.S. a Play Station for his birthday.

¶ 18 On September 22, 2008, the trial court found that the State proved the allegations in count 1, criminal sexual assault, and count 3, criminal sexual abuse, beyond a reasonable doubt. Sentencing was set for January 23, 2009. On that date, respondent’s attorney appeared and requested 60 days to see if respondent could begin denial counseling including a polygraph examination, but requested that respondent receive counseling at a facility other than Adelante “because of the issues with [the counselor at there].”³ The trial court ordered respondent to complete intake counseling within 14 days and to cooperate with counseling, and also ordered respondent’s

³A letter from the Adelante, P.C. counselor that was appended to the probation report stated that respondent was “not an appropriate candidate for sex offender specific treatment” because he was “in complete denial of the instant offense, dismissed the result from the Abel Screening for Sexual Interest,” and was “unwilling to discuss any information that suggests he has a problem with deviant sexuality.”

mother to cooperate with intake appointments, evaluation and treatment. On February 23, 2009, respondent and his mother appeared in court represented by counsel. On the State's motion, the trial court issued a rule to show cause against both respondent and his mother for their failure to cooperate with counseling efforts. The matter was continued until April 8 for sentencing and a hearing on the rule to show cause. On that date, another continuance was granted until May 13, and then again until May 21.

¶ 19 On May 21, 2009, the trial court denied respondent's motion to reconsider and proceeded to the sentencing hearing. G.S.'s mother read a victim impact statement that she had prepared. Respondent did not speak, but his mother made a statement.

¶ 20 In sentencing respondent, the trial court acknowledged that respondent had not previously been involved in juvenile court. It also noted its own responsibility to the community to "impose a sentence after there has been either an admission of guilt or in this case a finding of guilt beyond a reasonable doubt." Further, it advised respondent that "[y]ou do have the right to maintain your innocence" but then noted that "all indications from the expert in this field who has been handling the matter while this was ongoing has stated that without the treatment and because of the denial, you are a risk to the community." The trial court also commented on respondent's attitude as "very troubling," without remorse or respect. The trial court then found that respondent was not amenable to treatment in the community and remanded him to the Department of Juvenile Justice; respondent was also required to register as a sex offender pursuant to the statute.

¶ 21 Respondent timely appealed.

¶ 22

II. ANALYSIS

¶ 23

A. Admissibility of G.S.'s Hearsay Statements

¶24 Juvenile proceedings are governed by section 5-605 of the Juvenile Court Act of 1987 (Act), 705 ILCS 405/5-605 (West 2006). The Act provides that “all delinquency proceedings shall be heard by the court” with certain exceptions not applicable here. The proceedings at trial shall be “in the presence of the minor unless he or she waives the right to be present. At the trial, the court shall consider the question whether the minor is delinquent. *The standard of proof and the rules of evidence in the nature of criminal proceedings in this State are applicable to that consideration* (emphasis added).” 705 ILCS 405/5-605 (3)(a) (West 2006).

Thus, out-of-court statements offered for the truth of the matter asserted are hearsay statements and, as such, are inadmissible in juvenile proceedings as well as criminal proceedings. However, section 115-10 of the Code provides for certain exceptions to the hearsay rule:

“(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13, *** the following evidence shall be admitted as an exception to the hearsay rule:

(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and

(2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.”

725 ILCS 5/115-10 (a)(1), (2) (West 2006).

A trial court's rulings on evidentiary matters will not be reversed absent a clear abuse of discretion; however, evidentiary rulings involving questions of statutory interpretation or other questions of law are reviewed *de novo*. *People v. Learn*, 396 Ill. App. 3d 891, 898 (2009). The State, as the proponent of out of court statements sought to be admitted pursuant to the Code, bears the burden

of establishing that the statements were reliable and not the result of prompting or manipulation by an adult. *People v Zwart*, 151 Ill. 2d 37, 45 (1992). The determination of the reliability of the out of court statements rests in the sound discretion of the trial court; absent an abuse of that discretion, we, as the reviewing court, will not reverse the trial court's decision to admit the statements. *People v. Williams*, 193 Ill. 2d 306, 344 (2000).

