2018 IL App (2d) 180689-U
Nos. 2-18-0689 & 2-18-0698, cons.
Order filed December 21, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DEVARIOUS S., a Minor	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	Nos. 18-JD-157
	)	18-JD-180
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Devarious S., Respondent-	)	William J. Parkhurst,
Appellant.)	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's finding that mother was unable to care for, protect, train, and discipline the minor was not against the manifest weight of the evidence, and its determination that commitment to the Department of Juvenile Justice was the least restrictive alternative available was not an abuse of discretion.

¶ 2 On July 30, 2018, after the minor, Devarious S., had admitted to two separate offenses of unlawfully possessing a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2016)) and also admitted that those offenses were violations of his parole on prior offenses, the trial court committed him to the custody of the Department of Juvenile Justice (Department) for an indeterminate term. Devarious appeals, asserting that the trial court's findings with respect to his

mother were inconsistent with its prior statements, and that he should have been released to his mother's care as she requested. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts were adduced during Devarious's sentencing hearing and the prior proceedings.

¶ 5 Devarious had an extensive criminal history as a juvenile. That criminal history included two 2015 acts of aggravated robbery in which he wielded a knife, which Devarious admitted committing. In February 2016, he was sentenced to 60 months of probation on these Class 1 felonies and was ordered to complete certain services. At various points thereafter, he admitted to violating the terms of his probation. In July 2016, he participated in the Breaking Free substance abuse program, but he did not complete it and was discharged for non-attendance. In September 2016, it was recommended that he undergo a psychological evaluation and participate in anger management services, but this did not occur. He was sent to Glen Mills, a residential school in Pennsylvania that he attended for 18 months, from September 2016 through March 2018.

¶ 6 On May 6, 2018, Devarious was arrested for possessing a stolen car (case no. 18-JD-157) and appeared before the juvenile court accompanied by his stepfather, Cory W. He was 17 years old. The defense did not contest probable cause but asked that Devarious be released and returned to his mother's and stepfather's home. The defense noted that Devarious had been employed for the past two weeks at Walmart, that he was attending school, and that he had a young child. The State opposed release on the grounds of public protection, based on Devarious's prior criminal history including the two violent felonies noted above. The State reported that Devarious had been on probation for those offenses at the time he committed the

present offense, and it would be seeking to revoke his probation. The trial court ordered Devarious detained in the juvenile home until the next court date, which was two days later.

¶ 7 On May 8, Devarious appeared in court with his stepfather. The defense again asked that Devarious be released, arguing that he had been successful in many of the programs offered at Glen Mills. The trial court agreed. Devarious was returned home subject to several conditions, including a curfew and the requirement that he attend school. The trial court spoke to Devarious, encouraging him to take his situation seriously, pointing out that many of the less restrictive options available for delinquent juveniles had already been tried.

¶ 8 Three days later, on May 11, Devarious was arraigned on two counts of domestic battery. His stepfather was present in court. Devarious had refused to go to school and the police were called. While the police were there, Devarious hit his brother in the head and was arrested. The trial court went over the domestic battery charges as well as the petitions to revoke probation that the State had filed. The defense did not contest probable cause. The State then argued that Devarious should be detained because, despite being returned home only a few days earlier, he was not attending school, not complying with curfew, and was disrespectful to his mother. The trial court reviewed a synopsis prepared by court services in which Devarious's mother, Felicia W., reported that he had been nothing but trouble since he returned from Glen Mills and she could not control him. The trial court ordered that Devarious again be detained in the juvenile home.

¶ 9 Two weeks later, on May 25, all four pending cases (possession of a stolen vehicle, domestic battery, and the two probation revocations) were before the court for status. Devarious's stepfather was again present. The defense asked to revisit the issue of detention and the State objected. The trial court asked whether multi-systemic therapy (MST) had been tried.

