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2013 IL App (4th) 110958-U  
NO. 4-11-0958  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
June 13, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: MARCUS J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 11JD37
MARCUS J.,	)	
Respondent-Appellant.	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err as a matter of law or abuse its discretion in resentencing the respondent-minor, following revocation of his probation, to an indeterminate term in the Department of Juvenile Justice for the offense of possession with intent to deliver cannabis on school grounds (720 ILCS 550/5.2(d) (West 2010)).
- ¶ 2 In February 2011, the State filed a petition for adjudication of wardship alleging respondent minor, Marcus J., born September 1996, knowingly possessed, with intent to deliver, more than 2.5 grams but not more than 10 grams of a substance containing cannabis while in Edison Middle School (720 ILCS 550/5.2(d) (West 2010)). In March 2011, respondent admitted to the allegations in the petition and the trial court adjudicated him delinquent. In May 2011, the court made the respondent a ward of the court and sentenced him to an indeterminate term of commitment in the Illinois Department of Juvenile Justice (DOJJ). In July 2011, the court

vacated its commitment order and placed respondent on an 18-month period of probation subject to several conditions, including that he abide by the household rules of his mother. In August 2011, the State filed a petition to revoke respondent's probation on the ground he violated a probation condition by running away from home. The court revoked respondent's probation and, in September 2011, resentenced him to an indeterminate term of commitment in DOJJ, not to exceed three years. Respondent appeals, arguing his sentence is void as a matter of law or, in the alternative, the court abused its discretion in sentencing him to a term of commitment in DOJJ. For the reasons that follow, we affirm.

¶ 3

### I. BACKGROUND

¶ 4

In February 2011, the State filed a petition for adjudication of wardship alleging respondent knowingly possessed, with intent to deliver, more than 2.5 grams but not more than 10 grams of a substance containing cannabis while in Edison Middle School in Champaign, Illinois, a Class 4 felony (720 ILCS 550/5.2(d) (West 2010)). At the initial hearing on the petition, the trial court found probable cause existed to believe respondent was delinquent and ordered respondent detained for his own protection.

¶ 5

In March 2011, respondent entered an open admission to the allegations in the petition and the court found him to be a delinquent minor. In exchange for respondent's admission, the State agreed to dismiss a November 2010 delinquency petition charging respondent with burglary (Champaign County Case No. 10-JD-293). Following acceptance of the admission, the court granted respondent's request for conditional release until the sentencing hearing, placing him on home detention. The court also ordered the Court Services Department to prepare a social investigation report pursuant to section 5-701 of the Juvenile Court Act of

1987 (Act) (705 ILCS 405/5-701 (West 2010)).

¶ 6 A. The May 2011 Sentencing Hearing

¶ 7 At a May 2011 sentencing hearing, the State called Sergeant Dan Morgan of the Urbana police department. Morgan testified about an investigation in which respondent admitted that on a night in August 2010, he and his minor brother, Jamarrio, burglarized a car and vandalized several other cars and residences near the University of Illinois campus. When the State asked Morgan to describe respondent's general demeanor and attitude when he was telling Morgan about the August 2010 events, Morgan responded as follows:

"[MORGAN:] He was almost joyful, and I even asked him about it. He was smiling the whole time he talked. He was very animated, talked almost non-stop, gave pretty much a constant running narrative of what was going on. Occasionally I had to interrupt to re-direct him back onto path, but he was very animated and very happy to talk about what was going on.

[THE STATE:] Did he tell you why they were doing these various activities prior to breaking into the cars?

[MORGAN:] They were just—well his quote is they were just being hyper. They were just burning off energy. Having fun. It was enjoyable. They were hyper, hyper, hyper, and that was kind of his buzzword, and just doing whatever they felt like doing in the moment."

Morgan also testified respondent admitted using marijuana "on an almost daily basis."

¶ 8 The State also called the school resource officer for Edison Middle School, Officer Jonathon Westfield of the Champaign police department. In September 2010, an elementary school student, T., reported to Westfield that respondent and two other middle school students approached T. outside Edison Middle School. T. was holding his PlayStation Portable (PSP), a handheld video game device. One of the middle school students pushed T. and took the PSP. Respondent allegedly held the PSP and asked T. if he was in a gang and if he was willing to fight someone to get it back. Respondent and the other middle school students walked away with the PSP and left on a bus. Respondent admitted to Westfield he took the PSP but claimed he was just playing and forgot to give it back. Respondent told Westfield he did not push T.

