

NOTICE
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2011 IL App (4th) 090962-U

Filed 9/15/11

NO. 4-09-0962

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: BRANDON M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 09JD147
BRANDON M., a Minor,)	
Respondent-Appellant.)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in committing respondent to the Department of Juvenile Justice where the record contained sufficient evidence to support the court's determination.

¶ 2 In July 2009, pursuant to an open guilty plea, respondent, Brandon M. (born February 4, 1994), pleaded guilty to burglary (720 ILCS 5/19-1(a) (West 2008)) and possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)). In October 2009, the trial court committed respondent to an indeterminate term of incarceration in the Department of Juvenile Justice (DJJ) not to exceed seven years or his twenty-first birthday, whichever was sooner.

¶ 3 Respondent appeals, arguing the trial court abused its discretion in sentencing him to a term of imprisonment rather than a community-based sentence. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On June 16, 2009, the State filed a petition for adjudication of wardship against respondent, alleging he committed two counts of burglary (720 ILCS 5/19-1(a) (West 2008)) (counts I and V), one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)) (count II), and two counts of arson (720 ILCS 5/20-1(a) (West 2008)) (counts III and IV). The State claimed it was in respondent's and the public's best interest he be adjudged a delinquent minor pursuant to section 5-105(3) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-105(3) (West 2008)).

¶ 6 On July 24, 2009, respondent pleaded guilty to burglary (count I) and possession of a stolen motor vehicle (count II). The following factual basis was given for the plea:

"Your Honor, with respect to Count I, on June 15 of this year[, respondent] was inside the Mahomet IGA in Mahomet, Illinois. At that time[,] while he was there he selected items that were offered for retail sale. He did place them in his pocket and then left the store without paying for those items. The manager of the store had been alerted to the behavior of [respondent] and another individual with whom he was with, [Colby C.], and had been following [respondent] and observed the—and observed [respondent] leave without paying for the items.

With respect to Count II, your Honor, on June 11 of this year[,] the victim, Monty Teuscher, had his GMC Sonoma stolen from his business in Fisher. On June 11[,] a Mahomet man called

the police when some juveniles were hanging around the same truck that had been reported stolen and were acting suspiciously. At that time[,] an adult by the name of Josh Walker was found walking nearby. He admits that he had the keys but says that [respondent] as well as another juvenile, [Colby C.], had actually stolen it. [Respondent] was then interviewed by the officers and he told that all three of them had entered the truck looking for money. Once inside the truck[,] they found the keys. They then went and hid the truck so that they could come back and get it at a later time. They tried getting it later but the Mahomet man had confronted them so they left. The truck did sustain some damage while the minors had the truck in their possession."

¶ 7 Thereafter, the trial court accepted respondent's guilty plea and adjudicated him delinquent. The court also admonished respondent not to have any contact of any nature with Colby C.

¶ 8 On September 16, 2009, a social-investigation report was filed with the trial court. The report showed respondent had a number of prior police contacts. The report also showed the State had filed a petition for adjudication of wardship in 2007. However, the prior petition did not result in an adjudication. Instead, it was resolved through respondent's participation in the "Victim Offender Reconciliation Program."

¶ 9 The report further reflected concern regarding respondent's reported daily use of marijuana through May 2009. The report noted a number of respondent's police contacts over the

past three years were for very serious crimes. The report also indicated respondent had admitted "breaking into a vehicle, setting a vehicle on fire[,] and burning playground equipment at Sangamon School." The report concluded by recommending respondent's commitment to DJJ.

¶ 10 A mental-health and substance-abuse evaluation was attached to the social investigation report. The evaluation indicated respondent was "suffering from multiple behavioral problems and/or disorders which, if left unaddressed place him at a high risk for future acting out and illegal behaviors." The evaluation found respondent "presented himself as having no sense of guilt, shame[,] or remorse" regarding his behaviors and "appeared to have little intention of altering his behaviors." The evaluation recommended respondent's placement in a structured environment, such as a secure treatment facility, where he would receive proper supervision and therapy.

¶ 11 At the October 20, 2009, sentencing hearing, the State called several officers to testify to the circumstances surrounding some of respondent's prior police contacts.

¶ 12 Officer Jeremy Scharlow of the Mahomet police department testified he observed a vehicle stopped in the middle of the road and approximately 20 feet from a stop sign on May 26, 2009. The vehicle was owned by respondent's mother. Respondent and Colby C. admitted they had taken respondent's mother's vehicle and were out "joyriding."

¶ 13 Scharlow also testified to an incident where he responded to a domestic call on June 6, 2009, at respondent's home. Respondent's mother had called the police because she was having trouble controlling her children. During the course of the investigation, he observed "multiple pieces of homemade smoking devices" in respondent's bedroom, which Scharlow testified are commonly used to smoke marijuana. Scharlow testified most of the devices had

been used.

