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2011 IL App (3d) 090812-U

Order filed August 12, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re T.E.,	)	Appeal from the Circuit Court
a Minor.	)	of the 21st Judicial Circuit
	)	Kankakee County, Illinois,
(THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	Appeal No. 3-09-0812
Plaintiff-Appellee,	)	Circuit No. 07-JD-279
	)	
v.	)	
	)	
T.E.,	)	The Honorable
	)	Michael J. Kick,
Defendant-Appellant).	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

¶ *1* *Held*: The trial court abused its discretion when it sentenced the delinquent minor to the Juvenile Department of Corrections because it did not make either of the requisite statutory findings to support this disposition, and no basis for either finding was apparent in the record.

¶ 2 The trial court adjudicated T.E. a delinquent minor and imposed a five-year term of probation. The State subsequently filed a second petition to revoke T.E.'s probation. The trial court found that T.E. had violated his probation and committed him to the Juvenile Department of Corrections (JDOC). T.E. appeals, alleging that the trial court erred by revoking his term of probation and committing him to the JDOC because his probation violations did not render him a danger to the public, and thus, did not sufficiently support his commitment to the JDOC. We reverse and remand with instructions.

¶ 3 FACTS

¶ 4 The State filed an amended juvenile petition on December 12, 2007, alleging that T.E., born on April 16, 1991, was a delinquent minor because he committed the offenses of attempted residential burglary and residential burglary. T.E. pled guilty to residential burglary. The court entered an order finding that T.E. was a delinquent minor, naming him a ward of the court, and sentencing him to, among other things, a five-year term of probation. The court also ordered T.E. to obtain his general equivalency diploma (GED) and to report to the probation department once per month.

¶ 5 The State filed a petition to revoke T.E.'s probation on January 8, 2009, alleging that T.E. failed to report to eight probation appointments and failed to obtain his GED. At a subsequent hearing, T.E. admitted to the allegations in the petition. The trial court resentenced T.E. to the terms of his original probation, but modified it to include 30 days of home detention and six months of weekly reporting to the probation department.

¶ 6 Thereafter, on May 27, 2009, the State filed a second petition to revoke T.E.'s probation, alleging that T.E. failed to report to four probation appointments and failed to obtain his GED.

After the court conducted a hearing, it found that T.E. had violated the terms of his probation. The court set the cause for a dispositional hearing, and ordered Ashley Timm, T.E.'s probation officer, to complete a social history report.

¶ 7 At the September 29, 2009, dispositional hearing, T.E. acknowledged that he had not attended all of his probation appointments with Timm, explaining that he overslept or simply did not attend. T.E. also testified that he had twice completed GED courses and received the necessary vouchers to take the GED exam, but he never did so because he failed to obtain a state identification card which was required for him to be admitted to take the exam. T.E., however, had been applying for jobs, and had not engaged in any criminal activity while he was on probation. Jimmenia E., T.E.'s mother, testified that T.E. had recently begun following the rules of her home. According to her, their relationship was improving and she stated that "as [T.E.'s] mother, [she was] willing to do anything [that she could] possibly" do to help T.E.

¶ 8 Timm also testified and filed a social history report. She recommended that the court commit T.E. to the JDOC, opining that T.E. had been given several opportunities to make progress, but he failed to take advantage of the resources available to him. The State also recommended that the court commit T.E. to the JDOC.

¶ 9 The court committed T.E. to the JDOC. In doing so, the court stated that while no one "would think *** that [T.E. was] a danger to the public by anything he [had] done—on the petition to revoke[,]" his failure to consistently report to probation was a serious violation. The court continued that "another important condition of probation [was] not violat[ing] the laws," or getting arrested for criminal activity, with which T.E. had complied. The court believed that this condition was "the most important thing from the public's viewpoint," and that "the public [was]

pretty much taken care of." The court also noted that T.E.'s mother had "tried everything" to help T.E. The court acknowledged that it did not originally sentence T.E., and that it felt as if it had to rely on the recommendations of the State and Timm, who had been involved in the instant case since its inception. The court thus found it was in T.E.'s best interest to be committed to the JDOC. On the corresponding written order, the court checked a box indicating that the basis of T.E.'s commitment to the JDOC was because it was "necessary to ensure the protection of the public from the consequences of the criminal activity of [T.E.]" T.E. filed a motion to reconsider his sentence, which the trial court denied.

T.E. appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, T.E. contends that the court erred by revoking his probation and sentencing him to the JDOC because his commitment was not necessary to protect the public, and it did not serve his best interest. The State contends that the trial court properly revoked T.E.'s probation and sentenced him to the JDOC. Because our review of the record reveals that the trial court found that T.E. was not a danger to the public, and no other basis of commitment is apparent from the record, the court erred by sentencing T.E. to the JDOC. Before we address the merits of the instant case, however, we must first address disclosures by counsel for T.E. and the State on appeal that T.E. has been released from the JDOC.