¶ 9 Westfield also testified, as a result of bringing cannabis onto school grounds, respondent was expelled from Edison Middle School and ordered to remain off school district property. Two seventh-grade students reported to Westfield that, on the day of respondent's expulsion in February 2011, respondent convinced the two students to fight each other approximately two blocks away from Edison Middle School. Westfield saw a video, recorded in April 2011, showing respondent fighting an eighth-grade student at an apartment complex two blocks from Edison Middle School. Westfield also heard reports that respondent threatened to fight two other Edison students.

¶ 10 In mitigation, respondent offered, and the trial court considered, (1) a psychiatric evaluation of respondent prepared by Dr. Roselin Arunachalam of the Mental Health Center of Champaign County, Inc., and (2) respondent's "substance abuse/drug/alcohol counseling time sheet." The psychiatric evaluation showed respondent was born with cocaine in his system and adopted by his current mother when he was seven days old. Respondent was diagnosed with

attention deficit hyperactivity disorder (ADHD), marijuana abuse, and conduct disorder.

¶ 11 Following the presentation of evidence and argument, the trial court found commitment was necessary to ensure the protection of the public from the consequences of respondent's criminal activity. The court sentenced respondent to an indeterminate term of commitment in DOJJ, to automatically terminate in 3 years or upon respondent attaining the age of 21, whichever comes first. The court also ordered DOJJ to complete an examination of respondent's psychological, social, educational, and vocational condition and history and file a written report with the court and counsel, pursuant to section 3-10-2 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-10-2 (West 2010)).

¶ 12 B. The July 2011 Hearing to Review the Commitment Order

¶ 13 In July 2011, the trial court held a hearing to review its May 2011 commitment order. The court considered (1) the DOJJ report ordered by the court pursuant to section 3-10-2 of the Unified Code, and (2) an institutional adjustment report prepared by DOJJ. Both reports were generally positive and indicated respondent displayed good behavior during his commitment. On request of both the State and respondent, the court vacated its commitment order and placed respondent on probation. As a condition of the 18-month term of probation, the court ordered, among other things, respondent abide by a daily curfew set by the probation department and abide by the household rules of his mother. The court scheduled a review hearing for August 9, 2011.

¶ 14 C. The State's Petition To Revoke Probation and the August 2011 Hearing

¶ 15 On August 4, 2011, the State filed a petition to revoke respondent's probation, alleging he violated the condition he abide by the household rules of his mother by running away

from home on two occasions in late July. Respondent failed to appear at the August 9 review hearing and the trial court issued a warrant of apprehension that same day. Respondent was apprehended and the court ordered him temporarily detained on August 12.

¶ 16 On August 31, the trial court held a hearing on the State's petition to revoke. The State called respondent's mother, Ledora, who testified on July 24 and July 27, respondent left her home without permission and remained gone for multiple days each time.

¶ 17 Respondent called Thereon Forman, respondent's 13-year-old friend, who testified he was present when respondent returned home after running away and he witnessed Ledora tell respondent he could not stay at her home.

¶ 18 Respondent testified he ran away on July 24 because he was mad at Ledora and Terry Moore, his 50-year-old adoptive brother, who threatened to turn him in for breaking curfew. When respondent returned home two days later with Thereon, Ledora eventually let respondent back inside the home. Ledora and respondent argued, and respondent again packed his things and left the home. Respondent testified Terry would threaten to fight him when he argued with Ledora.

¶ 19 At the conclusion of evidence and argument, the trial court revoked respondent's probation and scheduled a hearing for resentencing on the underlying February 2011 cannabis offense. The court ordered the court services department to prepare a new social investigation report pursuant to section 5-701 of the Act (705 ILCS 405/5-701 (West 2010)).

¶ 20 D. The September 2011 Resentencing Hearing and Respondent's Motion To Reconsider

¶ 21 At the September 2011 resentencing hearing, the trial court considered (1) the

updated social investigation report prepared by respondent's probation officer, Thomas Harrocks, pursuant to section 5-701 of the Act (705 ILCS 405/5-701 (West 2010)), (2) a residential progress report prepared by Latanya Washington of the Champaign County Juvenile Detention Center, (3) a pamphlet describing the Mental Health Juvenile Justice Initiative Program (MHJJ), (4) a letter prepared by Louise Jackson of ACCESS Initiative describing the programs, services, and supports that ACCESS put in place for respondent, and (5) the previous reports placed on file with the court.

¶ 22 The updated social investigation report, offered by the State, indicated respondent (1) had not been taking his prescribed behavior medications, (2) missed three office appointments while on probation, (3) violated curfew twice while on probation, (4) had not completed any court-ordered community service, (5) had not been following household rules, (6) completed a drug test on July 21, 2011, which "tested negative but with trace amounts of THC," (7) had "5 new police contacts in a little over a month after his release," and (8) "has shown by his actions that he is not ready to make those positive changes in his life." The report concluded with a recommendation respondent be committed to DOJJ.

