2018 IL App (5th) 170382-U

NO. 5-17-0382

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re C.L.B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Fayette County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 16-JD-56, 16-JD-59,
	)	16-JD-64, & 16-JD-65
C.L.B.,	)	
	)	Honorable Kevin S. Parker,
Defendant-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment adjudicating the minor delinquent and sentencing him to the Illinois Department of Juvenile Justice for an indeterminate period is affirmed where the court complied with the requirements of section 5-750 of the Juvenile Court Act of 1987 (705 ILCS 405/5-750 (West 2016)) before committing him to secured confinement.

¶ 2 As a preliminary matter, because this appeal involves a final order from a delinquent minor proceeding arising out of the Juvenile Court Act of 1987 (Act), Illinois Supreme Court Rule 660A(f) (eff. July 1, 2013) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of

appeal. Accordingly, the decision in this case was due on February 26, 2018. The case was placed on the February 22, 2018, oral argument schedule, and we now issue this Rule 23 order.

¶ 3 The respondent, C.B., who was 15 years old, was adjudicated a delinquent minor for five counts of burglary and one count of unlawful possession of a stolen vehicle. He was sentenced to the Illinois Department of Juvenile Justice (Department) for an indeterminate period, not to exceed his twenty-first birthday. The respondent appeals his sentence, arguing that the juvenile court failed to comply with the requirements of section 5-750 of the Act (705 ILCS 405/5-750 (West 2016)) before committing him to secured confinement. For the following reasons, we affirm.

¶ 4 This appeal involves four petitions for adjudication of wardship filed against the respondent in case Nos. 16-JD-56, 16-JD-59, 16-JD-64, and 16-JD-65. This court consolidated the cases on appeal. The State filed the petition for adjudication for wardship in case No. 16-JD-59 against the respondent on August 16, 2016, for two counts of unlawful possession of a stolen vehicle, one count of burglary of the Arthur Young building in Vandalia, two counts of theft of a motor vehicle, and one count of criminal damage to property. The petition for adjudication of wardship in case No. 16-JD-65 was filed on August 29, 2016, for two counts of burglary of Old Capital Vending and Options Salon, two counts of criminal damage to property, and two counts of theft. The petition in case No. 16-JD-64 was also filed on August 29, 2016, for one count of burglary of Tiger Lily Flower and Gift Shop, one count of criminal damage to property, and one count of theft. In case No. 16-JD-56, an amended petition was filed on August

29, 2016, for two counts of burglary of Vandalia Veterans of Foreign Affairs and Discount Tobacco, two counts of criminal damage to property, and one count of theft.

¶ 5 Thereafter, the State sought an order mandating the respondent's detention until the case was set for a hearing on the petitions for adjudication of wardship. A detention screening instrument form was completed, which indicated that the respondent received a total score of 22 and that a score of 12 or higher recommended that the juvenile be detained. The score was based on the following criteria: the respondent was charged with the most serious alleged current offense possible; he had one additional current felony offense; he had two or more felonies and prior arrests; he was on probation, parole, or supervision at the time that he allegedly committed the current offense; and there were aggravating factors that increased the overall score for determining detention. In addition, there were no mitigating factors that could have allowed the court to consider other possible alternatives to detention.

¶ 6 At the August 2016, hearing, the trial court questioned the respondent's mother as to whether she had control over him and could make him stay home during the pendency of the proceedings. The respondent's mother responded, "I can make him stay home." The respondent's probation officer indicated that he had not been compliant with previous probation. Thus, the court granted the State's motion and ordered him detained at the Madison County Detention Center. At a subsequent hearing, the respondent requested to be released to home confinement, but the court denied his request after his mother indicated that he was living with her at the time that the alleged criminal offenses occurred.

¶ 7 On November 3, 2016, the respondent pled guilty to two counts of burglary in case No. 16-JD-56, one count of unlawful possession of a stolen vehicle in case No. 16-JD-59, one count of burglary in case No. 16-JD-64, and two counts of burglary in case No. 16-JD-65. In exchange for the open guilty plea, the State agreed to dismiss the remaining charges. There was no agreement as to sentencing. The court accepted the guilty plea, ordered the probation department to prepare a social history report, and set a date for the dispositional hearing.

¶ 8 According to the social history report filed on December 12, 2016, the respondent had an extensive criminal history, consisting of various convictions including animal cruelty for killing a horse, arson for burning down a garage, criminal damage to property, and aggravated battery against a school employee. He was sent to juvenile detention three times, but he had not been in "DOC custody." Although the probation officer had attempted to reach his mother for an interview, she was unsuccessful because the probation department did not have the correct phone number.