¶ 25 The trial court admitted hearsay testimony about the out of court statements G.S. made to two of the witnesses; Linda M., G.S.'s mother; and Officer Thornton. Relying on *Zwart*, 151 Ill. 2d 37, respondent contends that the admission of this hearsay testimony constituted an abuse of discretion because the State failed to prove that the out of court statements were reliable. In *Zwart*, the supreme court found that the timing and the circumstances surrounding the three-year-old victim's allegations failed to provide sufficient safeguards of their reliability. The alleged abuse occurred approximately five weeks prior to the first statement by the victim. The circumstances surrounding the victim's statements were "particularly troubling." *Id.* at 44. Prior to making statements implicating the defendant, the victim was interviewed by at least three persons regarding the alleged sexual abuse (*i.e.*, a police officer, a DCFS worker and a hospital counselor). The State failed to introduce any evidence regarding the substance of these interviews. The supreme court found that without such evidence, it was impossible for the trial court to determine whether the victim was questioned in a suggestive manner or was encouraged to accuse the defendant of sexual abuse. *Id.* at 44-45. Further, the supreme court found that "[i]t was also impossible for the trial court to determine whether the victim's precocious knowledge of sexual activity was due to sexual abuse, as the State claims, or was the result of suggestive interview techniques." *Id.* at 44-45. Additionally, the three-year-old was found incompetent to testify at trial, and, therefore, was unavailable for cross-examination. *Id.* at 45. As a result, although the content of the victim's

statements tended to support their reliability, the timing and circumstances of the statements did not. *Id.* at 46.

¶ 26 In contrast, in this case, two witnesses testified convincingly about their discussions with G.S., who was six years old. Linda M. and Officer Thornton testified at the section 115-10 hearing. M. testified about the events of March 19, 2006, when she noticed something wrong with G.S. She stated he got out of the shower too quickly, and after she asked him if he had properly cleaned himself, she started to wash him. She noticed that his buttocks were “open.” She asked him several questions about whether anyone had touched him. Eventually, he told her that respondent had.

¶ 27 Officer Thornton testified that on March 19, 2006, he first spoke to Linda M. and then to G.S. alone in a bedroom. He asked G.S. what a good touch and a bad touch was. G.S. indicated that a bad touch was where his penis was. He told Thornton that when he was spending the night at respondent’s house, “his cousin” had “stuck his thing in G.S.’s butt, quote unquote,” that respondent had “touched his thing,” and that respondent made him touch respondent’s “thing with his hand.” G.S. indicated his own penis when Thornton asked what he meant by “thing.” G.S. stated that he remained silent about the incident because he was told he would get video games if he did not talk about it.

¶ 28 The trial court found that there were “sufficient safeguards of reliability as to the time, content, and totality of the circumstances” of the statements made by G.S. to Linda M. and Officer Thornton. At the same time, he ruled that the testimony of G.S.’s sister, would not be admitted at trial.

¶ 29 The *Zwart* court recognized that often the victims of abuse are threatened not to tell anyone about the abuse, and the victims are often reluctant to talk to anyone except their mothers. *Id.* at 46-47. Here, even though the events occurred in July of the previous summer, when Linda M. noticed

something wrong and questioned G.S. directly the following March, he told her what respondent had done. He also told Officer Thornton a consistent version of the events. Linda M. testified that, in the meantime, she had noticed changes in his behavior that we believe were consistent with abuse or bullying. G.S. also testified consistently at trial, and was thoroughly cross-examined. Under these circumstances, we find no abuse of discretion in admitting the testimony about hearsay statements.