The State advised that it had been offered a few years ago but Felicia W. had declined to participate. Further, Devarious was now too old to be accepted into MST. The trial court then addressed Devarious:

> "I am—I am concerned, in a way, that I am sending you home and I am not putting anything in place to help. Just stick with me for a minute.
>
> I don't want to set you up to fail. I want you to succeed. And what do I mean by that? I want you to have a nice summer where the police don't have to get called, where you don't have to come in and see my ugly face, where you just have a good time being a kid. That is what I would wish for you this summer.
>
> You can't be hitting anybody. You have got to follow the rules at home. You are very lucky you have got parents that want to take you home. We have got a lot of kids that nobody wants to take them. I can't find a place to put them. So they have to cool their heels in detention the whole summer. And that is wrong.
>
> Here is the other thing I would say to you is I am trying to help you by doing this. I want you to succeed.
>
> But the other way to look upon this is I am giving you an opportunity to screw up. If you are out running the streets or are misbehaving at home, we are kind of running out of options here.
>
> We have had you in detention. We sent you to a residential facility. You have been on probation. You have allegedly had problems with that. At some point, I run out of options for you. And then the State may start asking for something more severe. And I don't want that to happen to you.

> I want you to be successful. So I want—I am going to give you this chance to go home and have a good summer. But you have to be very careful. And you have to think about hopefully things you learned at Glen Mills, about calming yourself, taking a break, asking the family if they will give you a timeout. And I would hope the family would cooperate with that.
>
> * * *
>
> So I am going to send you home. And it is—it is a beautiful weekend with great weather and hot weather. And there will be people out running the streets. I don't want that to be you."

The trial court then ordered Devarious released subject to conditions, including not having any hostile contact with family members, keeping curfew, and attending school (and summer school if that were recommended).

¶ 10 One week later, on June 1, Devarious was arrested for possession of another stolen vehicle. After his arraignment on the new charge (no. 18-JD-180), the trial court order that he be detained. Devarious remained in detention thereafter.

¶ 11 On June 6, both Devarious's mother and his stepfather were present in court. Felicia W. unsuccessfully asked that Devarious be released to her care. Commenting on the domestic battery charges, she objected to them, saying that she had only called the police because Devarious did not want to go to school, and she would have preferred to decide for herself whether a scuffle between her sons merited his arrest and charges being filed.

¶ 12 A pretrial was held on June 26, at which Felicia W. was again present. The attorneys advised the court that Devarious had agreed to plead guilty to the two cases of probation revocation and the two current cases of possessing a stolen vehicle. The State would *nolle pros*

the charges of domestic battery. There was no agreement on an appropriate sentence, but the State had agreed not to seek commitment to the Department on the most serious charges, which were the probation revocations on the 2015 Class 1 felonies of aggravated robbery. The State could still seek commitment on the two current cases, which were Class 2 felonies, but those charges could carry a lesser term of commitment than the Class 1 felonies. The trial court admonished Devarious regarding his guilty plea and he confirmed his decision to plead guilty despite his mother's expressed concerns and reservations. With Felicia W.'s permission, the trial court then held a Rule 402 conference outside her presence. After the conference, Felicia W. asked to revisit the issue of Devarious's continued pretrial detention, but the trial court continued that detention "for public safety."

¶ 13 On July 30, the trial court held the sentencing hearing. The probation officer assigned to Devarious in the spring of 2018, Kevin Murray, testified first. He covered Devarious's history as a juvenile offender and the various services and alternatives provided to him in the past. As a result of this history of repeated offenses and failed services, the probation office believed that the only viable sentencing option was commitment to the Department. Regarding Devarious's time at Glen Mills, Murray noted that he participated in a full academic curriculum, received commendable grades, was on the school wrestling team, and engaged in community service activities. Asked about diagnoses of attention-deficit/hyperactivity disorder (ADHD) and bipolar disorder, Murray testified that no supporting documentation for such diagnoses was contained in the record. Further, there was no indication that Devarious had ever received treatment for any such diagnoses. Murray had seen a note in the file that Devarious had refused medication for mental health conditions because of how the medication made him feel.

¶ 14 Felicia W. testified that Devarious did well when he was in a controlled setting such as Glen Mills. She was very proud of his success in the school wrestling program, noting that he had been one of the best wrestlers in local competitions there. He also participated in track and field events. Before Devarious went to Glen Mills, he had been in an alternative high school that she did not view as a constructive environment because he was surrounded by other kids who were making poor choices. One of the reasons that Devarious did not want to go to school when he returned from Glen Mills was that he was going back to the same poor alternative high school. To address this problem, Felicia W. had moved the family to a different school district, moving from Aurora in Kane County to East Aurora in Du Page County, where there was a much better high school that Devarious could attend to finish his last few terms. She believed that he would have a better chance now that he would be in a better environment, and asked that he be released to her care.

