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2012 IL App (3d) 100840-U

Order filed August 22, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> M.B.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor,	)	Peoria County, Illinois
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-10-0840
	)	Circuit No. 10-JD-249
v.	)	
	)	
M.B.,	)	
	)	Honorable Chris L. Fredericksen,
Respondent-Appellant).	)	Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion when sentencing M.B. to commitment in the Department of Juvenile Justice for an indeterminate term not to exceed his 21st birthday.
- ¶ 2 The circuit court of Peoria County adjudicated the minor, M.B., delinquent for engaging in numerous residential burglaries and sentenced him to juvenile detention not to exceed his 21st

birthday. M.B. appeals, claiming the trial court abused its discretion when fashioning his sentence. We affirm.

¶ 3

### BACKGROUND

¶ 4 The State filed a juvenile petition alleging that the minor, between June 1, 2010, and June 26, 2010, committed eight separate residential burglaries. During a hearing on July 13, 2010, the minor's attorney announced to the court M.B.'s desire to admit he committed five of the residential burglaries, counts I through V in the juvenile petition, in exchange for the State dismissing allegations of the other three counts and agreeing not to file charges for any other residential burglaries committed "as of July 5th, 2010." The minor's counsel informed the court, "It's a blind plea. Would ask for a sentencing hearing, would ask the court also then to review his detention after the plea."

¶ 5 After the trial court admonished the minor as to the effect of his admission to completing the residential burglaries, the State proffered "the factual basis for each count." The State offered that it could call victims at each residence to testify to the fact that their residence was broken into and items taken therefrom. Officer David Armstrong could be called to testify regarding the method of entry and that latent prints were taken from the burglarized residence. These prints "came back positive to M.B." The officer would further testify that he "spoke with M.B. who admitted that he broke into all of the houses that the officer was talking about." M.B. informed the officer that he had broken into "around 30 houses," taking property from "about 18" of the 30.

¶ 6 The trial court accepted M.B.'s plea as knowing and voluntary, continuing the matter for sentencing. The Peoria County Juvenile Probation department prepared a dispositional sentencing report to assist the trial court during sentencing. The report indicates that M.B. was

originally detained in the Peoria County Juvenile Detention Center on June 14, 2010, for the offense of residential burglary, then released on June 15, 2010. While on home detention, M.B. was again detained in the juvenile detention center on June 28, 2010, on additional counts of residential burglary. He remained in detention pending his sentencing hearing on August 24, 2010, at which time the minor was 16 years old.

¶ 7 The report continues by noting that M.B. claimed to have been diagnosed with bipolar disorder and attention deficit hyperactivity disorder at a young age. He further claimed that he had previously taken medication for these conditions, but was not taking medication at the time the report was authored. Due to the lack of information provided by his mother, the author of the report was unable to verify M.B.'s diagnosis of those conditions or his treatment history.

¶ 8 The report notes that M.B. acknowledged being a member of the street gang, "No Love" since age 10. He obtained the rank of captain. M.B. reported that at age 13, he fired a shotgun at another person but did not hit that person. He used marijuana since age 9, but does not use it on a regular basis. He has been using Ecstasy since age 13 about twice a week, last using it on the date of his detention. Finally, he reported making money through the sale of crack and marijuana. While his discipline at home involved taking away his cell phone, he always had a second cell phone available "for his drug dealing."

¶ 9 M.B.'s history showed no prior adjudications of delinquency. Numerous curfew violations, park district violations and traffic offenses were noted on the report.

¶ 10 Overall, the report indicated that the youth assessment screening instrument rates M.B. as a "moderate risk." The highest areas of concern are his community and peer relations and his skills. The probation officer who completed the report "strongly considered a full commitment

to the Department of Juvenile Justice," however, ultimately recommended supervising the minor in the community given this is his first adjudication for delinquency.

¶ 11 The trial court also received a summary report from the Peoria County Juvenile Detention Center detailing M.B.'s stay there pending sentencing. The report notes multiple "incidents that have reference to gang affiliation" and fights.

¶ 12 After considering the information above, the trial court noted it is unusual to commit a minor to the Department of Juvenile Justice (DOJJ) for a first offense. The court went on to conclude, however, that M.B. was beyond his parents' control as they had not been able to "train, discipline, or control" his conduct. Furthermore, the court found that the community needed protection from M.B. As such, the trial court ordered M.B. committed to the Illinois Department of Juvenile Justice for "an indeterminate period as provided in 705 ILCS 405/5-705(1) and (3), not to exceed the minor's 21st birthday."

¶ 13 M.B. moved to reconsider his sentence. The trial court denied M.B.'s motion to reconsider. This appeal followed.

¶ 14 ANALYSIS

¶ 15 The minor's sole claim of error is that the trial court abused its discretion when sentencing him to detention in the Department of Juvenile Justice.