¶ 14 Village of Mahomet police officer Tim Elliot testified he responded to a call from an autobody shop on June 5, 2009. The call concerned the burned interior of a vehicle. Elliot testified the investigation led him to respondent, who admitted throwing toilet paper he had lit on fire into the vehicle. Elliot testified the interior of the vehicle, including the dashboard, seating, and the door panel on the passenger side of the vehicle were all charred.

¶ 15 Colby C.'s mother testified respondent had not been abiding by the trial court's instruction that respondent cease contact with Colby C. She testified they had frequent contact with one another through a social networking Internet site. Colby C.'s mother also testified she personally observed respondent at her house on one occasion. She testified she had just arrived at the house and was getting out of her vehicle as respondent took off running.

¶ 16 James McCartney, a caseworker with Catholic Charities, testified he began working with respondent in 2009, and assisted in attempting to locate an alternative placement to incarceration for respondent. McCartney testified respondent had been accepted into the 30-day Spectrum Wilderness Program. Respondent's counsel also presented an October 19, 2009, letter from the Gateway Foundation, stating respondent met the criteria for admission into its residential treatment program.

¶ 17 The State argued respondent's needs went beyond what a 30-day camp could correct. The State, citing respondent's prior instances of alleged criminal conduct and respondent's mother's inability to discipline him, argued commitment to DJJ was appropriate for the protection of public.

¶ 18 Respondent's counsel argued a community-based sentence would be appropriate

because respondent had no prior adjudications and had no police contacts since being arrested in the instant cause. Counsel cited respondent's difficult childhood as a possible explanation for respondent's behavior. Counsel also argued respondent's mental-health issues would be better treated by the Gateway Center, not DJJ.

¶ 19 In determining whether commitment to DJJ was in the best interest of respondent and the public, the trial court stated the following:

"[Respondent's] contacts with law enforcement are notable. They've gone back over six years, as the State pointed out, and they've been limited not just to that, but multiple interventions from law enforcement for a multitude of problems, including many domestic batteries, as well as graduating to more serious interventions for more serious criminal conduct."

The court also noted respondent's relationship with his mother and stated the following:

"It's apparent that the respondent's mother is completely unable to control her son's behavior, and has been for some time. She has repeatedly been the victim of his disrespect, his threats, and his violent outbursts herself to the point where she had a device installed on her car because she was afraid he would steal it."

The court addressed respondent's mental-health issues, stating:

"This is [a] minor who has had the benefit of multiple professional and therapeutic interventions through the mental health services for the last seven years. He's been through the Pavilion. He's been

able to draw on the expertise of Dr. Welch, and there's been again an abundance of services made available through him. He continues to present behavioral and conduct problems, and has been diagnosed with AD-HD, mood disorder, and conduct disorder."

However, the court also noted the psychological evaluation showed a distinct lack of remorse for what respondent had done and a "remarkable lack of sympathy for what other people have had to endure at his hands."

¶ 20 The trial court stated it considered the residential-treatment option presented by respondent. However, the court found in respondent's case,

"[u]nlike other young people that I've seen, where substance abuse issues are a primary component, and definitely the main explanation for why that person's involved in the juvenile justice system, in this case[,] I find that's just one of a multitude of anti-social behaviors and addictive behaviors [respondent] continues to embrace."

¶ 21 With regard to the respondent's suggested 30-day Spectrum Wilderness Program as an alternative to incarceration, the trial court found

"given the fact [respondent] very clearly needs a structured setting and a secure setting, I believe that 30 days of camping isn't going to make a bit of difference, frankly. [Respondent] presents a very real, untenable risk to the community, and that has to be stopped

before he becomes an adult, so he recognizes that his choices are going to carry serious consequences."

¶ 22 Thereafter, the court committed respondent to an indeterminate term of incarceration in DJJ not to exceed seven years or his twenty-first birthday, whichever was sooner.

¶ 23 On November 10, 2009, respondent filed a motion to reconsider sentence, which the trial court denied.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent argues the trial court erred in committing him to a term in DJJ. Specifically, respondent contends the court erred where respondent (1) had no prior delinquency adjudications, (2) had never before been given a term of probation, and (3) had a history of mental-health problems. Respondent maintains it is in both his and the public's best interest he be given probation.

¶ 27 A reviewing court will not reverse a trial court's dispositional order unless the trial court's findings of fact are against the manifest weight of the evidence or the court abused its discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). A court may choose from among the appropriate dispositions available and need not defer to any particular recommendation. *In re T.L.B.*, 184 Ill. App. 3d 213, 215, 539 N.E.2d 1340, 1342 (1989).

"At a sentencing hearing in a delinquency case, the trial court must determine whether it is in the best interests of the minor and the public that the minor be made a ward of the court. 705

ILCS 405/5-705(1) (West 2006). If so, the court must determine the 'proper disposition best serving the interests of the minor and the public.' 705 ILCS 405/5-705(1) (West 2006).