¶ 23 The residential progress report, offered by the State, indicated respondent's behavior had been inconsistent, that he often displays an "I don't care attitude," and he needs to take more responsibility for his actions and show more initiative.

¶ 24 The MHJJ pamphlet, submitted by respondent, describes a program, funded by the Illinois Department of Human Services, that provides a variety of services aimed at helping minors who suffer from mental illness and who have been involved in the juvenile justice system.

¶ 25 In the letter, submitted by respondent, Louise Jackson of ACCESS Initiative describes respondent's successful cooperation with the program, which is aimed at helping him become successful at home, school, and in the community.

¶ 26 Following evidence and argument, the trial court found as follows:

"I find that the parents, guardian, or legal custodian of the minor are unfit or unable for some reason other than financial circumstances alone to care for, protect, train or discipline [respondent].

I don't find that [respondent's mother] is unwilling to do so. He is simply out of her control; so I'll strike that portion.

I do find the best interest will not be served by placement under Section 705 ILCS 405/5-740 and commitment is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent minor."

The court resentenced respondent to DOJJ for an indeterminate term, to terminate automatically in 3 years or upon respondent attaining the age of 21, whichever comes first.

¶ 27 In October 2011, following a hearing, the trial court denied respondent's motion to reconsider the sentence.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues the trial court erred as a matter of law by ordering him committed to DOJJ or, in the alternative, the court abused its discretion in committing him

to DOJJ. We disagree and affirm.

¶ 31 A. The Trial Court Did Not Err as a Matter of Law in Resentencing Respondent to DOJJ Following Revocation of His Probation

¶ 32 Because respondent's primary challenge to his sentence requires this court to construe the language of the Act, our review is *de novo*. *In re Rodney S.*, 402 Ill. App. 3d 272, 285, 932 N.E.2d 588, 600 (2010).

¶ 33 Respondent's primary argument is the trial court erred as a matter of law by committing him to DOJJ for the "status-offense conduct" of running away from home while on probation. Respondent misunderstands the nature of sentencing under section 5-720 of the Act (705 ILCS 405/5-720 (West 2010)). That section provides the procedures for revocation of a delinquent juvenile's probation or conditional discharge. If a petition is filed charging the respondent minor with violating a condition of his probation, section 5-720 requires the court to hold a hearing to determine whether a violation has occurred. 705 ILCS 405/5-720(2) (West 2010). Section 5-720(4) provides as follows:

"If the court finds that the minor has violated a condition at any time prior to the expiration or termination of the period of probation or conditional discharge, it may continue him or her on the existing sentence, with or without modifying or enlarging the conditions, *or may revoke probation or conditional discharge and impose any other sentence that was available under Section 5-710 at the time of the initial sentence.*" (Emphasis added.) 705 ILCS 405/5-720(4) (West 2010).

In turn, section 5-710 provides, in pertinent part, as follows:

"A minor found to be guilty may be committed to [DOJJ] under Section 5-750 if the minor is 13 years of age or older, provided that the commitment to [DOJJ] shall be made only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent." 705 ILCS 405/5-710(1)(b) (West 2010).

At the time respondent was initially sentenced in this case, section 5-750 provided, in pertinent part, as follows:

"[W]hen any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to [DOJJ], 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 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).

¶ 34 In this case, after finding respondent violated a condition of his probation, the trial court made an affirmative finding as to both (a) and (b) in section 5-750(1) and resentenced respondent to an indeterminate term in DOJJ—the same sentence originally imposed in May

2011 and vacated in July 2011 due to respondent's good report during his time in DOJJ. We note the court was only required to find one of the above parts of section 5-750(1) before ordering commitment. It found both applicable.

¶ 35 Respondent asserts his sentence is void because section 5-710(1)(b) prohibits the trial court from committing a delinquent juvenile to DOJJ if a term of incarceration is not permitted for adults found guilty of the same offense. According to respondent, because adults cannot be sentenced to incarceration for running away from home, the court was without authority to order respondent committed to DOJJ for that same conduct. However, respondent's argument fails because the court did not order him committed to DOJJ for the conduct that resulted in revocation of his probation.