¶ 9 With regard to the present motor vehicle theft charges, the respondent reported that he stole the vehicles to visit his father in St. Louis. He had not been drinking or using drugs before committing the offenses, but he did smoke marijuana after. Regarding the burglaries, he reported that he had used "meth that day." He further reported that he had started using alcohol and drugs at a young age, that he was smoking marijuana daily and using methamphetamines approximately one time per week, and had tried inhalants, synthetic substances, cocaine, Xanax, and Vicodin. Although he had a prescription for

Adderall, he did not take the medication and instead sold it. He reported that he had never been to drug or alcohol counseling but acknowledged that he needed treatment.

¶ 10 Although the respondent reported that he was diagnosed with attention deficient hyperactivity disorder (ADHD), bipolar disorder, and depression, the probation officer was unable to verify this information with his mother or a counseling agency. He remembered being hospitalized once and reported that he had attempted suicide for attention. He indicated that he was bullied for his weight but then learned to fight back. While in detention, he attended a "calm group" and learned coping skills for his anger issues. He accepted blame for his actions, saying that he was a follower, which got him into trouble, that he was "being dumb and hanging out with the wrong people," and that he did not have any friends that were positive influences. He was not regularly attending school. However, while in detention, he attended the Madison County Detention Home School Program. His goals were to graduate high school, attend college, and obtain a good job "like an engineer."

¶ 11 The social history report indicated the following three risk factors: prior substance abuse history; not attending school or a general education diploma (GED) program; and having few peers that were positive influences. The report identified the following "targeted interventions and supervision strategies/available resources": substance abuse assessment and treatment; mental health counseling; and drug testing. The report indicated that, if the trial court were to sentence him to a probation term, the priorities for probation would be the listed targeted intervention and supervision strategies and a maximum level of supervision.

¶ 12 On January 5, 2017, the respondent requested that he be released from juvenile detention. His mother informed the trial court that, at the time of the incidents, she was working two jobs but that she was currently unemployed and could stay home with the respondent. The court denied his request, finding that his release was not in the public's best interest.

¶ 13 At the January 18, 2017, dispositional hearing, the parties stipulated to the facts contained in the social history report and to the court's consideration of the filed report. The State presented no further evidence in aggravation. As evidence in mitigation, the respondent presented testimony from Beth Klenke, a teacher with the Edwardsville School District. Klenke testified that she was currently employed at the Madison County Juvenile Detention Center as a teacher. She explained that the detention center followed the Edwardsville School District curriculum and that students attended class every day for five hours.

¶ 14 Klenke testified that the respondent had been her student since August 2016. She testified as follows regarding the respondent as a student:

> "[He] has come a long way. When he first came in, he *** barely knew his multiplication facts, didn't enjoy reading. Now he is working almost to algebra 1. He now takes books to his room. He's read several of my book series. He also was introduced to cursive handwriting and then took it upon himself to become fluent. He participates in class. He's a very good student and has come a long way."

She further noted that, although his "skills were low," he came in with a good attitude, ready to work, and his grades have "averaged As and Bs the entire time he's been [there]." As for his behavior in class, she testified that she did not have any issues with him, that he is respectful to her, and that, if he does misbehave, she just has to "give him a dirty look or something, and he'll straighten up for me." She observed that his interest in learning had increased.

¶ 15 Starla Giller, the respondent's mother, testified that she was unemployed, had four children, and had parental rights over those children, including the respondent. He resided with her for most of his life; he lived with his father in 2013 for approximately one year. He lived with her at the time he committed the present offenses and was not regularly attending school. He had been in detention since August 2016, and she talked to him every week and visited twice. She observed a change in his "maturity level" in that he "seems more grown or aware of things." She believed that he was not "as apt to run around and get in trouble" and that he understands what he did was wrong. He has said that, when he is released, he wants to return home, find employment, and attend school. She observed him talking to his younger brother about staying out of trouble, staying in school, and going to college. She explained that, before detention, he did not really care about anything and did not care about his brother's education. He has also expressed remorse for his actions.

¶ 16 Starla acknowledged that the respondent was previously on probation, which was successfully completed in a few of his cases but not all of them. However, she believed that, if he were placed on probation and required to undergo mental health counseling and

drug or alcohol counseling, he would comply with probation. She testified that his father has not had any contact or involvement with him in the last couple of years.