Although commitment should be imposed only where a less-severe placement would not be in the minor's and the public's best interests, the trial court may consider a number of factors, including prior arrests, station adjustments or curfew violations, and the social-investigation report when determining whether commitment is necessary. [Citation.] Moreover, the court need not use any specific words when making its determination." *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1077, 904 N.E.2d 112, 123 (2008).

¶ 28 We note respondent does not argue the trial court erred in adjudicating him delinquent. Instead, respondent argues the court abused its discretion in sentencing him to incarceration instead of placing him in a community-based program. As part of his argument, respondent cites secondary authority for the propositions a minor's rehabilitation can be hindered and the public's safety can be undermined by incarcerating a minor and incarceration is linked to recidivism. However, the Act explicitly provides for the incarceration of a minor. 705 ILCS 405/5-750 (West 2008). As such, respondent's argument in this regard is better directed to the General Assembly rather than this court.

¶ 29 Section 5-750 of the Act provides the following:

"[W]hen any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the [DJJ], if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under [s]ection 5-740 or; (b) it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent." 705 ILCS 405/5-750(1) (West 2008).

¶ 30 In this case, the trial court committed respondent to DJJ pursuant to both subsection (a) *and* (b) of section 5-750(1) of the Act.

¶ 31 With regard to subsection (a), the record shows respondent had repeatedly disrespected his mother, ignored her rules, and threatened her. According to the mental-health evaluation, respondent's mother described respondent's behavior as "escalating over time and including behaviors such as not following household rules, paying little regards to her or her authority and acting out with aggressive outbursts." In addition, respondent's mother stated respondent "does what he wants" and has no respect for her. Respondent's mother also reported respondent would ignore any attempts she made at enforcing a curfew, sneak out of the house at night, and stay out to whatever time he wished. In addition, respondent had repeatedly stolen his mother's vehicle. Respondent's mother also reported having to contact the police on multiple occasions and recalled how respondent had been brought back to the house by police.

¶ 32 The report also indicated respondent had been physically aggressive to his mother by "throwing objects at her during his aggressive outbursts and punching walls." She also reported respondent exhibited behaviors involving firecrackers, flammable materials, and setting fires, which has resulted in her being evicted on at least two occasions. The State presented sufficient evidence from which the trial court could find respondent's mother had been unable to discipline respondent.

¶ 33 The record also contained sufficient evidence from which the trial court could find under subsection (b) that incarceration was necessary to protect the public from respondent's criminal activity. The social-investigation report showed respondent had a number of prior police contacts, including: arson/burglary/motor vehicle theft (June 15, 2009), unlawful possession of a stolen vehicle (June 13, 2009), criminal damage to property (June 11, 2009), domestic trouble/possession of drug equipment (June 6, 2009), curfew/resisting a peace officer (May 26, 2009), harassment by telephone (February 2, 2009), aggravated battery (September 5, 2008), possession of a lookalike substance (August 29, 2008), criminal damage to property (July 7, 2008), domestic trouble (June 23, 2008), criminal damage to property (June 18, 2008), domestic trouble (June 4, 2008), harassment by telephone (December 8, 2007), aggravated battery (November 19, 2007), aggravated battery (November 6, 2007), domestic battery (April 27, 2007), domestic trouble (April 7, 2007), filing a false police report (February 17, 2007), domestic trouble (February 8, 2007), and battery (August 3, 2005). The report also indicated respondent's contacts had increased within the past three years. Further, many of those recent contacts were for serious crimes. In the instant cause, respondent pleaded guilty to burglary and possession of a stolen motor vehicle, two Class 2 felonies.

¶ 34 Respondent argues it was improper for the trial court to consider respondent's station adjustments without hearing evidence as to whether these unadjudicated charges were reliable. However, prior appellate decisions have rejected the argument trial courts cannot consider mere criminal complaints during juvenile dispositional hearings (see *In re Blakes*, 4 Ill. App. 3d 567, 571-72, 281 N.E.2d 454, 456-57 (1972); *In re Lang*, 74 Ill. App. 3d 188, 190-92, 392 N.E.2d 752, 754-55 (1979); *Nathan A.C.*, 385 Ill. App. 3d at 1077, 904 N.E.2d at 123). Moreover, "the trial court may consider a number of factors, including prior arrests, station adjustments or curfew violations, and the social-investigation report when determining whether commitment is necessary." *Nathan A.C.*, 385 Ill. App. 3d at 1077, 904 N.E.2d at 123.

¶ 35 Finally, the mental-health evaluation characterized respondent as "having no sense of guilt, shame[,] or remorse" regarding his behaviors. The evaluation further noted respondent "appeared to have little intention of altering his behaviors for any future pro-social changes." Following our review of the record, we find the trial court did not abuse its discretion in committing respondent to DJJ.

¶ 36 **III. CONCLUSION**

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.