

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

IN THE MATTER OF:

K.M.B.

Adjudicated Delinquent Child

Case Nos. 19CA11
19CA12

DECISION AND JUDGMENT
ENTRY

APPEARANCES:

Timothy Young, Ohio Public Defender, and Lauren Hammersmith, Assistant State Public Defender, Columbus, Ohio, for Appellant.

Nicole Tipton Coil, Washington County Prosecutor, and Amy Bean, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

Smith, P. J.

{¶1} K.B. appeals the trial court’s judgment that committed him to the Ohio Department of Youth Services (“DYS”) for a minimum period of two years and not to exceed his twenty-first birthday.¹ The court also classified K.B. a tier II juvenile sex offender. K.B. argues that the trial court erred by classifying him a juvenile offender registrant at the time of disposition rather than waiting until his release from DHS, a secure facility. Upon our review, we agree with K.B. that the trial court erred by classifying him a juvenile offender registrant at the time of disposition. Accordingly, we

¹ Appellant also appealed the trial court’s judgment in a separate case that found him delinquent for committing grand theft. Appellant did not, however, assign any error to the trial court’s judgment in the grand theft case and further did not raise any argument in his appellate brief regarding the trial court’s judgment in the grand theft case.

sustain K.B.'s first assignment of error, find his second assignment of error moot, and reverse the trial court's judgment.

BACKGROUND

{¶2} On February 26, 2019, a Washington County Sheriff's detective filed a complaint that alleged K.B. is a delinquent child for committing the following offenses that would constitute felonies if an adult had committed them: (1) rape, in violation of R.C. 2907.02(A)(1)(c); (2) pandering sexually oriented matter involving a minor, in violation of R.C. 2907.322(A)(1); (3) sexual battery, in violation of R.C. 2907.03(A)(2); and (4) tampering with evidence, in violation of R.C. 2921.12(A)(1).

{¶3} On May 13, 2019, K.B. admitted that he was a delinquent child for committing (1) pandering sexually oriented material in violation of R.C. 2907.322(A)(1), a second-degree felony, and (2) sexual battery in violation of R.C. 2907.03(A)(2), a third-degree felony. The trial court committed K.B. to DYS's legal custody (1) for an indefinite term of twelve months and a maximum period not to exceed his twenty-first birthday for the pandering offense; and (2) for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed his attainment of the age of twenty-one for the sexual battery offense. The court ordered the two terms to run consecutively to one another as well as to a six-month commitment imposed in another case. The court also classified K.B. a tier II juvenile offender registrant. This appeal followed.

ASSIGNMENTS OF ERROR

K.B. raises two assignments of error:

First Assignment of Error:

The trial court erred when it classified K.B. as a juvenile offender registrant because it did not make that determination upon his release from a secure facility, in violation of R.C. 2152.83(A)(1).

Second Assignment of Error:

K.B. was denied the effective assistance of counsel when trial counsel failed to object to the juvenile court's unauthorized juvenile sex offender classification.

FIRST ASSIGNMENT OF ERROR

{¶4} In his first assignment of error, K.B. asserts that the trial court plainly erred by classifying him a juvenile offender registrant before his release from a secure facility. K.B. argues when a trial court commits a delinquent child to a secure facility, R.C. 2152.83(A)(1) prohibits the trial court from imposing a juvenile-offender-registrant classification at the time of disposition.

{¶5} As K.B. notes, he did not object to the trial court's classification during disposition. Appellate courts ordinarily “will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.” ” *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277, (1986) (citations omitted), quoting *State v. Childs*, 14 Ohio St.2d 56, 236 N.E.2d 545 (1968), paragraph three of the syllabus; accord *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 15. We may, however, exercise our discretion and review the trial court's juvenile-offender-registrant classification at disposition for plain error. *In re C.P.*, 4th Dist. Athens No. 12CA18, 2013-Ohio-889, 2013 WL 967898, ¶ 10, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002); accord *Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife*, 144 Ohio St.3d 278, 2015-Ohio-3731,

42 N.E.3d 718, ¶ 27; *Quarterman* at ¶ 16; *In re F.L.S.*, 4th Dist. Washington No. 09CA24, 2009-Ohio-6958, 2009 WL 5174111, ¶ 9.

{¶6} “To prevail under the plain-error standard, a [delinquent child] must show that an error occurred, that it was obvious, and that it affected his substantial rights,” i.e., the trial court’s error must have affected the outcome of the proceeding. *State v. Obermiller*, 147 Ohio St.3d 175, 2016-Ohio-1594, 63 N.E.3d 93, ¶ 62, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. Appellate courts “take ‘[n]otice of plain error * * * with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.’ ” *Obermiller* at ¶ 62, quoting *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978). “Reversal is warranted only if the outcome of the trial clearly would have been different absent the error.” *State v. Hill*, 92 Ohio St.3d 191, 203, 749 N.E.2d 274 (2001).