¶ 17 Cory B., the respondent's younger brother, testified that he was close with the respondent and that, since the respondent has been in detention, he talks to him every week and has visited him. During their conversations, the respondent talks to him about going to school, keeping his grades up, staying in sports, and having a good life. Cory opined that the respondent has "matured exponentially," that he "seems a lot more grown up instead of acting childish," and that he wants to turn his life around. The respondent has spoken to him of future plans, stating that he wants to obtain employment, spend more time with his family, and attend school. Cory believed that the respondent has "seen the error of his ways" and that he "misses his family too much to mess up again."

¶ 18 The respondent testified that he was 16 years old and currently incarcerated at the Madison County Detention Center. He acknowledged that he was on probation when he was charged with the current offenses, and he expressed remorse for his actions and acknowledged that he was wrong. He testified that he wanted to do better because he had family that needed him and that he wanted to "be somebody one day." After his release from detention, he wants to graduate high school, attend college, find employment, and spend time with his family. He wanted to attend a "regular school" and not a behavioral school, and he wanted to play sports.

¶ 19 Although the respondent acknowledged that he had a drug or alcohol problem, he testified that he never told anyone about those issues. He believed drug or alcohol counseling would be beneficial. When he was previously on probation, he did not

receive any drug or alcohol counseling or mental health counseling, he did not attend any anger management classes, and he was not evaluated for any mental health issues. He failed three drug tests while on probation. He was prescribed medication for ADHD, but he was not taking the medication. He believed that it would be beneficial to attend mental health counseling and to take his prescribed medication. He acknowledged that he had an anger problem and that he thought anger management class would be beneficial. He attended a “calm group” at the detention center and it helped with his anger issues. Although he was enrolled in school, he did not attend regularly because they had a "hands-on" policy where the school authorities were allowed to put their hands on the students, and, thus, he did not like the school.

¶ 20 After the presentation of the aggravating and mitigating evidence, the trial court asked for disposition recommendations. Given the respondent's prior criminal history and the fact that his conduct could have caused and/or threatened serious harm, the State argued for commitment to the Department for a maximum term of four years, which would be the minimum sentence for a Class 1 felony for an adult offender, or until his twenty-first birthday.

¶ 21 The State noted that there was a "cluster" of crimes that were committed; namely, unlawful possession of a stolen vehicle, which was a Class 1 felony, and five burglaries, which were all charged as Class 2 felonies. The State further noted that the respondent had been a part of the juvenile system since he was nine years old, and his criminal activity has escalated from small, petty offenses, such as disorderly conduct, to burglary and stealing vehicles.

¶ 22 The State then went through the seven factors that the trial court is required to consider to commit a juvenile to the Department. The State noted that the respondent was not attending school before he was placed in the detention center and that it was only when he went to detention and was required to attend school that he showed significant progress. The State noted that he was at a third- or fourth-grade level for basic skills when he should have been at a sophomore, junior, or senior level based on his age. The State argued that the educational services that would be offered in the Department would give him the opportunity to get his GED and/or continue his schooling, and it would also give him the ability to obtain a secondary degree.

¶ 23 The State acknowledged that, if he was given probation, he would live with his mother, and it would be unlikely that he would be able to return to the regular school district and would instead have to return to the behavioral school, which he did not like and believed was not conducive to his learning. The State noted that the respondent was diagnosed with ADHD, bipolar disorder, and depression and that he was not actively getting any services for those conditions. However, the State noted that, in the Department, the respondent would receive a mental health evaluation to determine the necessary services, and then he would receive the necessary services to get his bipolar disorder, depression, and ADHD under control. He would also be offered counseling services for his drug problem.

¶ 24 The State also argued that, based on the social history report, the respondent would be at the highest level of probation, and he would be required to do all of the things that he was required to do in detention. However, the State opined that the nature

of the charges warranted detention. Specially, the State argued as follows: the "crimes that were committed were crimes against people and places. Burglary in and of itself is considered an act of violence against someone. He might not have used a gun or anything of that nature to gain access to these places, but he used physical violence to get into these and to physically remove property of other people." Thus, the State argued that he was in direct need of intervention, that there were no other alternatives to detention, and that detention would ensure the protection of the community from the consequences of any further criminal activity.

