

[Cite as *In re D.L.*, 2009-Ohio-5294.]

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

IN THE MATTER OF:
D.L.,

:

Adjudicated
Delinquent Child.

: Case No. 09CA26

:

: DECISION AND JUDGMENT ENTRY

:

APPEARANCES:

COUNSEL FOR APPELLANT: Joseph H. Brockwell, 311 Scammel Street, Suite 201,
Marietta, Ohio 45750

COUNSEL FOR APPELLEE:¹ Raymond Dugger, 205 Putnam Street, Marietta, Ohio
45750

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 9-30-09

ABELE, J.

{¶ 1} This is an appeal from a Washington County Common Pleas Court, Juvenile Division, judgment that adjudicated sixteen-year-old D.L. a delinquent child for committing the offense of burglary in violation of R.C. 2911.12(A)(3), a third-degree felony if committed by an adult.

{¶ 2} Appellant's counsel has filed a brief under Anders v. California (1967),

¹ Appellee did not file a brief.

386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. In accordance with Anders, counsel presents the following issues that might support an appeal:

FIRST POTENTIAL ASSIGNMENT OF ERROR:

“DID THE TRIAL COURT ABUSE ITS DISCRETION BY SENTENCING THE CHILD TO A TERM TO DYS RATHER THAN A LESS RESTRICTIVE PLACEMENT?”

SECOND POTENTIAL ASSIGNMENT OF ERROR:

“DID THE TRIAL COURT ABUSE ITS DISCRETION BY ACCEPTING THE ADMISSION OF THE JUVENILE WITHOUT ANY EVIDENCE BEING PUT INTO THE RECORD TO SUPPORT THE ADMISSION, AND WITHOUT REQUIRING THE JUVENILE TO TELL THE COURT IN A COLLOQUY WHAT IT WAS HE DID THAT MET THE ELEMENTS OF THE BURGLARY CHARGE?”

THIRD POTENTIAL ASSIGNMENT OF ERROR:

“DID THE CHILD’S COUNSEL FAIL TO ADEQUATELY REPRESENT HIM BY NOT FILING A MOTION CHALLENGING THE ADMISSIBILITY OF THE CHILD’S CONFESSION?”

{¶ 3} In February 2009, appellant took a laptop computer and a ring from his neighbor’s residence. At the time, appellant lived next door with his foster parents. A complaint was later filed that alleged appellant was a delinquent child for committing the offense of burglary (a third-degree felony if committed by an adult).

{¶ 4} After appellant admitted to the allegations in the complaint, the trial court committed him to the Department of Youth Services (DYS) for a minimum of six months, but not to exceed his twenty-first birthday. This appeal followed.

I

{¶ 5} In Anders, the United States Supreme Court held that if counsel

determines, after a thorough and conscientious examination of the record, that the appeal is wholly frivolous, counsel should so advise the court and request permission to withdraw.² Furthermore, counsel must accompany the request with a brief that identifies anything in the record that could arguably support the appeal. *Id.* Counsel also must provide the appellant with a copy of the brief and allow him sufficient time to raise any matters that he so chooses. *Id.* Once these requirements have been satisfied, the appellate court must fully examine the record to determine if meritorious issues exist. If the appellate court determines that the appeal is frivolous, it may either grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements, or it may proceed to a decision on the merits if state law so requires. *Id.* If we find, however, that meritorious issues for appeal exist, we must afford appellant the assistance of counsel in order that counsel may address the issues. *Id.* at 744.

{¶ 6} In the case sub judice, counsel satisfied the requirements in Anders. Appellant did not file a pro se brief. Accordingly, we will examine counsel's potential assignments of error, and the entire record below, to determine if this appeal lacks merit.

II

² Appellant's counsel does not use the explicit language of Anders, but instead posits: "When counsel files a brief which sets forth a summary of the proceedings and facts with citations to the record and transcript, but raises no specific issues, the Appellate Court must conduct a review of the record to determine if the record reveals any issues which, if resolved favorably to Appellant, would result in reversal or modification of the judgment." We construe this statement to mean that counsel has reviewed the record and finds that an appeal would be wholly frivolous.

