

2013 IL App (2d) 111061-U  
Nos. 2-11-1061, 2-11-1067, 2-11-1068, 2-11-1069, 2-11-1070, 2-11-1073 cons.  
Order filed February 28, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re* ELIJAH H., )  
A Minor ) Appeal from the Circuit Court  
) of Du Page County.  
)  
) No. 09-JD-135  
)  
(The People of the State of Illinois, )  
Petitioner-Appellee, v. Elijah H., ) Honorable  
Respondent-Appellant.) ) Robert J. Anderson,  
) Judge, Presiding.

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*In re* ELIJAH H., )  
A Minor ) Appeal from the Circuit Court  
) of Du Page County.  
)  
) No. 11-JD-346  
)  
(The People of the State of Illinois, )  
Petitioner-Appellee, v. Elijah H., ) Honorable  
Respondent-Appellant.) ) Robert J. Anderson,  
) Judge, Presiding.

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*In re* ELIJAH H., )  
A Minor ) Appeal from the Circuit Court  
) of Du Page County.  
)  
) No. 09-JD-232  
)  
(The People of the State of Illinois, )  
Petitioner-Appellee, v. Elijah H., ) Honorable  
Respondent-Appellant.) ) Robert J. Anderson,  
) Judge, Presiding.

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*In re* ELIJAH H., ) Appeal from the Circuit Court  
A Minor ) of Du Page County.  
)  
) No. 09-JD-389  
)  
(The People of the State of Illinois, ) Honorable  
Petitioner-Appellee, v. Elijah H., ) Robert J. Anderson,  
Respondent-Appellant). ) Judge, Presiding.

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*In re* ELIJAH H., ) Appeal from the Circuit Court  
A Minor ) of Du Page County.  
)  
) No. 09-JD-191  
)  
(The People of the State of Illinois, ) Honorable  
Petitioner-Appellee, v. Elijah H., ) Robert J. Anderson,  
Respondent-Appellant). ) Judge, Presiding.

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*In re* ELIJAH H., ) Appeal from the Circuit Court  
A Minor ) of Du Page County.  
)  
) No. 09-JD-319  
)  
(The People of the State of Illinois, ) Honorable  
Petitioner-Appellee, v. Elijah H., ) Robert J. Anderson,  
Respondent-Appellant). ) Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in committing respondent to the Department of Juvenile Justice, as respondent's record supported the court's findings that commitment was necessary to protect the public and that a less restrictive placement would be inappropriate; we modified the terms to limit them to maximum periods of adult incarceration and to reflect that they were concurrent.

¶ 2 Elijah H. was adjudicated a delinquent minor and committed to the Department of Juvenile Justice (DJJ) for an indeterminate term in the following four cases now before us: 09-JD-191,<sup>1</sup> 09-JD-232,<sup>2</sup> 09-JD-389,<sup>3</sup> and 11-JD-346.<sup>4</sup> The cases were consolidated on appeal.<sup>5</sup> On appeal, Elijah argues that the trial court abused its discretion when it committed him to the DJJ. Elijah also argues that the dispositional orders must be modified to include a limitation on the periods of commitment, so that they do not exceed the maximum period of time for which an adult could be incarcerated for the same offenses, and to reflect the imposition of concurrent terms. For the reasons that follow, we affirm the dispositional orders as modified to include the necessary limitation on the periods of commitment and to reflect that the terms are to run concurrently.

¶ 3

#### I. BACKGROUND

¶ 4 In case No. 09-JD-191, on March 17, 2009, the State filed a petition to adjudicate Elijah a delinquent minor, alleging assault (720 ILCS 5/12-1(a) (West 2008)), in that he threw a rock at his father on March 16, 2009. On March 25, Elijah admitted the allegation and was released to his parents.

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<sup>1</sup>Appeal No. 2-11-1070

<sup>2</sup>Appeal No. 2-11-1068

<sup>3</sup>Appeal No. 2-11-1069

<sup>4</sup>Appeal No. 2-11-1067

<sup>5</sup>Two other appeals were consolidated in the present case: appeal Nos. 2-11-1061 (case No. 09-JD-135) and 2-11-1073 (case No. 09-JD-319). However, it appears that, in each appeal, the underlying case has been closed. Elijah raises no argument concerning either case.

¶ 5 In case No. 09-JD-232, on April 6, 2009, the State filed a petition to adjudicate Elijah a delinquent minor, alleging a violation of an order of protection (720 ILCS 5/12-30 (West 2008)), in that he threatened the physical safety of his mother. On May 20, Elijah admitted the allegation and, on July 1, he was sentenced to 12 months' probation.

