2015 IL App (4th) 140796-U

NO. 4-14-0796

FILED
January 26, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: VICTOR H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JD76
VICTOR H.,	)	
Respondent-Appellant.	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found (1) respondent forfeited review of the trial court's alleged improper consideration of certain factors at sentencing, (2) the social-investigation report included sufficient information for the trial court to sentence respondent to the Illinois Department of Juvenile Justice, and (3) the monetary assessments imposed against respondent were not authorized by statute and must be vacated.

¶ 2 In July 2014, the trial court found respondent, Victor H., guilty of the offense of resisting a peace officer and adjudged him to be a delinquent minor. In August 2014, the court sentenced respondent to the Illinois Department of Juvenile Justice (DOJJ) for a period of 364 days. In September 2014, the court denied respondent's motion to reconsider.

¶ 3 On appeal, respondent argues (1) the trial court erred in considering certain factors at sentencing, (2) the social-investigation report failed to include statutorily required information, and (3) he was improperly assessed certain fines. We affirm in part and vacate in

part.

¶ 4 I. BACKGROUND

¶ 5 In April 2014, the State filed a petition for adjudication of delinquency and wardship, alleging respondent, born in 1997, committed the offense of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)). In July 2014, respondent's bench trial commenced.

¶ 6 Champaign police officer Brian Rogers testified he was on duty at approximately 11 p.m. on April 20, 2014, when he saw two black males walking in the middle of the road. Rogers parked and exited his vehicle. He then told the males he wanted to talk to them, but they took off running. Rogers yelled at them to stop, but they continued running. Rogers gave chase, and respondent was later detained. Rogers identified respondent as one of the jaywalkers. Champaign police sergeant Matthew Crane testified he responded to Officer Rogers' call that he was chasing two subjects. He eventually stopped respondent and arrested him.

¶ 7 Respondent did not present any evidence. Following closing arguments, the trial court found the State proved respondent committed the offense beyond a reasonable doubt. The court then adjudged respondent to be a delinquent minor.

¶ 8 In August 2014, the trial court conducted the sentencing hearing. The court considered the social-investigation report, which included information on respondent's family, his prior court/police involvement, education, and agency involvement. The report also included an analysis/recommendation, wherein the juvenile-probation officer stated respondent makes "pie-crust promises," has "continued to thumb his nose at the Court," and has made "a joke of his situation." The report continued as follows:

"This is a young man who could have a very positive, very

> fruitful life. His family has always been nothing but supportive of him, and willing to provide him with whatever means necessary to be successful. Unfortunately, the respondent minor has returned their love and support time and again by showing them an inexcusable amount of heartache and disrespect; not only in his illegal behaviors and decision to lead a life of criminal behavior, but in his overall general attitude as well. As unfortunate as it may seem, the respondent minor has done nothing to prove to this officer or to this Court that if afforded an opportunity to participate in a community based sentence that he would at all be successful."

The report concluded with the recommendation that respondent be committed to the DOJJ.

¶ 9 In addressing the trial court, respondent stated he had a chance to go to "adult ed" in the upcoming school year if he could receive probation or be on an ankle monitor. Following recommendations, the court found it in respondent's best interest that he be made a ward of the court. The court also determined respondent's mother was unable, for reasons other than financial circumstances alone, to care for, protect, train, and discipline respondent. In fashioning a sentence, the court indicated it sought to enter an order that would redirect respondent from further criminal conduct and serve as a deterrent to others. The court found a secure confinement was necessary and commitment to the DOJJ was the least restrictive alternative. The court sentenced respondent to 364 days in the DOJJ.

¶ 10 Respondent's attorney filed a motion to reconsider, arguing the sentence was excessive because it did not allow respondent to utilize community resources that were available. In September 2014, the trial court denied the motion. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. Sentencing Factors

¶ 13 Respondent argues the trial court erred in considering several improper sentencing factors before committing him to the DOJJ. We find this issue forfeited.

¶ 14 In its brief on appeal, the State argues respondent has forfeited this issue by failing to object at trial and raise the issue in a posttrial motion. In *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009), our supreme court stated:

> "In a criminal case, a defendant forfeits review of a claimed error if she does not object at trial and does not raise the issue in a posttrial motion. [Citation.] 'This principle encourages a defendant to raise issues before the trial court, thereby allowing the court to correct its errors *** and consequently precluding a defendant from obtaining a reversal through inaction.' [Citation.] This same forfeiture principle applies in proceedings under the Juvenile Court Act [citation], although no postadjudication motion is required in such cases [citation.]"