¶ 25 In contrast, the respondent's counsel recommended a sentence of probation. Initially, counsel objected to the State's testimony at closing argument regarding the services offered by the Department as the State did not provide witness testimony or documentation relating to the available Department programs. Counsel also argued that the State failed to meet the statutory requirements of the Act in that it did not present evidence of specific services offered by the Department that meet the respondent's individualized needs. Counsel also noted that the respondent had not received a mental health evaluation or an evaluation for drug or alcohol abuse to determine his specific needs. Counsel argued that the respondent's previous probation did not adequately suit his needs in that he had substance abuse and mental health issues, and he did not receive any treatment for those issues while on probation. According to counsel, the respondent's previous probation was "simply random drug testing"; "[s]how up once a month, talk to your probation officer"; did not provide adequate supervision, and was not "strict enough" to meet his needs. Further, counsel argued that there were other service

alternatives that were better suited to the respondent's needs and less restrictive than secure confinement, such as probation with more stringent requirements and mandatory evaluations.

¶ 26 The respondent's counsel presented the trial court with a copy of the Department's annual report from 2016, which stated that the Department struggled to fulfill its mission because it started as an "under-resourced ill-equipped agency attempting to serve the needs of Illinois' most troubled and vulnerable youth." The report indicated that the Department was sued in 2012 by the American Civil Liberties Union in a class-action lawsuit in which the court noted the Department's failures in mental health, education, and conditions of confinement. Counsel noted that improvements had been made in the Department but argued that it was "nowhere near where it needs to be to adequately serve the needs of its youth." Thus, counsel argued that confinement to the Department would not be in the respondent's best interests. After arguments, the respondent read his statement in allocution in which he expressed remorse for his actions.

¶ 27 After hearing counsels' arguments and the respondent's statement in allocution, the trial court sentenced the respondent to an indeterminate period of time, no later than his twenty-first birthday. In making this decision, the court noted that it considered the presocial history, the social investigation report, the evidence in aggravation and mitigation, the respondent's statement in allocution, and the disposition recommendations made by the State and the respondent's counsel. Regarding the sentence, the court stated as follows:

"The Court views this case as a real tragedy from the outset starting in 2009. The Court believes that our society in general has failed [the respondent]. [The] Court believes that as far back [as] 2009 when he committed his first act that the juvenile justice system throughout the state and various counties has failed [the respondent].

[The] Court believes that [the respondent's] parents have each failed [him].

There's reference to the word 'child' throughout this hearing today. In 2009 the Court might have considered and would have considered [him] perhaps a child defendant. However, now knocking on *** his 17th year, this Court, in addition to other failures *** of [the respondent], believes that [the respondent] *** has failed himself and has not taken personal responsibility for his own conduct, despite the failures by others.

The Court did hear some positive testimony here today. And particularly with respect to progress made in schooling and attitude and things of that nature since the minor has been in detention. The Court finds the minor to be seemingly a good person at heart and one who indeed may have experienced a realization that he wants to make something of himself and be a positive member of the community.

The Court has considered, however, the extensive prior history of delinquency. The Court makes the following findings. The Court believes that *** with respect to the minor's father ***, that he is either or both unwilling and

unable for reasons other than financial circumstances to care for, protect, train, or discipline the minor.

The Court finds that with respect to the minor's mother, who testified here today, not that she is unwilling but that at this point or up to this point has been unable for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor.

The Court also finds as required by statute that incarceration is necessary to protect the public from the consequences of criminal activity with the minor's extensive delinquency related to very serious property-related crimes, which not only damaged property, but also placed both himself and society in harm's way.

The Court believes that a sentence or a disposition to the Illinois Department of Corrections juvenile division is indeed the least restrictive alternative that this Court has before it, notwithstanding the specific purpose of the Juvenile Act being to protect and rehabilitate rather than to punish.

The Court has considered all of the factors in making that finding that a sentence to the Department of Corrections is indeed the least restrictive means based on minor's extensive criminal background, the nature of those offenses, and his present age. As I said, there's a big difference of committing an act of animal cruelty in 2009 and committing multiple acts of felony acts at age 16.

[The] Court believes that reasonable efforts at this point given all the circumstances, the residential circumstances, the community resources, that reasonable efforts cannot prevent or eliminate the need for removal of the minor

from his mother, who has just recently returned to Vandalia having gone to Eldorado, Illinois."

¶ 28 Following the dispositional hearing, the trial court entered a written preprinted form order, which made the following findings: that the minor's 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 of the Act (705 ILCS 405/5-740 (West 2016)); commitment to the Department is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; reasonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal; removal from the home is in the best interests of the minor, the minor's family, and the public; and 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 those efforts were unsuccessful. Although the form order had space for the court to explain why the efforts to locate less restrictive alternatives were unsuccessful, the court left this blank.