¶ 15 Regarding his mental health, she had been told that Devarious had ADHD when he was in the third grade. She made the decision not to give him medication for the disorder. She did not recall when Devarious was diagnosed as having bipolar disorder, and he had never received any treatment for that. He had not taken any medications while he was at Glen Mills. She also explained why she had declined to participate in MST when it was offered in 2016: she had participated in MST with one of her younger children and had a low opinion of it, believing that it focused on the parents rather than the child who needed help. However, if it were still an option that could prevent his being committed to the Department, she was willing to participate. If Devarious returned home, he could seek out his old job at Walmart. He would also have the opportunity to see his two-year old child, to whom he had not really been able to be a father.

¶ 16 Philip Wessel, the placement coordinator for Kane County Court Services, then testified. He had advocated for Devarious to be placed at Glen Mills in 2016 because Devarious had trouble with peer interactions and "criminal thinking." Also, Devarious was athletic, and Glen Mills had a good athletic program and a "work/study-type environment." Devarious was released from Glen Mills in March 2018 primarily because he had gone as far as he could there: he had completed all of the programs offered. Wessel characterized Devarious's stay at Glen Mills as "rocky," noting that Devarious had been moved to different rooms several times due to conflicts with roommates, but he conceded that Devarious was not necessarily or primarily to blame for these conflicts. Devarious had tested positive for cannabis in April 2018, shortly after returning home. Wessel was not aware of any diagnoses of ADHD or bipolar disorder for Devarious.

¶ 17 Finally, Devarious spoke in elocution. He apologized for "messing up" and promised that, if he were given another chance, he would get his life together. He would attend school, take medication, and change the people he hung out with. He wanted to prove everyone wrong about what he could do. He had made a list of immediate goals and goals for the next 20 years, which he gave to the trial court.

¶ 18 The trial court then ruled, finding that Devarious's history of repeated offenses despite the many treatment alternatives that had been offered required that he be committed to the Department for an indeterminate term. Although it commended Felicia W. for her love and dedication toward Devarious, it found that she was unwilling and unable to care for, protect, train, and discipline him. Her unwillingness was shown by the fact that she had declined to participate in MST. The trial court also found that commitment to the Department was necessary to protect the public. In making its ruling, the trial court noted various relevant factors. For

instance, Devarious's refusal to take medication was an example of his rejection of other possible treatment options. The fact that Devarious's second case of possession of a stolen motor vehicle involved a high-speed chase on an interstate highway was an example of the danger his actions posed to the public. The trial court noted that it had, over the course of six weeks, released Devarious to return home twice, but each time he had been arrested on a new offense within a few days. Indeed, Devarious had an extensive criminal background. The trial court also rejected Felicia W.'s belief that Devarious's misconduct was the result of his yielding too easily to peer pressure; the trial court noted evidence in the probation office's synopsis that, during one of the earlier aggravated robberies, other peers urged Devarious to stop what he was doing and let the victim go home, but Devarious instead continued the assault. The trial court concluded by saying that there really were no further alternative treatment options for Devarious:

> "Reasonable efforts were made to locate less restrictive alternatives to secured confinement and were unsuccessful. Again, absolutely true. Glen Mills is an example of that, but there were many others—electronic home monitoring, probation. Everything we have available we have tried in this case, and it either was unsuccessful, rejected, or—I would say unsuccessful because there's continuing criminal activity."

Further, the Department itself offered several programs that could meet the needs of Devarious.

¶ 19 Devarious filed a motion to reconsider the sentence, which the trial court denied. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Devarious challenges the decision to commit him to the Department as an abuse of discretion that rested on a finding of parental unfitness and unwillingness that was contradicted by the trial court's own prior comments. The State contends that this finding was not against the

manifest weight of the evidence and the court's ultimate decision was not an abuse of discretion in light of Devarious's criminal history and the many less restrictive alternatives that had already been tried unsuccessfully.