¶ 30

B. DCFS Records

¶ 31 Next, respondent argues that the trial erred when it refused to allow respondent to review the sealed DCFS records; he contends that he had the right to evaluate them to determine “if they impacted G.S.’s motive to falsely accuse respondent,” and “if they included all of the information requested.” Citing *People v. Bean*, 137 Ill. 2d 65, 97-99, 101 (1990), he asserts that the Fourteenth Amendment due process clause and the Sixth Amendment’s right to confront and cross-examine witnesses gives criminal defense attorneys “the right to examine otherwise statutorily privileged information if that evidence is relevant and impeaching, and its relevance is not outweighed by other factors.” (See U.S. Const., Amend. VI; Amend. XIV).

¶ 32 The DCFS report is statutorily privileged under section 5/11.1(a) of the Abused and Neglected Child Reporting Act (Act). 325 ILCS 5/11.1(a) (West 2008). However, section 5/11.1(a)(8) of the Act provides that:

“Those persons and purposes for access include:

(8) [a] court, upon its finding that access to such records may be necessary for the determination of an issue before such court; however such access shall be limited to in

camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.”

We review the trial court’s evidentiary decision to withhold disclosure of normal confidential records under an abuse of discretion standard. See *People v. Santos*, 211 Ill. 2d 395, 401 (2004).

¶ 33 The State contends that the “Rape Shield” statute (725 ILCS 5/115-7 (West 2006)) operated to bar the admission of the DCFS reports and that the trial court did not abuse its discretion. The “Rape Shield” statute absolutely bars evidence of the alleged victim's prior sexual activity and reputation, subject to two exceptions: (1) evidence of past sexual activities with the accused, offered as evidence of consent; and (2) where the admission of such evidence is constitutionally required. *Santos*, 211 Ill. 2d at 401-02. Neither exception applies in this case.

¶ 34 The first exception applies to prior sexual activity between the accused and the alleged victim only as to the issue of consent. This exception is inapplicable here. The second exception requires a balancing of the accused’s constitutional rights to due process and to confront and cross-examine. If the relevance of the evidence is not outweighed by other factors, the evidence should be admitted. We find guidance in the following remarks by the Justice McMorrow in her dissent in *Santos*, “We are vested with the responsibility to strike an appropriate balance between these demands [of the rape shield statute and of the confrontation clause] to assure that the legislature's intent in protecting the privacy of the victims of sexual crimes is fulfilled, while also ensuring that a defendant's constitutional rights to confront his accuser and to present evidence in support of his defense are secured. In arriving at an appropriate balance, we must assess the nature and quality of the evidence at issue, as well as the need for that evidence to assure that the charges in the case are fairly adjudicated.” Justice McMorrow dissenting.

¶ 35 “Impeachment of a witness is limited to relevant matters; a witness may not be impeached on collateral or irrelevant matters.” *People v. Sandoval*, 135 Ill. 2d 159, 181 (1994). In this case, Linda M. testified that before G.S. told her about the incident, his behavior had noticeably changed. In addition to behavior problems at school and having bathroom accidents, he had begun to touch his younger sister. As a result, the defense sought to introduce confidential DCFS reports that, in theory, “could have provided the defense with a motive for [G.S.] to accuse someone of assaulting him—to take the pressure off of his own bad acts [sic].” The reports were twice reviewed by the trial court and twice determined to be not relevant.

¶ 36 We have reviewed the sealed DCFS report; we find that the review procedure used by the trial court was proper and that the trial court did not err in its decision that any information contained therein was not relevant and need not be disclosed to respondent. See *Bean*, 137 Ill. 2d at 102.

¶ 37 C. Ineffective Assistance of Counsel

¶ 38 Respondent next argues that his trial attorney was ineffective “when he failed to object to court ordered denial intervention therapy which required [respondent] to admit to sexually assaulting G.S. in order to be deemed cooperative in sex offender treatment.” This argument is premised on the proposition that respondent’s right under the Fifth Amendment against self-incrimination was violated by the requirement that he participate in “denial intervention therapy.” Respondent further avers that counsel’s failure to object and to “request other sex offender therapy which did not require an admission of guilt” denied him his right to the effective assistance of counsel. See *Strickland v. Washington*, 166 U.S. 668 (1984) (counsel’s performance fell below an objective standard of reasonableness and respondent was prejudiced by counsel’s deficient performance). *Id.* at 687-88.