See also *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 493 (2009) (stating "minors are not required to file a postadjudication motion"). In this case, respondent did not object at sentencing or raise in his posttrial motion the issue he now sets forth on appeal. Thus, these issues are forfeited unless respondent can demonstrate plain error.

¶ 15 The first step in a plain-error analysis is to determine whether error occurred. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773. If a clear or obvious error exists, the requested relief will be granted: "(1) if 'the evidence is so closely balanced that the error alone threatened

to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). Under both prongs, the respondent bears the burden of persuasion. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773.

¶ 16 Generally, a trial court's sentencing disposition is reviewed for an abuse of discretion. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22, 8 N.E.3d 1142. However, the questions of whether the court complied with the statutory requirements or relied on improper factors are questions of law that we review *de novo*. *Ashley C.*, 2014 IL App (4th)131014, ¶ 22, 8 N.E.3d 1142.

¶ 17 Respondent argues the social-investigation report included the extensive criminal histories of his father, stepfather, and two brothers. Respondent acknowledges his stepfather's criminal history was relevant because respondent was living with his mother and stepfather and their home was an alternative to detention. The report noted respondent's father was on parole and had a "lengthy criminal history, dating back to 1985." The report also listed the criminal history of respondent's brothers, including Mark, who lived independently, and Quintin, who was incarcerated in the Illinois Department of Corrections. Respondent argues this information was highly prejudicial.

¶ 18 In *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 60, 1 N.E.3d 86, this court took issue with the trial court's emphasis on the criminal history of the minor's father during sentencing. There, defense counsel raised the issue of the criminal history of the minor's father and worried there was " 'significant danger for this young man to follow in his father's footsteps.' " *Raheem M.*, 2013 IL App (4th) 130585, ¶ 12, 1 N.E.3d 86. The social-investigation

report also included two pages of criminal convictions for the minor's father. *Raheem M.*, 2013 IL App (4th) 130585, ¶ 14, 1 N.E.3d 86. This court stated "a defendant should not be punished for the crimes of his father absent the defendant's involvement in those same crimes." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 60, 1 N.E.3d 86. This court also did "not see the relevance of the criminal history of respondent's biological father, especially when the evidence presented showed respondent had no contact with his father, who was incarcerated out of state." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 60, 1 N.E.3d 86.

¶ 19 In *Ashley C.*, 2014 IL App (4th) 131014, ¶ 32, 8 N.E.3d 1142, the respondent, relying on *Raheem M.*, argued it was error to include the criminal history of her mother, father, and stepfather in the social-history report. This court distinguished *Raheem M.* and took the opportunity to clarify our earlier opinion as follows:

> "We did not mean to imply the criminal history of a minor's family members is irrelevant to a proper disposition. The case before us is a perfect example of why such information is relevant. Here, Ashley C.'s mother and stepfather were both incarcerated at the time of the sentencing hearing. Clearly, they could not provide an alternative to incarceration for respondent. Ashley had limited contact with her father, who lived in Louisiana. The existence of his criminal record also was relevant to whether he was a viable placement for respondent. The undue emphasis placed on Raheem's father's criminal history, where his father had not raised him and where Raheem had had no contact with his father, and the implicit imputation of those wrongs to Raheem distinguish that

case from the one before us." *Ashley C.*, 2014 IL App (4th) 131014, ¶ 33, 8 N.E.3d 1142.

¶ 20 Here, respondent's claim that the inclusion of the criminal histories of his father and brothers was "highly prejudicial" is without merit. The criminal histories of respondent's relatives were relevant to the issue of the least restrictive alternative to commitment. Respondent had been known to absent himself from his mother's home without telling her where he was staying. Respondent's father and one brother lived in Champaign, while another brother resided in prison. The report provided the trial court with a complete picture of respondent's family, their whereabouts, and potential placements. Neither the parties nor the court mentioned the criminal histories of respondent's father or brothers at sentencing. Moreover, there was no "undue emphasis" placed on the criminal histories of respondent's family members. We find no error.

¶ 21 Respondent argues the social-investigation report improperly commented on the criminal history of respondent's father by emphasizing his father's recidivism following several opportunities to participate in community-based sentences. However, respondent's father's criminal history and attempts at rehabilitation were relevant to whether he was a suitable placement alternative for respondent. The report did not attempt to tie the father's history of community-based sentences to the conclusion that respondent would not be successful if given the opportunity to participate in a similar sentence. Moreover, neither the attorneys nor the trial court mentioned the father's failures at community-based sentences in fashioning a sentence. We find no error.