¶ 29 The court also ordered the Department to submit a report pursuant to section 5-745 of the Act (*id.* § 5-745) of the respondent's progress and activities in the Department no later than November 9, 2017, at which time the court would reconsider the respondent's confinement. The court noted that this order was for the respondent's benefit, noting that it was not giving up on him despite the sentence and that, if he continues to improve while in detention, the court would consider modifying the disposition.

¶ 30 On February 16, 2017, the respondent filed a motion to reconsider his sentence, arguing that commitment to the Department was not the least restrictive alternative as determined by section 5-750(1)(b) of the Act (*id.* § 5-750(1)(b)); that there was insufficient evidence, as required by section 5-750(1)(b)(F) of the Act (*id.* § 5-750(1)(b)(F)), of any community-based services provided to the respondent, whether he was compliant with services, and the reasons why services that were provided were unsuccessful; and there was inadequate evidence, as required by section 5-750(1)(b)(G) of the Act (*id.* § 5-750(1)(b)(G)), as to the available services within the Department that would meet his individualized needs.

¶ 31 On September 26, 2017, the Department prepared a written report of the respondent's activities within the Illinois Youth Center Pere Marquette. The report, which was filed on September 28, indicated that he had adjusted poorly and, in his 60 days in confinement, he earned 19 major violations, resulting in an additional 105 days added to his initial release date, and he was involved in two assaults, one of which caused injury to a staff member, and three fights with other youths in the center. The other violations included disobeying direct orders, damage or misuse of property, insolence, unauthorized movement, and intimidation/threats.

¶ 32 Academically, he completed his coursework and tried to remain focused on his computer-based learning. The report indicated that there were times that he was distracted but that his behavior in school was more appropriate than his behavior in his dorm. He was involved with victim impact group, responsible behavior group, symptom management group, and masculinity group, and all of the group leaders reported that he

participated in the groups most of the time but was easily distracted and sometimes "gets so worked up that he is required to leave the group in order to not be a distraction." The report indicated that he completed the substance abuse program at the Illinois Youth Center in Harrisburg before arriving in Pere Marquette.

¶ 33 On September 28, 2017, the trial court held a hearing on the motion to reconsider sentence. In denying the motion, the court stated as follows:

> "[The respondent's] parents have failed him miserably in guiding their young son through his formative years. Father was not present at disposition, he's not present here today. Mother was present, she's not here today, neither of whom have offered any sense of stability or monitoring of this child at this sentencing.
>
> I think I also noted that as time went on *** and frankly, were 09-JD-15 before me, cruelty to animals when the minor was about nine or ten, or perhaps criminal damage to property in 13-JD-48 when he was a bit older, this Court would have been persuaded somewhat by [counsel's] argument. However, I think I also noted at the disposition that as time went on and the minor became closer to adulthood as he is today and was at the time of the disposition, he has to take responsibility for his own actions and he utterly failed to do so.
>
> I've not seen an extensive history of criminal delinquency like [the] one before me very often. I cannot think of a least restrictive means at this time other than a sentence to the Department of Corrections that would both serve the minor's needs and also serve the public's need to be protected from property offenses—

serious property offenses, some of which when committed also placed this minor in great danger for his own safety.

The Court is keenly aware of the services available to the minor while he is in the custody of the Department of Juvenile Justice, but I see no reason why the issue of any substance abuse cannot be adequately addressed or any counseling—emotional counseling cannot be offered in the Department of Juvenile Justice. It seems to me at this point the minor has to come to a reckoning with himself as to whether or not he respects himself and the property of others, and I don't know how you treat that. At any rate, there's no reason why social services cannot be provided to him in the Department of Corrections.

The Court, however, does recall some redeeming qualities, and the minor presented himself well at the disposition hearing and, as in all cases, this Court did not want to simply suggest that he was locking up the minor and throwing away the key. In this particular case I recall, and I note, the order of commitment specifically provides for a court review. The Court doesn't always do that in these cases when we send a minor to the Department of Juvenile Justice but a court review pursuant to statute has been ordered by this Court and is to be prepared and submitted to this Court in less than two months, by November 9, 2017.

