

No. 1-14-0852

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

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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IN THE INTEREST OF L.M., a minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 13 JD 70086
v.	)	
	)	
L.M., a minor,	)	Honorable
	)	Lori Wolfson,
Respondent-Appellant.)	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court complied with the statutory requirement that it review all of the listed factors before committing a minor to the Illinois Department of Juvenile Justice (DOJJ) when it checked the appropriate boxes on the pre-printed commitment order. It did not abuse its discretion in sentencing the minor, finding that a term in the DOJJ was necessary to protect the public and appropriate given the minor's history of violations and aggressive behavior.

¶ 2 Respondent, L.M., pled guilty to violating his probation in that he committed a battery while on probation. Due to his history of poor behavior and probation violations, the trial court sentenced L.M. to an indeterminate term in the Illinois Department of Juvenile Justice (DOJJ). On appeal, L.M. argues that the court erred in sentencing him to the DOJJ where it failed to consider all of the factors listed in section 5-750(1)(b) of the Juvenile Court Act (Act) (705 ILCS 405/5-750(1)(b) (West 2010), and where a least restrictive alternative was available that sufficiently addressed L.M.'s needs. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court sentenced L.M. on March 4, 2014. L.M. filed this appeal on March 28, 2014. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009).

¶ 5 BACKGROUND

¶ 6 L.M., who is 17 years old, is a ward of the Department of Children and Family Services (DCFS) and has been in DCFS guardianship since he was nine years old. On October 29, 2012, L.M. pled guilty in Du Page county to the offenses of attempted burglary, battery, and theft, and sentenced to two years of probation. His social investigation report (SIR) revealed that he had learning disabilities and suffered from hypertension and obesity. He was also diagnosed with intermittent explosive disorder, oppositional defiant disorder, reactive attachment disorder, learning disorder and bipolar disorder.

¶ 7 On June 25, 2013, L.M.'s case was transferred to Cook county when he was placed in the Lawrence Hall Youth Services (Lawrence Hall) program in Chicago. Parole Officer Brady was

assigned as L.M.'s probation officer. At a progress check on September 10, 2013, Officer Brady informed the court that L.M. was doing "very, very well." However, on October 30, 2013, the State filed a violation of probation charging that L.M. headbutted, elbowed, and kicked the head and body of Mr. Thomas, a Lawrence Hall staff member. Also, L.M. had received 16 unusual incident reports (UIR) since he first arrived at Lawrence Hall in April. His social worker stated that 16 UIR's was "fantastic" for Lawrence Hall given the environment there. Since it appeared L.M.'s situation was stable, the trial court released him to Lawrence Hall. The trial court did issue a restraining order that L.M. have no unlawful contact with Mr. Thomas.

¶ 8 L.M. pled guilty to the violation of probation on November 19, 2013, and was recommitted to his two-year probation term, ordered to perform 40 hours of community service, and required to attend anger management counseling. However, on December 17, 2013, the State filed another violation of probation charge against L.M. alleging that he (1) was suspended from school for stealing a cell phone; (2) threatened a female Lawrence Hall staff member; (3) threw a chair while at Lawrence Hall; (4) pushed a female staff member at Lawrence Hall; and (5) hit a fellow resident at Lawrence Hall. Officer Brady informed the court that since the filing of the violation of probation, L.M. had committed five incidents of physical aggression against staff or residents of Lawrence Hall. He also noted that some of the staff were afraid of L.M. due to his large size.

¶ 9 Defense counsel argued that L.M. suffered from a lack of sleep which was contributing to his behavior and L.M. was in the process of changing therapists to address his needs. Counsel also stated that L.M. recently lost two people close to him, a pastor and L.M.'s cousin, and he was having a difficult time with the grieving process and not being with family. Although L.M. had received 13 UIR's since November, only five were for physical aggression. Counsel

requested that L.M. be released to Lawrence Hall pending the hearing on his probation violation. However, Officer Brady acknowledged that at three separate staff meetings in the last two weeks, L.M.'s attitude "has been extremely negative, disrespectful to people, not cooperative." L.M. was in the process of being placed in a group home but "now everything is on hold" because "his behavior for the last month has just been horrible." The court noted that L.M. was having "a very difficult month" and found that L.M. should remain in custody until the hearing because "right now it's the wrong time to return him back to Lawrence Hall."

¶ 10 On January 2, 2014, L.M. pled guilty to committing a violation of probation in that he struck a fellow resident at Lawrence Hall. Upon Officer Brady's recommendation, the trial court released L.M. to Lawrence Hall in order to evaluate his behavior prior to sentencing. The trial court told L.M., "It's important that I test you and see how you can handle yourself. I certainly don't want to keep you locked up, but I also don't want to see you lose control of people anymore." The trial court also told him that "[t]he last thing I want to do is lock you up" but if L.M. loses control the court would not hesitate to lock him up because "I'm not going to let someone else get hurt."