¶ 22 The purpose of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) is:

> "to secure for each minor *** such care and guidance, preferably in his *** own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; removing him *** from the custody of his *** parents only when his *** safety or welfare or the protection of the public cannot be adequately safeguarded without removal; *** and, when the minor is removed from his *** own family, to secure for him *** custody, care and discipline as nearly as possible equivalent to that which should be given by his *** parents." 705 ILCS 405/1-2(1) (West 2016).

The Act is to be "liberally construed to carry out the foregoing purpose." *Id.* 405/1-2(4). If a court finds a minor guilty of an offense, it must conduct a sentencing hearing and decide whether it is in the best interest of the minor to be made a ward of the court. 705 ILCS 405/5-620 (West 2016). If the court orders wardship, the court must "determine the proper disposition best serving the interests of the minor and the public." 705 ILCS 405/5-705(1) (West 2016).

¶ 23 The most serious sanction that may be imposed on a juvenile offender is commitment to the Department, which may not extend beyond the minor's twenty-first birthday. See *In re Dontrale E.*, 358 Ill. App. 3d 136, 138 (2005); *In re Christopher K.*, 348 Ill. App. 3d 130, 139 (2004). A court may commit a delinquent minor to the Department if it finds that his parents are unfit, unable, or unwilling to "care for, protect, train or discipline the minor," and that "it is necessary to ensure the protection of the public from the consequences" of the minor's criminal

activity. 705 ILCS 405/5-750(1) (West 2016). The court must also find that commitment to the Department "is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why [those] efforts were unsuccessful." *Id.* Finally, the court must find that secure confinement is necessary, considering statutory factors that include the minor's age, criminal background, assessments, educational background, and his physical, mental, and emotional health, as well as what community-based services were provided and whether the minor complied with those services, and the services that are available within the Department that would meet the minor's individualized needs. *Id.*

¶ 24 When determining the appropriate disposition for juvenile offenders, trial courts are given broad discretion. *In re D.D.*, 312 Ill. App. 3d 806, 810 (2000). Because the trial court is in the best position to observe the minor and the other witnesses, a reviewing court will not reverse the trial court's factual findings unless they are against the manifest weight of the evidence. *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009). We will reverse the trial court's overall dispositional decision only if it was an abuse of discretion. *Id.* A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or no reasonable person would take the view adopted by the trial court, or when its ruling rests on an error of law. *People v. Olsen*, 2015 IL App (2d) 140267, ¶ 11.

¶ 25 Here, Devarious seizes upon some of the trial court's comments to, or about, his mother Felicia W. to argue that its later finding—that she was unfit, unwilling or unable to care for, protect, train, and discipline him—was against the manifest weight of the evidence. For instance, Devarious argues that the trial court should not have stated that Felicia W.'s decision not to medicate her son for ADHD showed an unwillingness to exercise proper parental responsibility, pointing to studies suggesting that medication often is not needed for ADHD and

that the decision not to medicate a child is empirically reasonable. Devarious also notes that the trial court itself praised Felicia W.'s demonstrated commitment to her son and her willingness to uproot her family and move to a new home in a better school district for his sake. He contends that these comments contradict the trial court's finding of parental unwillingness.

¶ 26 We agree that the record contained evidence contradicting the trial court's characterization of Felicia W. as unwilling to adequately parent Devarious. However, the record also amply supports the conclusion that, her devotion notwithstanding, she was not able to discipline Devarious or keep him from repeated forays into delinquent behavior. Indeed, Felicia W. lamented to court services that she could not control Devarious after his return from Glen Mills. This evidence supports the trial court's finding that she was unable to care for, protect, train, or discipline Devarious. See *In re Thomas*, 56 Ill. App. 3d 587, 594 (1978) (where minor repeatedly reoffended while in his mother's custody, trial court's finding that mother was unfit, unable, or unwilling to care for, protect, train, or discipline minor was not against the manifest weight of the evidence).

¶ 27 Devarious's remaining arguments amount to a request that we reweigh the evidence and determine that commitment to the Department would not serve his best interests or the public interest. This we will not do. The trial court's determination that commitment was the most appropriate option was not an abuse of discretion, given Devarious's history of promptly reoffending every time he was released and the fact that none of the less restrictive alternatives that were tried enabled him to refrain from engaging in new criminal conduct.

¶ 28 III. CONCLUSION

¶ 29 For all of these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 30 Affirmed.