This report is pursuant to 705 ILCS 405/5-7.5 where the Department of Juvenile Justice is to report to this Court as to what progress the minor [has] made. It was then and is now the Court's hope that that will be a positive report showing that this minor is having a reckoning with himself and is looking towards a future

in which he can comport himself to the laws of the State of Illinois and respect not only himself but the property of others."

¶ 34 The respondent appeals his sentence.

¶ 35 On appeal, the respondent contends that the trial court failed to comply with the statutory requirements of section 5-750 of the Act (705 ILCS 405/5-750 (West 2016)) before committing him to the Department for an indeterminate term. Specifically, the respondent argues that no evidence was presented about any efforts made to find a less restrictive alternative to secured confinement and that the court failed to consider individualized factors listed in section 5-750(1)(b)(A) through (1)(b)(G) of the Act (*id.* § 5-750(1)(b)).

¶ 36 The trial court's decision to commit a minor to the Department is reviewed for an abuse of discretion. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22. However, whether the court complied with the statutory requirements presents a question of law, which is reviewed *de novo*. *Id.*

¶ 37 The trial court is required to craft a disposition that best serves the interests of the minor and the public. 705 ILCS 405/5-705(1) (West 2016). Before committing a minor to the Department, the trial court must make the following findings: (1) that the minor's parents are unfit or 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 of the Act (*id.* § 5-740), or it is necessary to ensure the protection of the public from the consequences of the minor's criminal activity; and (2) 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 efforts were unsuccessful in locating a less restrictive alternative to secure confinement. *Id.* § 5-750(1).

¶ 38 Additionally, the court must make a finding that secure confinement is necessary after a review of the following individualized factors: (1) the minor's age; (2) his criminal background; (3) any assessment results; (4) his educational background, which includes whether the minor has ever been assessed for a learning disability, and if so, whether the minor has been provided with any services, and whether there were any disciplinary incidents at school; (5) his physical, mental, and emotional health, including whether the minor has ever been diagnosed with a health issue, and if so, the provided services, and whether the minor was compliant with those services; (6) whether any community-based services were provided to the minor, whether the minor was compliant with those services, and the reason the services were unsuccessful; and (7) any services within the Department that will meet the individualized needs of the minor.

¶ 39 The respondent contends that the State did not present any testimony or evidence tending to show that efforts were made to find a less restrictive alternative to secure confinement. He further argues that the court failed to make any statement on the record about why it had determined that confinement was the least restrictive available alternative to probation, home confinement, strict probation, or other community-based alternatives. Although he acknowledges that he was unsuccessfully discharged from probation in the past, he argues that the probation terms were less than adequate to meet

his needs. He relies on *In re Raheem M.*, 2013 IL App (4th) 130585, as support for his arguments.

¶ 40 In *Raheem M.*, the trial court found the minor guilty of aggravated battery of a teacher and disorderly conduct following a brawl in a school cafeteria and sentenced him to an indeterminate term in the Department. *Id.* ¶¶ 1, 4. The minor had several police interactions, but no criminal charges had ever been filed, and he never had a community-based sentence or any previous commitments to the Department. *Id.* ¶ 12. Of the other minors facing delinquency petitions for the brawl, one received 6 months' probation, one received 12 months' supervision, and three had their cases dismissed. *Id.* ¶ 14.

¶ 41 During the dispositional hearing, the trial court acknowledged that it was required to look at alternatives to commitment, but stated, " 'I don't know that that's possible when you have someone like this. I also think there's a value to a deterrence message to people in this community.' " *Id.* The court noted that the minor was receiving good grades but that his student discipline report indicated that he had an aggressive attitude and refused to show respect to those in authority and to his fellow students. *Id.* ¶ 13. The court stated that, based on the minor's various contacts with police and his high school disciplinary records, it did not have much hope that a community-based sentence would be appropriate. *Id.* ¶ 14. Thus, the court sentenced him to an indeterminate term in the Department, not to exceed his twenty-first birthday. *Id.* The form sentencing order recited that the trial court had received and reviewed evidence concerning efforts to identify a less restrictive alternative to commitment in the Department. *Id.* ¶ 47.

¶ 42 On appeal, the appellate court remanded for a new dispositional hearing based on the finding that the trial court failed to comply with section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2012)) in that it did not consider less restrictive alternatives to secure confinement. *Id.* ¶ 50. In making this decision, the court found that, pursuant to the statute, the trial court had to consider evidence that efforts were made to find a less restrictive alternative to secure confinement before it could sentence the minor to the Department. *Id.* ¶ 49. According to the court, 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." *Id.* ¶ 50.