¶ 11 At a status meeting on February 2, 2014, Officer Brady informed the trial court that L.M. had threatened staff at Lawrence Hall. Also, L.M. was interviewing for a new placement but he was argumentative and "hardheaded" so he did not make a good impression with the staff. Officer Brady stated that L.M. "seems to feel that we're impinging on his rights by asking him to do things like go to counseling, go to therapy, do his community service." The court allowed two weeks before sentencing in order to see what would happen with L.M.'s placement interviews.

¶ 12 On February 18, 2014, Officer Brady returned to court and stated that "at this point, I feel that we have no alternative but to take the minor into custody" because "I believe it's time for him to go to the Department of Corrections." Defense counsel objected, arguing that L.M. was beginning his community service work and has found placement at the Jarvis Home, which provided a less restrictive environment. The trial court noted that L.M. has had three violations of probation and "a significant background prior to coming to our attention," and denied counsel's request to take L.M. out of custody pending sentencing.

¶ 13 The trial court held L.M.'s sentencing hearing on March 4, 2014. At the hearing, the State requested that L.M. be sentenced to the DOJJ, noting his "extensive history" and has "picked up 17 UIR's" at his current placement. He has also "picked up six referrals to the courts" and has violated probation twice. Furthermore, L.M. was not taking advantage of the services offered to him. Officer Brady stated that up until "three or four weeks ago, I was willing to consider letting him stay at Lawrence Hall and then be transferred to the new placement. However, during that course of time, he was found to be in possession of another cellphone that had been stolen from staff. And then a week later he was arrested for aggravated assault against the police officer at Amundsen High School where he was found "wandering the halls, and he wouldn't listen to anyone, and then he tried to get confrontational with the police."

¶ 14 Defense counsel responded that L.M. has faced many challenges as well as inconsistent family participation, where his mother used the visitation mechanism sometimes as a punishment. His caseworker stated that when L.M.'s mother participates and is in regular communication with him, he "does much better." L.M. is receiving treatment for his bipolar disorder and he was accepted to three separate placements, including Jarvis Home. Jarvis Home has "a little less restriction," but is a smaller setting so he would receive more

individualized services. L.M. could also receive services from Project Rising Phoenix so that a sentence to the DOJJ need not be imposed. Counsel asked for a period of probation, or L.M.'s release to the Jarvis Home "allowing him to show this Court that these new services put into place can help keep him from furthering delinquent background."

¶ 15 Before sentencing L.M., the trial court noted that it had reviewed a letter written by L.M. in which he apologized for his mistakes and asked for another opportunity to improve his behavior. The trial court also "considered the minor's background, which is significant, as well as how he's done on probation since he's been in Cook County." It stated that it had given L.M. "ample opportunity to conform" his behavior, noting that there has been "a solid three years of criminal behavior that gets us to this point" despite the fact that others have "stepped up and tried to be there for you to help you improve your behavior." The trial court concluded that L.M. has not learned a person cannot "lash out at people either physically" or by taking property, and he must now face the "consequence of repeated behaviors that are in violation of the law and a violation of the kind of rules that we all have to live by." The trial court believed L.M. to be a risk to the public. It made a finding of best interest and wardship, and sentenced L.M. to an indeterminate term in the DOJJ. The trial court further provided that once L.M. served his time in custody, an appropriate placement would be found for him. L.M. filed this timely appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, L.M. contends that the court below erred in sentencing him to the DOJJ. The State first responds that L.M. has forfeited review of his sentence because he failed to make his objections at the time of sentencing. In general, a defendant forfeits any issue he does not object to at trial and raise in a posttrial motion. *In re M.W.*, 232 Ill. 2d 408, 430 (2009). This principle of forfeiture applies equally in delinquency proceedings under the Act. *Id.* Although

in delinquency proceedings minors need not file a posttrial motion in order to preserve an issue for appeal, they must still make their objections at trial. *In re Samantha V.*, 234 Ill. 2d 359, 368 (2009). Therefore, L.M. has forfeited review of his sentence. L.M. urges this court to review his appeal as a matter of plain error; however, we find that on the merits the court below did not err in sentencing L.M. to the DOJJ. See *People v. Sargent*, 239 Ill. 2d 166, 189 (before determining whether there is plain error, the court must find whether any error occurred at all).

¶ 18 L.M. challenges his sentence based on two grounds: (1) the trial court did not consider all of the factors listed in section 750(1)(b) of the Act, and (2) the trial court failed to consider less restrictive alternatives to the DOJJ that would meet his needs. Whether the trial court complied with the requirements of the Act is a question of law we review *de novo*. *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 45. However, if the trial court is found to have complied with the statutory requirements, its decision to commit L.M. to the DOJJ is reviewed under an abuse of discretion standard. *In re Ashley C.*, 2014 IL App. (4th) 131014, ¶ 22.

¶ 19 Section 5-750 of the Act provides:

"(1) 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 Department of Juvenile Justice, 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 Department of Juvenile Justice 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. Before the court commits a minor to the Department of Juvenile Justice, 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 CANS.

(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 services 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 the Department of Juvenile Justice that will meet the needs of the minor." 705 ILCS 405/5-750 (West 2012).