¶ 6 In case No. 09-JD-389, on June 16, 2009, the State filed a petition to adjudicate Elijah a delinquent minor, alleging criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2008)) and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2008)), in that he burned some of his mother's mail. On June 24, Elijah admitted to the disorderly conduct and the State withdrew the allegation of criminal damage to property. On July 1, Elijah was sentenced to 12 months' probation.

¶ 7 Thereafter, in September, October, and November 2009, the State filed a series of supplemental petitions to revoke probation or to find Elijah in indirect criminal contempt. Elijah admitted to most of the allegations in those petitions and, on December 16, 2009, probation previously imposed was revoked and a new period of 12 months' probation was ordered.

¶ 8 In 2010, the State filed additional supplemental petitions to revoke probation or to find Elijah in indirect criminal contempt. As a result of some of Elijah's admissions to the petitions, Elijah was ordered to serve periodic confinement in the Du Page County Youth Home. On December 1, 2010, Elijah was resentenced to 12 months' probation and a period of time in detention.

¶ 9 In 2011, additional supplemental petitions to revoke probation or to find Elijah in indirect criminal contempt were filed by the State and admitted to by Elijah.

¶ 10 In case No. 11-JD-346, on June 3, 2011, a petition to adjudicate Elijah a delinquent minor was filed alleging aggravated battery to a probation employee (720 ILCS 5/12-4(b)(18) (West 2010)),

in that Elijah struck the probation officer on her leg and hip when he flipped a table on May 29, 2011. Elijah admitted the allegations on July 6, 2011.

¶ 11 On August 24, 2011, Elijah appeared for a dispositional hearing on the above cases. Ray Stubner, deputy chief of the juvenile division of the Department of Probation Court Services in Du Page County, testified that he and his staff reviewed Elijah's case in July 2011. The staff had recommended that Elijah be transferred to the DJJ, receive substance abuse treatment, and, upon his release, return to probation. Stubner explained that the staff had discussed "what's been attempted so far and the lack of success [they] were having, the number of times [Elijah] was going in and out of detention, the number of times that he would leave his house, not return, be out in the community while on intensive probation." They also discussed Elijah's need for "substance abuse treatment \*\*\*, difficulty with transportation to get [Elijah] to an intensive outpatient program, [and the] lack of inpatient programs that would take him based on his history." Elijah's caseworker reported to Stubner that the residential treatment facilities felt that Elijah was too violent to be maintained there. Stubner further testified that his staff also took into account the fact that Elijah had been detained 19 times over the pendency of his cases and had already spent 290 days in the youth home, which, according to Stubner, was a lot as compared to other juveniles.

¶ 12 Following Stubner's testimony, the following colloquy occurred between the court and Stubner:

“[THE COURT]: So, Mr. Stubner, if I'm understanding you correctly, it's your opinion, based on the conversations and based on the staffing, if I'm understanding it, that Elijah can't get into an inpatient program because of his past history? I mean, there's a letter

here from Abraxis that says just that. Are you telling me that you think that he can't get into any of the other programs?

A. I believe there were two programs they attempted and both declined for the same reasons.

Q. Okay.

And then if I were to do a commitment to the [DJJ] and as part of that order or recommend the drug treatment, is it guaranteed that he'll go to drug treatment; do they have to do what I recommend?

A. They have to follow what's in the orders. So yes. That's what they told us. If it's in the orders, they have to abide by that.

Q. How long is the program?

A. It's minimally six months.

Q. Okay."

¶ 13 In announcing its decision, the court indicated that it was ordering Elijah into the custody of the DJJ for a drug treatment assessment and that it would review the commitment in 45 days. The court stated: "I'm not going to today ultimately decide that you're to stay in the [DJJ], but I'm going to send you there to see about the drug program." The court then found that it was in the best interests of Elijah and the public that Elijah be adjudicated a delinquent minor in each pending case and be made a ward of the court. The court found that, for reasons other than financial, his parents were unable to care for, protect, and discipline him. The court committed Elijah to the DJJ for an indeterminate term in case Nos. 09-JD-191, 09-JD-232, 09-JD-389, and 11-JD-346. The court further ordered the DJJ to evaluate Elijah and prepare a report on the services that it could offer him.