¶ 43 The appellate court found that the trial court was not given, nor did it ask for, any evidence regarding efforts of less restrictive alternatives. *Id.* ¶ 49. Although the court acknowledged that the form sentencing order recited that evidence concerning less restrictive alternatives had been presented and considered, the court concluded that the record contained no evidence regarding any efforts to identify less restrictive alternatives to secure confinement, either in the social history report or at the sentencing hearing. *Id.* ¶ 47. The court noted that while the sentencing order stated that the trial court had reviewed and considered the results of the minor's assessments, the minor was not evaluated or assessed in any manner to determine whether community-based services could eliminate any perceived need to incarcerate the minor and that the minor never had a community-based sentence so there was no opportunity for the minor to demonstrate

compliance. *Id.* Thus, the court found that the trial court failed to comply with section 5-750 of the Act before committing the minor to the Department. *Id.* ¶ 50.

¶ 44 The respondent also relies on *In re Henry P.*, 2014 IL App (1st) 130241, ¶ 60, for the proposition that the trial court must make a finding that commitment to the Department was the least restrictive alternative for the minor before committing the minor to secure confinement. In *Henry P.*, the trial court construed section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2012)) to require that the court make an explicit finding that commitment is the least restrictive alternative even though the appellate record may support a determination that there were no less restrictive alternatives available to the minor. *Id.* ¶ 60. In making this decision, the appellate court distinguished between a requirement that the court consider lesser alternatives and a requirement that the court make a finding. *Id.* Thus, because the trial court did not make an express finding concerning lesser alternatives, the appellate court remanded for resentencing. *Id.* ¶ 62.

¶ 45 We disagree with the respondent that the present case is analogous to *Henry P.* and *Raheem M.* Section 5-750(1)(b) of the Act does not require the trial court to enumerate all of the possible alternatives when determining a disposition, and the trial judge's remarks can evidence a consideration of alternatives. *In re J.C.*, 163 Ill. App. 3d 877, 888 (1987).

¶ 46 At the dispositional hearing, the respondent's counsel recommended a disposition of probation with more stringent requirements and mandatory evaluations. However, the trial court expressly found 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 those efforts were unsuccessful. Although the court did not elaborate on the specific efforts that were made to locate less restrictive alternatives, it considered the probation officer's social history report, which reflected that the respondent had an extensive legal history beginning in 2009 and that his offenses had escalated from disorderly conduct and animal cruelty to burglary and stealing vehicles. He was charged with five burglaries and one count of unlawful possession of a stolen vehicle, the charges at issue here, while on probation. He also had pending charges in another county for unlawful possession of a stolen vehicle at the time of sentencing.

¶ 47 The record is clear that the trial court was aware of the respondent's court involvement, that this was not his first encounter with the juvenile court, the serious nature of the present offenses, and the services that were both available and offered to the respondent but were unsuccessful in deterring him from engaging in further criminal conduct. The social history report identified the following as targeted interventions and supervision strategies that were available resources for the respondent: substance abuse assessment and treatment; mental health counseling; and drug testing. The record indicates that the court was also aware that an available less restrictive alternative was more restrictive probation with assessments, mental health counseling, and alcohol and drug use treatment. However, the record evidences that probation had been unsuccessful in the past. Although the respondent had previously participated in individual counseling for his substance abuse issues, he testified that he did not find the counseling beneficial. While on probation, he had not received counseling for his depression, he was not taking

his prescribed ADHD medication and was instead selling it, and he was not regularly attending school.

¶ 48 Thus, the trial court considered and rejected intensive probation as an alternative to confinement. Further, at the hearing on the respondent's motion to reconsider, the court stated that it could not think of a less restrictive alternative to confinement that would serve the respondent's needs and also serve the public's need to be protected from serious property offenses, some of which also placed him in danger of his own safety. Further, the court indicated that it was aware of the services available to the respondent and that his substance abuse and mental health issues could be addressed in the Department.

¶ 49 We therefore conclude that the trial court considered whether there were alternatives to secure confinement as required by the statute and that the record reflects the reasons why the efforts to locate alternatives to confinement were unsuccessful.

¶ 50 The respondent next argues that the trial court failed to consider individualized factors set forth in section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2016)). The respondent relies on *In re Justin F.*, 2016 IL App (1st) 153257, ¶¶ 13, 31, in which the appellate court found that, although the trial court had checked off the appropriate box on the commitment order, it failed to comply with section 5-750(1)(b) of the Act because there was no evidence in the record regarding whether the Department would provide services that would meet the juvenile's individualized needs. Because the trial court failed to consider any evidence regarding the availability of services for the

juvenile, the appellate court vacated the dispositional order and remanded for a new dispositional hearing. *Id.* ¶ 31.