¶ 36 The sentence imposed upon revocation of probation is not a sentence for the conduct that violated a condition of probation, but rather a new sentence for the original, underlying offense. See *People v. Young*, 138 Ill. App. 3d 130, 142, 485 N.E.2d 443, 450 (1985). "When a defendant is admitted to probation and that probation is revoked, the trial court may sentence the defendant to any sentence that would have been appropriate for the original offense." *Id.* at 134-35, 485 N.E.2d at 445. "When the circuit court revokes probation, a new sentence is imposed." *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 32, 976 N.E.2d 1109.

¶ 37 At the September 2011 resentencing hearing, the trial judge opened court by stating, "The matter was allotted for resentencing for the offense of unlawful possession with intent to deliver cannabis on school grounds, a Class IV felony." The court's September 2011 resentencing order lists the offense as "Unlawful Possession with Intent to Deliver Cannabis on School Grounds 720 ILCS 550/5.2(d)." Respondent's conduct of running away merely provided

the grounds for revoking his probation under section 5-720 of the Act (705 ILCS 405/5-720 (West 2010)). Once the court determined respondent had violated a condition of his probation, the court revoked probation and, pursuant to section 5-720(4), resentenced him for the original February 2011 cannabis offense. 705 ILCS 504/5-720(4) (West 2010).

¶ 38 The trial court did not err as a matter of law in ordering respondent committed to an indeterminate term in DOJJ under section 5-710(b) because adults found guilty of the Class 4 felony of possession with intent to deliver cannabis on school grounds (720 ILCS 550/5.2(d) (West 2010)) can be sentenced to a term of imprisonment for that offense. See 730 ILCS 5/5-4.5-45 (West 2010).

¶ 39 In his brief to this court, respondent cites five different sociological and psychological studies to support his position that incarceration of juveniles is generally a bad policy. To the extent respondent argues the trial court should be prohibited from resentencing juveniles to DOJJ following noncriminal, technical violations of probation, that is a decision to be made by the legislature, not this court.

¶ 40 B. The Trial Court Did Not Abuse Its Discretion in Ordering Respondent Committed to DOJJ for an Indeterminate Term

¶ 41 The disposition of a minor adjudicated delinquent rests within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *In re Griffin*, 92 Ill. 2d 48, 54, 440 N.E.2d 852, 855 (1982).

¶ 42 Respondent alternatively argues the trial court abused its discretion in ordering him committed to DOJJ for an indeterminate term. As respondent states in his reply brief to this court, "[b]ecause a minor whose sole revoking conduct is the non-criminal conduct of running

away, there is no criminal activity from which the public needs to be protected."

¶ 43 Respondent again rests his claim on the erroneous assertion the trial court fashioned its resentencing order based solely on respondent's conduct during his term of probation. As noted previously, the court's September 2011 order recommitting respondent to DOJJ for an indeterminate term was imposed for the underlying February 2011 cannabis offense. The court's July 2011 decision to vacate its May 2011 commitment order and place respondent on probation was an act of grace. Respondent's behavior while serving probation reflected on respondent's rehabilitative potential and ability to function in the community. The court was entitled to conclude it reflected adversely and resentence respondent accordingly. The court noted at the September 2011 resentencing as follows:

"[I]t's the court's feeling to this date, that children should be free of having to worry about encountering drug sellers, even their peers, on school grounds, and that parents shouldn't have to worry about sending their children to school where their children are going to be confronted with those choices."

¶ 44 The trial court also incorporated its findings from the May 2011 sentencing hearing, in which it noted (1) respondent was getting into confrontations and instigating fights, (2) respondent had burglary charges pending against him when he was caught with cannabis at school, (3) respondent engaged in "pretty much a crime spree that went on where houses were damaged, property was smashed, people woke up to things that were disturbed around their house or their cars," and (4) respondent and other students robbed a younger student of his gaming system and challenged him to a fight to regain his property. At that time, the court noted

this was a very serious offense, where defendant brought cannabis to a middle school with the intent to sell it to other students to make money. Each of these findings was properly before the court for consideration as to whether commitment was necessary to protect the public from respondent's criminal activity.

¶ 45 The trial court also noted in detail the mitigating factors it considered in coming to its sentencing decision, including (1) the fact respondent was born with cocaine in his system, (2) respondent's mental health diagnosis, and (3) recent deaths in respondent's family.

¶ 46 Based on our review of the record and transcripts, we conclude the trial court acted within its discretion in ordering respondent committed to DOJJ for an indeterminate term, not to exceed three years. Because we conclude the court properly determined commitment was necessary to protect the public from respondent's criminal activity, we need not address the court's alternative finding under part (a) of section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2010)). See *In re S.M.*, 229 Ill. App. 3d 764, 769-70, 594 N.E.2d 410, 414 (1992).

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the trial court's resentencing order.

¶ 49 Affirmed.