{¶7} With the foregoing in mind, we turn to consider whether the trial court plainly erred by classifying K.B. a juvenile offender registrant at the time of disposition rather than upon his release from DYS’s secure facility.

R.C. 2152.83(A)(1) states:

The court that adjudicates a child a delinquent child shall issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, shall issue at the time of the child’s release from the secure facility an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code if all of the following apply:

- (a) The act for which the child is or was adjudicated a delinquent child is a sexually oriented offense or a child-victim oriented offense that the child committed on or after January 1, 2002.
- (b) The child was sixteen or seventeen years of age at

the time of committing the offense.

- (c) The court was not required to classify the child a juvenile offender registrant under section 2152.82 of the Revised Code or as both a juvenile offender registrant and a public registry-qualified juvenile offender registrant under Section 2152.86 of the Revised Code.

{¶8} This court previously has interpreted R.C. 2152.83(A)(1) to mean that a court that commits a delinquent child to a secure facility cannot classify the delinquent child a juvenile offender registrant at the time of disposition. *In the Matter of P.B.*, Scioto App. No. 07CA3140, 2007–Ohio–3937, ¶ 7. Instead, if the court commits the child to a secure facility, then the court must wait until the child’s release from the facility before classifying the child a juvenile offender registrant. *Id.*; e.g., *In re P.C.*, 9th Dist. Medina No. 18CA0019-M, 2019-Ohio-2603, 2019 WL 2721358, ¶¶ 10-11; *In re L.S.*, 2018-Ohio-5005, 126 N.E.3d 308 (6th Dist.), ¶ 16; *In re H.P.*, 9th Dist. Summit No. 24239, 2008-Ohio-5848, 2008 WL 4866674, ¶ 14, 17; *see also State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶ 28 (stating that “[b]ecause Jean–Baptiste was adjudicated a delinquent child and was committed to a secure facility, the statute is clear that the court must issue the order classifying the child as a juvenile-offender registrant at the time the child is released from the secure facility-not afterward.”).

{¶9} In the case at bar, the trial court committed K.B. to DYS’s legal custody for a minimum term of two years. Additionally, the court adjudicated K.B. delinquent for committing a sexually oriented offense, and he was seventeen years old at the time of the offense. Consequently, R.C. 2152.83(A)(1) precluded the trial court from classifying K.B. a juvenile offender registrant until his release from DYS’s secured facility.

{¶10} This court also has recognized that a court plainly errs by classifying a delinquent child a juvenile offender registrant before the child's release from a secure facility. *In re F.L.S.*, 4th Dist. Washington No. 09CA24, 2009-Ohio-6958, 2009 WL 5174111, ¶ 13. We explained:

The likely rationale behind R.C. 2152.83(A)(1)'s requirement that a court wait until the juvenile offender has been released from custody is to give the offender time to rehabilitate and reform himself. The juvenile offender therefore has an incentive to do well while in DYS custody in order to persuade the court to classify him at a lower tier level. As we have previously held, a judge has discretion in choosing the proper classification tier of a juvenile offender registrant. *See In the Matter of J.M.*, Pike App. No. 08CA782, 2009-Ohio-4574, at ¶ 71. Accordingly, [the delinquent child] was deprived of this potential opportunity when the trial court prematurely classified him.

{¶11} Based upon the foregoing, we therefore agree with K.B. that the trial court plainly erred by classifying him a juvenile offender registrant at the time of disposition. Accordingly, we sustain K.B.'s first assignment of error.

SECOND ASSIGNMENT OF ERROR

{¶12} In his second assignment of error, K.B. asserts that trial counsel failed to provide the effective assistance of counsel guaranteed under the federal and state constitutions. In particular, K.B. argues that trial counsel performed ineffectively by failing to object to the trial court's juvenile-offender-registrant classification made at disposition.

{¶13} We believe that our disposition of K.B.'s first assignment of error renders his second assignment of error moot. We therefore do not address it. *See App.R. 12(A)(1)(c).*

CONCLUSION

{¶14} Accordingly, we reverse the trial court's judgment that classified K.B. a juvenile offender registrant.

JUDGMENT REVERSED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED. Costs assessed to Appellee.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the WASHINGTON County Common Pleas Court, Juvenile Court Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Jason P. Smith, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.