¶ 14 Elijah filed a motion for reconsideration of the dispositions. The court held a hearing on October 5, 2011. At the hearing, the court reviewed reports from the DJJ. The reports indicated that Elijah had been in a fight with a peer at school shortly after arriving in the general population at the Illinois Youth Center (IYC). The DJJ report characterized Elijah's adjustment to the IYC as "overall below average" with Elijah maintaining the lowest grade in the Behavioral Management Program. The DJJ report further indicated that a psychiatric evaluation of Elijah recommended that, in addition to other therapeutic services, Elijah should participate in counseling, attend group therapy to increase impulse control, and engage in substance abuse treatment. The DJJ noted that Elijah would move to a different living unit and would begin a six-month substance abuse treatment program if the court continued his commitment. The court then ruled as follows:

"I had a chance to read the report from the [DJJ]. I had a chance to look again at the sentencing report that was prepared. I have considered the Illinois Constitution. I have considered the age of the minor. I have considered his criminal background. I have considered his extensive social history. I have considered his educational background that is reported in the sentencing report. I've considered his physical, mental and emotional health. I have considered the fact that community-based services, extensive ones have been provided and they have seemingly failed. I've considered that services are available in the [DJJ], including a substance abuse program that is mentioned in the letters which are part of the plan that seem to be in the minor's best interest. I've considered that reasonable efforts were made to prevent this commitment[.]

I can tell you, I was hoping for a different report. I would echo what the prosecutor said. My expectation was I would get a report that came back and said you were wonderful

in the [DJJ]. You have done everything. This report says that basically you haven't met expectations there of the grading system of A, B, and C, C being the lowest grade, that is where you are.

You have been in front of me a lot of time, and you were in front of Judge Riggs a lot of times before that. You're smart, you're bright, you're articulate, and in my opinion there is [*sic*] a lot of good things about you. For whatever reason you're just not doing the right things. I don't know why that is. It does appear to me that you need that substance abuse program, and I think that that would be a good thing for you."

The court told Elijah that "the next thing they're going to do is put you in a substance abuse program, and then when you finish that you will be eligible for release assuming you have done well."

¶ 15 Based upon the DJJ's recommendation of services, including that Elijah participate in substance abuse treatment at the IYC, the court found that the services available at the DJJ were in Elijah's best interest. The court denied Elijah's motion for reconsideration, and it "renewed" the orders of August 24, 2011, committing Elijah to the DJJ for an indeterminate term.

¶ 16 Elijah timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Elijah first argues that the trial court abused its discretion in committing him to the DJJ, because doing so was not necessary to protect the public from criminal activity and because the court failed to consider any other residential placement that would have better suited the situation. The State responds by arguing that the issue raised by Elijah is moot, because Elijah has since been released from the DJJ. Mootness aside, the State argues that the court did not abuse its discretion.

¶ 19 We begin by rejecting the State’s mootness claim. As the State ultimately concedes, in view of the extended parole provisions applicable to juvenile cases, and because the record does not reflect that Elijah’s parole has been terminated, he is subject to termination of parole and recommitment until the age of 21. 730 ILCS 5/3-3-8(a), (b) (West 2010). Thus, his appeal is not moot. *In re Napier*, 83 Ill. App. 3d 503, 505-06 (1980) (where juvenile was subject to revocation of parole and recommitment until age 21 if he violated parole, juvenile’s appeal from commitment to Department of Corrections, Juvenile Division, following delinquency adjudication was not moot).

¶ 20 We turn now to the issue of whether the court abused its discretion when it committed Elijah to the DJJ. At a dispositional 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); *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1077 (2008). 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 2010); *In re Nathan C.*, 385 Ill. App. 3d at 1077. After a minor has been adjudged a ward of the court, “the court may commit him \*\*\* to the [DJJ], if it finds that (a) his \*\*\* parents \*\*\* 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 Section 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 2010). In determining the proper disposition, the court may consider all helpful evidence, including oral and written reports. 705 ILCS 405/5-705(1) (West 2010). “The disposition of a minor rests within the sound discretion of the trial judge, and absent a showing of

abuse, the trial court's determination will not be reversed by this court." *In re S.M.*, 229 Ill. App. 3d 764, 768-69 (1992).

¶ 21 Elijah argues that his commitment was not necessary to protect the public, because the supplemental petitions to revoke "were based on technical violations." We find that the record supports the court's conclusion that commitment was necessary. The social history report, detailing previous police contacts, established that Elijah had often made threats and been physical with others. In particular, in June 2010, he was charged with and he admitted to grabbing his father by the neck. At the end of seventh grade, Elijah was removed from his middle school and sent to an alternative school "because his behavior at school was escalating. He was representing his participation in the Four Corner Hustler street gang, and was becoming more verbally aggressive and intimidating with other students." In September 2010, he was refused admission to Cornell Interventions' inpatient program due to his history of violence. Cornell stated that Elijah could not be placed in their intensive program due to the risk of harm that he posed to other clients. In October 2010, Elijah committed aggravated battery against a teacher at his alternative school. A petition concerning this offense was not filed by the State, as part of an agreement concerning another petition. Thus, in spite of the fact that the supplemental petitions to revoke probation "were based on technical violations," the court's finding that commitment was necessary to protect the public found support in the record and was not an abuse of discretion.