¶ 51 As previously stated, in considering whether secure confinement is necessary, the court is required to review various factors, which include the juvenile's age; criminal background; assessments; educational background; physical, mental, and emotional health; any community-based services that have been provided; and any services within the Department that will meet the juvenile's individualized needs.

¶ 52 Here, the trial court's form order indicated that it had considered all of the requisite statutory factors before committing the respondent to the Department. As for the respondent's age, the trial court stated that, while the court believed that the juvenile justice system and the respondent's parents had failed him beginning in 2009 with his first offense, he was now "knocking on *** his 17th year" and should take personal responsibility for his own actions.

¶ 53 With regard to his criminal background, the social history report indicated that the respondent had an extensive criminal history, which began in 2009, and included convictions for animal cruelty, arson, criminal damage to property, and aggravated battery. He also had a pending charge in another county at the time of sentencing. Although he had been to detention three times, he had not been in the Department's custody. During sentencing and the motion to reconsider sentence hearing, the trial court considered the respondent's criminal background, commenting that it had not "seen an extensive history of criminal delinquency like [the] one before me very often." As for any assessments, although the record indicated that the respondent had not had any

substance abuse or mental health assessments, he reported that he had been diagnosed with ADHD, bipolar disorder, and depression and acknowledged that he had a substance abuse problem and needed treatment.

¶ 54 With regard to his educational background, the testimony indicated that the respondent was enrolled in a behavioral school before being placed in the detention center in 2016 but that he had not regularly attended school. He had not attended a "regular school" since the fourth grade, his reading skills were at a fifth-grade level and his math skills were at a third-grade level, and he had an IEP. He was living with his mother at this time, and she was working two jobs. He attended school while in detention, had shown significant progress in his performance, had evidenced a willingness to learn, participated in class, and was a good student. After working with his teacher in the detention home school program, he was working up to Algebra I, was reading on his own, and had learned cursive. At sentencing, the trial court acknowledged the respondent's progress in school, noting that there was positive testimony about his progress and his attitude about school.

¶ 55 As for the respondent's physical, mental, and emotional health, there was testimony that he was diagnosed with ADHD but that he sold his prescription medication instead of taking it. There was also testimony that he was diagnosed with depression and bipolar disorder but never received any mental health counseling. At the hearing on the motion to reconsider sentence, the court noted that it was aware of the services available to the respondent while in secure confinement and that there was no reason why his substance abuse and mental health issues could not be adequately addressed there.

¶ 56 As for community-based services that have been provided to the respondent, the record reflects that he had not been compliant with probation in the past, that he was on probation when he committed the present offenses, that he was not regularly attending school, was not taking his ADHD medication, and found previous substance abuse counseling unhelpful. Although his counsel argued that the previous probation terms did not adequately suit his needs, any community-based services, such as home confinement or restrictive probation, would require an authority figure that would enforce the restrictions. The record indicates that the respondent had lived with his mother for most of his life, was living with her when he was previously on probation, and would live with her if he received restrictive probation. However, the court found that his mother was unable to care for, protect, train, and discipline him.

¶ 57 Lastly, with regard to the services within the Department that would meet the respondent's individualized needs, the respondent testified that he attended a calm group while in detention that taught him coping skills for his anger and that he also attended school there. His social history report indicated that he would need substance abuse assessment and treatment, mental health counseling, and drug testing. During the sentencing hearing, the State argued that the respondent would be offered mental health and substance abuse services while in secured confinement. Further, the court indicated at the motion to reconsider sentence hearing that it was aware of the services available to the respondent while in custody and there was no reason why his mental health and substance abuse issues could not be adequately addressed while in secure confinement. Moreover, the trial court recognized the positive changes made by the respondent while

in detention, noting that the disposition order could be modified if the respondent continued to improve.

¶ 58 In conclusion, we conclude that the trial court considered whether there were less restrictive alternatives to secure confinement that would be available to the respondent. We also conclude that there was some evidence before the trial court concerning each individualized factor set forth in section 5-750(1)(b) of the Act. Thus, the court's dispositional hearing complied with section 5-750 of the Act.

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court of Fayette County.

¶ 60 Affirmed.