{¶ 7} In his first potential assignment of error, counsel argues that the trial court may have abused its discretion by sentencing appellant to DYS.

{¶ 8} Juvenile courts have broad discretion to craft dispositions for delinquent children. In re D.S., 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921, at ¶6. Thus, an appellate court generally will not disturb a trial court's dispositional choice absent an abuse of discretion. In re B.C., Lawrence App. No. 06CA43, 2007-Ohio-6477, at ¶11; In re T.S., Franklin App. No. 06AP-1163, 2007-Ohio-5085, at ¶28; In re T.H., Clermont App. Nos. CA2006-02-021 & CA2006-02-022, 2007-Ohio-352, at ¶10. An abuse of discretion is more than an error of judgment; rather, it means that the trial court's ruling is unreasonable, arbitrary, or unconscionable. See, e.g., Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621. Furthermore, when reviewing for an abuse of discretion, an appellate court must not substitute its judgment for that of the trial court. State ex rel. Duncan v. Chippewa Twp. Trustees (1995), 73 Ohio St.3d 728, 732, 654 N.E.2d 1254; In re Jane Doe 1 (1991). 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181.

{¶ 9} R.C. 2152.16(A)(1)(e) provides that a juvenile court may commit a delinquent child to the custody of DYS for an indefinite term of a minimum of six months and a maximum period not to exceed the child's attainment of the age of twenty-one for an offense that would be a third-degree felony if committed by an adult. R.C. 2152.19 enumerates other dispositional orders that a juvenile court may impose in addition to any other disposition authorized by R.C. Chapter 2152. The juvenile court, however,

must impose dispositions that are “reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child’s * * * conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children * * *.” R.C. 2152.01(B). The “overriding purposes for dispositions” include: (1) providing for the care, protection, and mental and physical development of the delinquent child; (2) holding the offender accountable for his actions; (3) restoring the victim; and (4) rehabilitating the offender. R.C. 2152.01(A). The statute mandates that the juvenile court achieve those purposes through “a system of graduated sanctions and services.”
Id.

{¶ 10} We have reviewed the record in the case sub judice and conclude that this potential assigned error does not present a meritorious issue for review. At the dispositional hearing, appellant specifically requested that the trial court consider DYS alternatives, but the court did not find any to be suitable. The court noted that the child has a long involvement with the court and that Washington County Children Services has tried several placements. The court thus determined that a DYS commitment was “the only option at this time.” The court specifically found that returning the child to his mother or foster care were not suitable options. We find no abuse of discretion.

{¶ 11} Accordingly, based upon the foregoing reasons, we find counsel's first potential assignment of error to be without merit.

III

{¶ 12} In his second potential assignment of error, counsel suggests that the trial court erred by accepting appellant’s admission to the complaint without setting forth the

facts supporting the delinquency charge and without requiring appellant to explain his actions that constituted the charge.

{¶ 13} Juv.R. 29(D) prohibits a court from accepting a juvenile's admission unless the court personally addresses the juvenile and determines both that: (1) "[t]he party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission; and (2) "[t]he party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing." The rule places an affirmative duty upon the juvenile court to personally address the juvenile and determine that the juvenile understands the nature of the allegations and the consequences of entering the admission. In re Beechler (1996), 115 Ohio App.3d 567, 571, 685 N.E.2d 1257. The court must "conduct an on-the-record discussion to determine whether the admission is being entered knowingly and voluntarily." In re Tabler, Lawrence App. No. 06CA30, 2007-Ohio-411, citing In re West (1998), 128 Ohio App.3d 356, 359, 714 N.E.2d 988. A juvenile court's failure to substantially comply with the Juv.R. 29 requirements constitutes prejudicial error that requires a reversal of the adjudication. In re C.S., 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶1113; Beechler, 115 Ohio App.3d at 572. Substantial compliance means that under the totality of the circumstances, the juvenile subjectively understands the implications of his plea and the rights he is waiving. In re C.S., at ¶1113; Tabler, supra, citing State v. Nero (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. Obviously, the best way to ensure substantial compliance with Juv.R. 29(D) is for the court "to use the language of the rule, ' * * * carefully tailored to the

child's level of understanding, stopping after each right and asking whether the child understands the right and knows that he is waiving it by entering an admission.” In re Royal (1999), 132 Ohio App.3d 496, 504, 725 N.E.2d 685, quoting In re Miller (1997), 119 Ohio App.3d 52, 58, 694 N.E.2d 500. We conduct a de novo review to determine whether a trial court substantially complied with Juv.R. 29(D). In re C.K., Washington App. No. 07CA4, 2007-Ohio-3234, at ¶15; In re Elliot, Washington App. Nos. 03CA65 and 03CA66, 2004-Ohio-2770, at ¶17.