¶ 39 Respondent urges this court to review the issue under the plain error rule, which permits us to consider an issue that was otherwise forfeited (1) if the evidence is closely balanced, or (2) if the

error is so fundamental that the accused was denied a fair trial. *People v. Herron*, 215 Ill.2d 167, 178-79, 186-87 (2005). The first instance does not apply here. However, “[i]n the second instance, the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. [Citation]. Prejudice to the defendant is presumed because of the importance of the right involved, ‘regardless of the strength of the evidence.’ (Emphasis in original.) [Citation].” *Id.* at 187. Here, citing *People v. Kopczyk*, 312 Ill. App. 3d 843, 852 (2000), respondent claims that the “consideration of improper factors during sentencing [rose] to the level of reversible, plain error” such that he was denied a fair sentencing hearing.

¶ 40 The following excerpt from a report dated February 24, 2009, from the therapist to probation services is helpful to our consideration of this issue. “[Respondent’s and his mother’s] denial and resistance to even considering the possibility he is guilty is so strong and rigid, it approached martyr like qualities. This is problematic as an essential aspect of denial intervention (for effectiveness) is the client’s willingness to consider the possibility if not probability they have a problem, they have committed a sexual offense and are having (understandably) difficulty accepting the reality and the consequences.”

¶ 41 In *Estelle v. Smith*, 451 U.S. 454, 469 n. 13 (1981), the Supreme Court has expressly noted it was *not* holding that the same fifth amendment concerns “are necessarily presented by all types of interviews and examinations that might be ordered or relied upon to inform a sentencing determination.” (*Id.* at 469 n.13). Respondent cites a Minnesota supreme court case, *Johnson v. Fabian*, 735 N.W. 2d 295 (2007), contending that “a defendant has a Fifth Amendment right not to incriminate himself until his conviction (or adjudication) is final, at the conclusion of his direct

appeal.” *Id.* at 302. Equally persuasive, however, is the following quote from *Spencer v. State*, 334 S.W.3d 559, 571 (Mo. App. W.D., 2010):

“Multiple cases from other jurisdictions have held that *sex offender treatment programs do not violate the Fifth Amendment privilege against self-incrimination*, even though failure to complete the programs results in forfeiture of good-time credits or the opportunity for early release, where—as in Missouri—the award of such benefits is left to the discretion of corrections officials [Emphasis added].”

Respondent does not cite, nor have we found, any authority on point from this jurisdiction that compels us to agree with his argument.

¶ 42 An analogous case from our own jurisdiction is *People v. Davis*, 175 Ill. App. 3d 1006 (1988), which found that the trial court properly used a TASC report in determining sentence, since the report was “more akin to a presentence report” because the evaluation was to determine the defendant’s disposition following conviction. Finding no error in the trial court’s use of the statements as aggravating or mitigating factors in a sentencing determination, the *Davis* court stated:

“[j]ust as a defendant would reasonably expect that statements made in a presentence interview might be used in aggravation or mitigation of sentence, a defendant should reasonably expect that statements made in an interview to determine his acceptability for a substance abuse treatment program might be used in aggravation or mitigation of sentence.”

Davis, 175 Ill. App. 3d at 1012.

The *Davis* court discussed its holding in *People v. Bachman*, 127 Ill. App. 3d 179 (1984), where the defendant contended that Miranda warnings were constitutionally required in connection with the submission by a defendant to a routine presentence interview, and, therefore, his Fifth Amendment

privilege against self-incrimination was violated. *Id.* at 184-185. The *Bachman* court held that Miranda warnings were not required for statements made in a “routine preauthorized presentence interview.” *Id.* at 185. We find guidance in the following comments from *In re Nathan A.C.*, 385 Ill. App.3d 1063 (2008):

“The trial court believed it was in respondent's best interests to be committed to [the Illinois Department of Juvenile Justice] and, in essence, be forced to take advantage of the programs and services in a confined setting. The court clearly sought to fashion a sentence that would meet both the public's and respondent's best interests—one that would help rehabilitate and educate respondent in becoming a functioning member of society while protecting the public from his actions.” *Id.* at 1078.