¶ 20 L.M. first argues that the trial court did not consider all of the factors listed when it decided to sentence him to the DOJJ, in violation of section 5-750 of the Act. L.M. cites no authority for his contention that the trial court must state its findings on every factor listed in

section 5-750(1). In fact, a reading of the statute reveals that the legislature did not intend for the trial court to make explicit findings on every factor before committing a minor to the DOJJ. The statute provides that before sentencing a minor to the DOJJ, the trial court must "review" the listed factors. The most reliable indicator of legislative intent is the language of the statute, which is given its plain and ordinary meaning. *In re J.L.*, 236 Ill. 2d 329, 339 (2010). A court may not alter the plain language of the statute by reading into it exceptions, limitations, or conditions. *Id.* Therefore, pursuant to the language of section 5-750, the trial court fulfills its statutory duty if it reviews the listed factors before deciding to commit a minor to the DOJJ.

¶ 21 The record contains the order of commitment to the DOJJ form which was marked, dated and signed by the trial court. On the pre-printed form, the trial court checked numerous boxes indicating its findings. One check box indicated that the "parents, guardian, legal custodian 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." Another checked box indicated that commitment to the DOJJ "is necessary to ensure the protection of the public from the consequences of the criminal activity of the minor." Another section lists the same factors as found in section 5-750, and the trial court checked boxes indicating that secure confinement was necessary due to the age and criminal background of the minor. The trial court also checked boxes indicating that reasonable efforts were made to prevent the need to remove the minor from the home and "reasonable efforts were made to locate less restrictive alternatives to secure confinement and were unsuccessful." We find that the trial court satisfied the requirements of section 5-750 that it review the factors before committing L.M. to the DOJJ.

¶ 22 L.M. also challenges the trial court's decision to sentence him to the DOJJ, arguing that less restrictive alternatives were available and the trial court failed to take into account L.M.'s background of mental illness and whether services at the DOJJ would accommodate his needs. "A trial court may choose as it sees fit, among the various alternatives, and not defer to any particular disposition." *In the Interest of A.J.D.*, 162 Ill. App. 3d 661, 666 (1987). The trial court has "wide discretion" in determining an appropriate disposition, and we will not overturn its determination absent an abuse of discretion. *Id.*

¶ 23 L.M. argues that the trial court failed to consider less restrictive alternatives to the DOJJ in violation of section 5-750(1)(b), which provides that the court should commit a minor to the DOJJ if it "is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement." 705 ILCS 405/5-750(1)(b) (West 2012). Further, the trial court must give reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement. We note again that on the order of commitment form the trial court checked the box indicating that "reasonable efforts were made to locate less restrictive alternatives to secure confinement and were unsuccessful." Although the form did not state the reasons why efforts were unsuccessful, the record shows that the trial court had before it less restrictive alternatives (the Jarvis Home) but decided against the alternative.

¶ 24 The trial court was well aware of L.M.'s history of mental illness as well as his criminal past. It noted the difficulty of L.M.'s background and his personal losses. However, L.M. pled guilty to a serious offense and he has had previous encounters with the juvenile court. L.M. violated his probation twice. The trial court heard testimony that L.M. did not always participate in the services available at Lawrence Hall, but rather felt that the court system and the people trying to help him were "impinging on his rights by asking him to do things like go to

counseling, go to therapy, do his community service." Officer Brady stated that up until three or four weeks before the sentencing hearing, he was willing to consider letting L.M. stay at Lawrence Hall and then be transferred to the new placement. However, since then L.M. was found to be in possession of another cellphone stolen from staff. A week later, he was arrested for an aggravated assault against the police officer at Amundsen High School where he was found wandering the halls, he wouldn't listen to anyone, and he got confrontational with the police. Some of the staff at Lawrence Hall admitted to being afraid of L.M. due to his large size. Officer Brady stated that "at this point, I feel that we have no alternative but to take the minor into custody" because "I believe it's time for him to go to the Department of Corrections."

¶ 25 The trial court acknowledged L.M.'s letter in which he asked for another opportunity to improve his behavior. It stated, however, that it had given L.M. "ample opportunity to conform" his behavior in the past, having released L.M. a number of times to Lawrence Hall, rather than confine him to custody. The trial court further found that despite L.M.'s time at Lawrence Hall, there has been "a solid three years of criminal behavior that gets us to this point" despite the fact that others have "stepped up and tried to be there for you to help you improve your behavior." It believed L.M. to be a risk to the public because he has not learned a person cannot "lash out at people either physically" or by taking property. It concluded that L.M. must now face the "consequence of repeated behaviors that are in violation of the law and a violation of the kind of rules that we all have to live by." Clearly, the trial court believed that sending L.M. to a less restrictive environment such as Jarvis Home would not help with his aggressive behavior, and that commitment to the DOJJ was necessary for the safety of the public. The trial court did not abuse its discretion in sentencing L.M. to the DOJJ. Since we find no error occurred, there can be no plain error. *Sargent*, 239 Ill. 2d at 189.

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¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.