¶ 12 In her appellate brief, T.E.'s counsel stated that T.E. has already served his commitment. Upon further inquiry, counsel disclosed that T.E. has been released from the JDOC and is serving a term of parole until April 16, 2012. Consequently, we may consider T.E.'s challenge to his commitment to the JDOC because the trial court may recommit T.E. to the JDOC if he violates a

term of his parole. See *In re K.A.S.*, 90 Ill. App. 3d 211 (1980) (a reviewing court can consider a juvenile's challenge to his term of commitment to the JDOC after his release to parole because of the possibility of recommitment in the event of a parole violation).

¶ 13 Section 5-710 of the Juvenile Court Act of 1987 (the Act) provides the various dispositional alternatives available to a trial court as to a delinquent minor (705 ILCS 405/5-710 (West 2008)), including commitment to the JDOC (705 ILCS 405/5-750 (West 2008)). However, a court may commit a delinquent minor the JDOC only if it finds that: (a) the minor's parent or guardian is unfit or unable, for reasons other than financial circumstances alone, to care for, protect, train or discipline the minor, or is unwilling to do so, and the best interest of the minor will not be served by placement outside the home; or (b) it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent minor. 705 ILCS 405/5–750(1)(a), (b) (West 2008). Although the trial court need not repeat the exact language of section 5-750(1)(a) or (b) of the Act, it must make at least one of these findings before it may commit a minor to the JDOC. *In re S.M.*, 229 Ill. App. 3d 764 (1992). Commitment to the JDOC should be used only when less severe placement alternatives would not be in the best interest of the minor and the public. *In re B.S.*, 192 Ill. App. 3d 886 (1989).

¶ 14 The disposition of a delinquent minor rests within the sound discretion of the trial court. *In re T.M.*, 210 Ill. App. 3d 651 (1991). Thus, we will not overturn a trial court's determination absent an abuse of discretion. *In re Griffin*, 92 Ill. 2d 48 (1982). When a trial court's oral pronouncement of its decision conflicts with its subsequent written order, the oral proclamation prevails over the written order. *In re William H.*, 407 Ill. App. 3d 858 (2011).

¶ 15 In this case, we conclude that the trial court abused its discretion by committing T.E. to

the JDOC because it did not make either of the requisite statutory findings pursuant section 5-750(1) of the Act to support his commitment, nor was either finding apparent from the record.

¶ 16 First, the record indicates that the trial court did not find that T.E. was a danger to the public so as to support his commitment to the JDOC pursuant to section 5-750(1)(b) of the Act. Specifically, as the trial court was announcing T.E.'s disposition, it found that T.E. was not a danger to the public. However, on the written dispositional order, the court indicated that the basis of T.E.'s commitment was because it was necessary to protect the public from the consequences of T.E.'s criminal activity. Since well-settled law provides that a trial court's oral proclamation prevails over a written order to the contrary, we must honor the trial court's oral finding that T.E. did not constitute a danger to the public. Our review of the record does not indicate that T.E. was a danger to the public, as the trial court revoked T.E.'s probation because he failed to consistently report to probation and did not obtain his GED. Consequently, the statutory basis of section 5-750(1)(b) of the Act does not support T.E.'s commitment to the JDOC.

¶ 17 Next, the record does not indicate that T.E. should be committed to the JDOC pursuant to section 5-750(1)(a) of the Act because his parent or guardian was unfit, unable or unwilling to care for, protect, train or discipline T.E. Specifically, the trial court did not find that Jimmenia was unfit, unable or unwilling to care for, protect, train or discipline her son. Instead, the trial court commented that Jimmenia had "tried everything" to help T.E., and Jimmemia testified that she was willing to do anything to help T.E. Thus, T.E.'s commitment to the JDOC cannot properly rest on the basis provided in section 5-750(1)(a) of the Act.

¶ 18 In this case, the trial court essentially committed T.E. to the JDOC because it had not

been involved in the instant case since its inception, and decided to defer to the recommendation of Timm and the State. However, a trial court may only commit a delinquent minor to the JDOC if it finds a basis provided in section 750(1)(a) or (b) of the Act. Here, since the trial court did not make, and the record does not support, either of these findings, the trial court abused its discretion when it committed T.E. to the JDOC. Given that neither of the requisite statutory bases supports T.E.'s commitment to the JDOC, and because neither party has raised any additional issues with respect to the instant dispositional hearing, we vacate T.E.'s commitment to the JDOC and remand the cause to the trial court with the instruction to either impose a term of probation or terminate wardship of T.E. and close the instant juvenile case.

¶ 19 CONCLUSION

¶ 20 We reverse the judgment of the trial court of Kankakee County, and remand it with directions.

¶ 21 Reversed and remanded with directions.