¶ 22 Respondent argues the analysis and recommendation included in the social-investigation report were not fair and impartial. In setting forth the requirements of the social-

investigation report, section 5-701 of the Juvenile Court Act of 1987 (Juvenile Court Act) provides, in part, as follows:

> "The written report of social investigation shall include an investigation and report of the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, personal habits, minor's history of delinquency or criminality or other matters which have been brought to the attention of the juvenile court, information about special resources known to the person preparing the report which might be available to assist in the minor's rehabilitation, and any other matters which may be helpful to the court or which the court directs to be included." 705 ILCS 405/5-701 (West 2012).

While respondent notes there is no express legislative direction for the report to include an "analysis" or "recommendation," he acknowledges many probation officers regularly include such information in their reports. See *People v. Young*, 52 Ill. App. 3d 671, 675, 367 N.E.2d 976, 979 (1977) (stating that although the Unified Code of Corrections "does not expressly authorize a probation officer to make a sentence recommendation, we believe that the trial judge may receive such a recommendation"). However, respondent argues the author of the social-investigation report was not neutral or fair and impartial. Respondent takes issue, *inter alia*, with the report's statements that he makes "pie-crust promises," "has continued to thumb his nose at the Court," and has made "a joke of his situation."

¶ 23 As noted by the appellate prosecutor, a recommendation as to sentence is helpful considering the variety of alternatives available to the juvenile court judge. In contrast to the

judge, whose knowledge of the minor's circumstances is dependent on what comes out in the courtroom, the juvenile-probation officer has a greater opportunity to become familiar with all aspects of the minor's life, including family history, educational background, police involvement, and other information. Information of this nature, and a recommendation based on the minor's life circumstances, can prove helpful to the court in fashioning a sentence. We find no error.

¶ 24 Respondent argues the trial court improperly considered the sentence would deter others from committing a similar crime. At the sentencing hearing, "the court shall determine the proper disposition best serving the interests of the minor and the public." 705 ILCS 405/5-705 (West 2012). In considering whether secure confinement of the minor is necessary, the court is required to review factors including the minor's age, criminal background, assessments, education, and health. 705 ILCS 405/5-750 (West 2012).

¶ 25 Although deterrence is not a listed factor to consider under the Juvenile Court Act, we find the trial court did not err in mentioning it. The court's reference to deterring others was *de minimis*. Instead, the court's sentencing decision focused on respondent's behavior and failure to comply with services and court orders. See *People v. Miller*, 2014 IL App (2d) 120873, ¶ 37, 9 N.E.3d 1210 (stating "a reviewing court should not focus on a few words or statements of the trial court, but should make its decision based on the record as a whole"). We find no error.

¶ 26 Respondent argues the trial court erred in considering his apparent lack of empathy for purposes of sentencing. After issuing the sentence, the court addressed respondent's behavior, noting he had shown his mother "extreme disrespect." The court then told respondent he needed to think about "empathy," *i.e.*, understanding "how my actions affect other people and for that reason, I don't do things to purposefully annoy or frustrate other people."

¶ 27 Respondent notes empathy, like deterrence, is not a listed sentencing factor for the juvenile court judge. While an accurate statement, the trial court's mention of respondent being more empathetic occurred after it had already sentenced him to the DOJJ. Moreover, that the court sought to give respondent advice on respecting his mother and being empathetic to her concerns can hardly be considered inappropriate given respondent's behaviors. We find no error.

¶ 28 Respondent argues the social-investigation report improperly included a list of his police contacts. In *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1077, 904 N.E.2d 112, 123 (2008), this court concluded the trial court can consider "a number of factors, including prior arrests, station adjustments or curfew violations, and the social-investigation report when determining whether commitment is necessary." This court has continued to adhere to *Nathan A.C.*, and we will do so here. See *Raheem M.*, 2013 IL App (4th) 130585, ¶ 44, 1 N.E.3d 86. Thus, we find no error. As we find the trial court did not commit error as to any of these issues, there can be no plain error and we will honor respondent's forfeiture.

¶ 29 B. Social-Investigation Report

¶ 30 Respondent argues the social-investigation report failed to include statutorily required information regarding mental-health resources available to assess and assist him. We disagree.

¶ 31 Like the previous issue, the State argues respondent has forfeited his argument as to the alleged error by failing to raise the issue at sentencing or in his motion to reconsider sentence. At the sentencing hearing, the trial court stated respondent's counsel had noted no inaccurate or missing information in the social-investigation report. In the motion to reconsider, counsel argued respondent's sentence was excessive because it did not allow respondent the opportunity to utilize various community resources that were available. Under a plain-error

analysis or on the merits, we would find no error.