We find that the trial court did so here.

¶ 43 After reviewing the record, we agree with respondent’s statement that the court seemed to be ordering therapy prior to sentencing so that it could decide between probation with sex offender treatment or a sentence to the Department of Juvenile Justice. We also agree with the State’s statement that respondent’s Fifth Amendment concerns, while significant, are misplaced. Deciding whether probation or imprisonment is appropriate for a given defendant after considering the circumstances of the offense and the defendant’s individual characteristics is the type of decision judges routinely make in sentencing. See *People v. Fern*, 189 Ill. 2d 48, 55 (1999) (“trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant”). This principle is no less applicable in a juvenile proceeding. The Supreme Court in *In re Winship*, 397 U.S. 358, 366-367, (1970), observed that the trial court in the juvenile justice system has “the opportunity during the

post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment.”

¶ 44 In sentencing respondent in this case, the trial court properly considered relevant factors in aggravation and mitigation. After acknowledging that respondent had not previously been involved in juvenile court, the trial court noted its own responsibility to the community to “impose a sentence after there has been either an admission of guilt or in this case a finding of guilt beyond a reasonable doubt.” Further, it noted that “all indications from the expert in this field who has been handling the matter while this was ongoing has stated that without the treatment and because of the denial, you are a risk to the community” and that respondent’s attitude was “very troubling,” showing no remorse or respect. In our view, the trial court, by delaying sentencing for months, gave respondent ample time to comply with the requirements of the sex offender treatment program. Far from prejudicing respondent, defense counsel’s actions were an attempt to obtain treatment and probation for respondent. Had respondent cooperated, he would more than likely have received a sentence of probation plus treatment. By not cooperating, he was adjudged a danger to society. We conclude that his Fifth Amendment right against self-incrimination was not violated and no error occurred. His claim of ineffective assistance of counsel fails.

¶ 45 D. Constitutionality of 725 ILCS 5/115-10

¶ 46 Respondent concedes that his argument regarding the constitutionality of section 115-10 of the Code (725 ILCS 5/115-10 (West 2010)) is controlled by *People v. Kitch*, 239 Ill. 2d 452 (2011), wherein the supreme court found the statute constitutional on its face. Therefore, we need not address this issue.

¶ 47 E. Right to Jury Trial in Juvenile Proceedings

¶ 48 Respondent's final contention on appeal is that he was denied his constitutional right to a jury trial. As a preliminary matter regarding this issue, we granted the State's motion to cite *In re Jonathan C.B.*, 2011 WL 2572541 (subject to revision or withdrawal) as additional authority; in that case, the supreme court declined to hold that the Illinois Constitution confers a right to a jury trial to juveniles in juvenile proceedings.

¶ 49 In *In re Jonathan C.B.*, the respondent contended that the Juvenile Court Act provision denying the right to jury trial to juveniles is contrary to the Illinois Constitution and also that denying a jury trial to juveniles charged with sex offenses offends both due process and equal protection. While recognizing that juvenile proceedings have evolved to resemble criminal proceedings, the supreme court declined to hold that the Illinois Constitution's right to a jury trial extends to juveniles. The Illinois Constitution guarantees the right to a jury trial in criminal prosecutions, but the Juvenile Court Act denies the right to jury trial to minors except in certain specific instances that are not applicable here. Meanwhile, the United States Constitution has not been held to guarantee the right to jury trial to minors in state court juvenile proceedings. See *Jonathan C.B.*, slip op. at 23. Juvenile proceedings have evolved in recent years to be more like criminal proceedings, with added emphasis on punishment and the protection of the public, and with changes in terminology that took effect in Illinois in 1999. Thus, *Jonathan C. B.* controls, and we find that respondent was not entitled to a jury trial.

¶ 50

III. CONCLUSION

¶ 51 For the reasons stated above, the judgment of the circuit court of Lake County is affirmed.

¶ 52 Affirmed.