¶ 22 Elijah also argues that the court's commitment of Elijah to the DJJ improperly bypassed the intermediate less restrictive step of a residential placement. However, it is clear that the court considered less restrictive placements and found them to be inappropriate. The court's finding is again supported by the record. Stubner testified that, in discussing an appropriate recommendation

for Elijah, his staff considered Elijah's need for "substance abuse treatment \*\*\*, difficulty with transportation to get [Elijah] to an intensive outpatient program, [and the] lack of inpatient programs that would take him based on his history." Elijah's caseworker reported to Stubner that the residential treatment facilities felt that Elijah was too violent to be maintained there. In April 2011, Elijah was evaluated by Elmhurst Memorial Healthcare and again denied services. Later, after being reevaluated and accepted for intensive outpatient drug treatment by Cornell Interventions, Elijah ran away. The court ordered Elijah into the custody of the DJJ for a drug treatment assessment and provided that it would review the commitment in 45 days. Upon review, the court considered the report from the DJJ, which recommended that Elijah should participate in counseling, attend group therapy to increase impulse control, and engage in substance abuse treatment. The DJJ noted that Elijah would move to a different living unit and would begin a six-month substance abuse treatment program if the court continued his commitment. The court expressed disappointment with Elijah's performance at the DJJ thus far. Taking into consideration the recommendation of the DJJ and the services available, the court continued Elijah's commitment. Thus, contrary to Elijah's claim, it is clear that less restrictive placements were considered but found to be inappropriate.

¶ 23 Elijah next argues that the dispositional orders must be modified to include a limitation on the periods of commitment, so that they do not exceed the maximum period of time for which an adult could be incarcerated for the same offense. See 705 ILCS 405/5-710(7) (West 2010); *In re C.L.P.*, 332 Ill. App. 3d 640, 645 (2002); see also *In re K.S.*, 354 Ill. App. 3d 862, 863-64 (2004) (placing limitation on commitment to Department of Corrections, Juvenile Division, for misdemeanor). The State agrees. Accordingly, we order the dispositional orders be modified as follows:

In case No. 09-JD-191, charging assault (720 ILCS 5/12-1(a) (West 2008)), a Class C misdemeanor, the dispositional order is hereby modified to include a 30-day limitation on the period of commitment (see 730 ILCS 5/5-4.5-65(a) (West 2010)).

In case No. 09-JD-232, charging a violation of an order of protection (720 ILCS 5/12-30 (West 2008)), a Class A misdemeanor, the dispositional order is hereby modified to include a one-year limitation on the period of commitment (see 730 ILCS 5/5-4.5-55(a) (West 2010)).

In case No. 09-JD-389, charging disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2008)), a Class C misdemeanor, the dispositional order is hereby modified to include a 30-day limitation on the period of commitment (see 730 ILCS 5/5-4.5-65(a) (West 2010)).

In case No. 11-JD-346, charging aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)), a Class 3 felony, the dispositional order is hereby modified to include a 5-year limitation on the period of commitment (see 730 ILCS 5/5-4.5-40(a) (West 2010)).

¶ 24 Finally, Elijah argues that the dispositional orders should be further modified to reflect that the terms of commitment were to be served concurrently. Although the State argues that this argument has been forfeited, because Elijah failed to raise it below (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), it nevertheless concedes that, because the court committed Elijah to the DJJ in these consolidated cases for the purpose of receiving substance abuse treatment and because the DJJ interpreted the orders as imposing one term, the orders should be modified to reflect concurrent terms of commitment. See *In re P.A.F.*, 134 Ill. App. 3d 1066, 1068 (1985) (order committing juvenile to Department of Corrections, Juvenile Division, upon finding of probation violation and to concurrent probation on finding of criminal trespass was not improper). Accordingly, we ignore

any arguable forfeiture and so modify the orders. See *People v. Yaworski*, 2011 IL App (2d) 090785,

¶ 10 (recognizing that forfeiture is a limitation on the parties, not on the reviewing court).

¶ 25

### III. CONCLUSION

¶ 26 For the reasons stated, we affirm the orders of the circuit court of Du Page County as modified.

¶ 27 Affirmed as modified.