¶ 32 We previously noted the social-investigation report requires information on "the minor's physical and mental history and condition." 750 ILCS 405/5-701 (West 2012). Section 5-750(1) of the Juvenile Court Act provides as follows:

> "Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the [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 it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the [DOJJ] is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to confinement. Before the court commits a minor to the [DOJJ], it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:
>
> (A) Age of the minor.
>
> (B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the [Child and Adolescent Needs and Strengths].

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based serves that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within [DOJJ] that will meet the individualized needs of the minor." 705 ILCS 405/5-750(1) (West 2012).

¶ 33 In 2012, the General Assembly amended the Juvenile Court Act to provide that "a juvenile shall not be sentenced to the DOJJ without evidence before the sentencing judge of less

restrictive alternatives, except in the case of murder." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 53, 1 N.E.3d 86. In that case, this court stated:

> "Prior to committing a juvenile to the DOJJ, a trial court must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and the court must state the reasons why said efforts were unsuccessful. This is not some *pro forma* statement to be satisfied by including the language of the statute in a form sentencing order. Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 50, 1 N.E.3d 86.

¶ 34 In this case, the trial court considered the social-investigation report. The report indicated respondent supposedly lived with his mother and stepfather. However, his mother stated he was not residing in the home and she did not know exactly where he was staying. Respondent's parole agent had no contact with respondent "in a considerable amount of time," and he was wanted on a warrant due to his noncompliance with parole. Respondent had a prior commitment to the DOJJ in January 2013.

¶ 35 The report indicated respondent had never participated in a diversionary program and was not enrolled in any educational program. Respondent had been referred to the Parenting with Love and Limits Program, but his mother was unable to schedule any appointments because he was "continuously running away from home." Respondent completed the Youth Assessment Screening Instrument, which indicated he was "a high-risk level offender."

¶ 36 The report stated respondent's mother reported the minor was in good health. Although he had been diagnosed with attention deficit/hyperactivity disorder, he did not take medication. Further, the report stated, "while he has never been diagnosed as suffering from any mental or emotional health issues, [respondent's mother] reported to this officer that she believes he may have 'psych issues; there has to be something wrong with him to make him do the things he does.' " As to alcohol and illegal drugs, the report stated respondent's mother believed, although she could not be certain, that respondent "may be using some type of illegal substance(s)." Respondent had never participated in any type of substance-abuse counseling or educational program. At the sentencing hearing, defense counsel argued respondent's mother was willing and able to provide a suitable home life for him and asked the trial court to place respondent on probation and electronic monitoring.

¶ 37 The trial court stated it considered evidence concerning efforts to identify a less restrictive alternative to commitment in the DOJJ. However, the court found commitment necessary, given respondent's behavior and his failure to comply with services and court orders. At the hearing on the motion to reconsider, the court noted there were services in the community that could have assisted respondent. However, the court found respondent "was prone to miss appointments, he came and went at his house whenever he felt like it, he was on parole from the [DOJJ] and failed to cooperate with his parole officer." The court concluded there was "no indication whatsoever that the Respondent Minor would avail himself of the services that are here in the community that could have assisted him based upon his prior conduct." Here, the record indicates the trial court was presented with and considered less restrictive alternatives to incarceration.

¶ 38 Respondent's claim on appeal that the social-investigation report did not set forth

information on mental-health resources has no merit. That respondent's mother believed her son "may" have psychological issues provides insufficient evidence for the probation officer to research mental-health services. Moreover, defense counsel did not mention any mental-health issues at the sentencing hearing. The evidence indicated respondent was unwilling to comply with any community-based sentence. Thus, the court's decision to commit him to the DOJJ was not an abuse of discretion.

¶ 39 C. Fines and Fees

¶ 40 Respondent argues he was improperly assessed a $25 "court finance fee" (55 ILCS 5/5-1103 (West 2012)) and a $5 "drug court program" fine (55 ILCS 5/5-1101(f) (West 2012)). We agree, and the State concedes.

¶ 41 In the case *sub judice*, the trial court did not order any fines following respondent's adjudication. However, the Champaign County circuit clerk later imposed the court-finance fee and the drug-court assessment. Initially, we note a "circuit clerk does not have the power to impose fines." *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246. Both the court-finance fee and the drug-court assessment have been found to be fines. *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 54, 56, 18 N.E.3d 912. Thus, those fines must be vacated.

¶ 42 The State concedes these criminal fines should be vacated because the statutes do not authorize fines for adjudicated delinquent minors. See *Raheem M.*, 2013 IL App (4th) 130585, ¶ 63, 1 N.E.3d 86. Accordingly, as we have vacated the fines and as there is no statutory authority for their reimposition, we need not remand to the trial court.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm respondent's DOJJ sentence and vacate the monetary assessments imposed upon him.

¶ 45 Affirmed in part and vacated in part.