¶ 16 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 2010). If so, the court must then decide the "proper disposition best serving the interests of the minor and the public." 705 ILCS 405/5-705(1) (West 2010). In making that determination, the court may consider all helpful evidence, including oral and

written reports. 705 ILCS 405/5-705(1) (West 2010). A court may not order the minor committed to the DOJJ until a written social-investigation report is completed and considered. 705 ILCS 405/5-705(1) (West 2010). "The trial court's decision following a dispositional hearing 'will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order.' " *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009) (quoting *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008)). A trial court abuses its discretion when no reasonable person would agree with its decision. *In re M.P.*, 408 Ill. App. 3d 1070, 1073 (2011).

¶ 17 M.B. does not argue that commitment was an unavailable disposition for the trial court following his confession to committing numerous Class 1 felonies: those being residential burglaries. 720 ILCS 5/19-3(A) (West 2010). Instead, to support his claim that the disposition crafted by the trial court amounted to an abuse of discretion, the minor emphasizes facts within the record claiming these facts, when viewed through the statutory scheme of the Juvenile Court Act, lead to the singular conclusion that he simply should not have received the maximum allowable sentence for his actions.

¶ 18 Specifically, M.B. argues the trial court failed to properly consider that this is the first time he has been adjudicated delinquent, especially in light of the sentencing report, which recommends probation. He notes the youth assessment screening instrument found him "only a moderate risk." He claims his commitment violates the purpose of the Juvenile Court Act (the Act) as it does not "serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community." 705 ILCS 405/1-2(1) (West 2010). He submits that the trial court failed to properly consider placement instead of commitment. Finally, M.B.

argues it was simply not "necessary" to commit him to the DOJJ.

¶ 19 To support these arguments, M.B. notes that amendments to the Act (Pub. Act 97---0362 (eff. Jan. 1, 2012)) reveal "the legislature's growing distaste for incarcerating minors." Prior to the enactment of the amendments, a trial court could commit a delinquent minor to the DOJJ for an indeterminate term if the court found his parents unfit to care for, protect, train or discipline the minor and that the best interests of the minor and public will be served by commitment. 705 ILCS 405/5-750 (West 2010). The version of the Act under which the trial court sentenced M.B. also allowed for commitment of a delinquent minor if it was necessary to ensure the protection of the public from the consequences of criminal activity or the delinquent. *Id.*

¶ 20 The amendments to section 5-750 necessitate a finding that commitment "is the least restrictive alternative based on the evidence that efforts were made to locate less restrictive alternatives to secure confinement \*\*\*." 705 ILCS 405/5-750 (1) (West Supp. 2011). M.B. does not argue these amendments are applicable to his sentencing, only that they reaffirm and expand the rehabilitative goals of the Act. Given the nature of these goals, M.B. argues there is but one reasonable conclusion to this matter: a finding that the trial court abused its discretion when incarcerating him. As M.B. does not argue the amendments and current version of section 5-750 apply to his sentencing or that the trial court erred as a matter of law by failing to find commitment was the least restrictive appropriate sentence, that issue is not before the court.

¶ 21 What is before the court is M.B.'s rather straightforward excessive sentence claim. As the State notes in its brief and M.B. does not dispute in his reply, M.B. makes no specific contention of error committed by the trial court. M.B. merely reiterates the general purposes of the Juvenile Court Act, claiming his sentence is too harsh in light of the Act's focus on rehabilitation. We

disagree and find the trial court did not abuse its discretion in sentencing defendant to an indeterminate period of commitment in the DOJJ not to exceed his 21st birthday.

¶ 22 As noted above, failure by the parents to adequately supervise a minor is a proper consideration by a trial court when fashioning a disposition for a delinquent minor as is the necessity to ensure the protection of the public from the consequences of criminal activity by the delinquent. 750 ILCS 405/5-750 (1) (West 2010). During sentencing, the State indicated that M.B. admitted to police that he had committed, or attempted, some 30 residential burglaries. M.B. committed a number of these burglaries while on home detention. This, the State argued, weighed against any sentence of probation. M.B. acknowledged his involvement in gang activity, the drug trade, and his attempt to shoot another individual. M.B. indicated that his parents' attempts to discipline him by "often" taking his phone away were futile as he "always had a second cell phone for \*\* drug dealing."

¶ 23 We disagree with M.B.'s claims the trial court failed to properly consider alternatives to commitment in the DOJJ, such as placement under section 5-740 of the Act. 705 ILCS 405/5-740 (West 2010). While the trial court did not specifically mention placement, it did acknowledge that a sentence to the DOJJ for a first adjudication of delinquency is a rarity. The trial court's discussion on the rare outcome of committing a juvenile to the DOJJ following his first adjudication of delinquency makes it clear that the trial judge understood and considered all possible sentencing options. The trial judge concluded commitment is appropriate given the volume of M.B.'s criminal activity over a period of time, which included home detention, M.B.'s continued violation of rules while detained at the juvenile detention center, and the clear fact that his parents are unable to control, train or discipline him. In light of these facts, we cannot say no

reasonable person would agree with the disposition handed down by the trial court. As such, we find the trial court did not abuse its discretion in committing M.B. to an indeterminate term not to exceed his 21st birthday.

¶ 24

#### CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 26 Affirmed.