{¶ 14} In the case sub judice, the trial court engaged in the following colloquy with appellant:

THE COURT: “[The] complaint alleges that on or about February 11th of ‘09, * * * the child did by force, stealth or deception, trespass in an occupied structure or in a separately secure and occupied portion of an occupied structure, with purpose to commit in that structure a criminal offense.

This is the offense of burglary if committed by an adult. It would be in violation of 2911.12(A)(3) and (C). It’s a felony of the third degree.

It involves the child entering a home and taking various items. That home belonging to a Brian McCoy.

[D.L.], do you understand what you’re charged with?

THE JUVENILE: Yes, sir.

THE COURT: And do you wish to have the trial that we’re set to have today or do you wish to admit to that burglary?

THE JUVENILE: I’ll admit.

THE COURT: Are you admitting voluntarily of your own free will?

THE JUVENILE: Yes, sir.

THE COURT: Do you understand that by admitting, I will find you to be delinquent? In other words, guilty, if you were an adult? We’d use the word guilty.

THE JUVENILE: Yes, sir.

THE COURT: Once I find you to be delinquent, then I’m going to proceed to disposition.

Possible disposition orders on this particular burglary offense are as follows. You could be fined up to \$750 and be ordered to pay the court costs.

You could be placed on community control including probation. And you’re familiar with probation, correct?

THE JUVENILE: Yes, sir.

THE COURT: You could also be committed to the Department of Youth Services. That would be for a minimum period of six months up to a maximum age of twenty-one.

The minimum commitment is six months. The institution would decide how long to keep you. If you behave, generally you're out in six months. If you misbehave, they could keep you clear to age twenty-one. That's a possibility in this case.

You could also be ordered to complete up to five hundred hours of community service. You could be ordered into counseling.

Your right to drive or obtain a driver's license could be suspended up until age twenty-one.

You could also be ordered held in detention for up to ninety days on this burglary charge as well.

So those are the possible dispositions.

Do you understand that?

THE JUVENILE: Yes, sir.

THE COURT: By admitting, we're not going to have the trial that we were set to have today.

Because of that, by your admission, you give up certain rights that you would normally have at a trial.

Those are the right to remain silent; the right to present your own evidence, call your own witnesses; and you also give up the right to challenge any evidence or witnesses presented by the State of Ohio.

Since you're admitting here today, you give up those rights. Do you understand that?

THE JUVENILE: Yes, sir.

THE COURT: Knowing all that, do you still wish to admit here today to one count of delinquency by reason of burglary, a felony of the third degree?

THE JUVENILE: Yes, sir.

THE COURT: The Court in this matter then, is going to accept the child's admission to the delinquency by reason of burglary.

The Court is going to find that admission to be voluntarily made with a full understanding of the rights which the child is giving up, with a full understanding of the nature of the offense, and the possible dispositional alternatives."

Here, the record reveals that the trial court substantially complied with Juv.R. 29(D).

Contrary to counsel's suggestion, nothing in the rule requires a trial court to make the juvenile explain the circumstances constituting the delinquency charge. Rather, the rule requires the court to ascertain that the juvenile understands the nature of the

charge. Here, the trial court stated the essential facts that constituted the delinquency charge and asked appellant if he understood. Appellant replied affirmatively. While the court may not have precisely detailed all of the facts that constituted the delinquency charge, nothing in Juv.R. 29(D) requires that it do so.

{¶ 15} Accordingly, based upon the foregoing reasons, we find counsel's second potential assignment of error to have no merit.

IV

{¶ 16} In his third potential assignment of error, counsel suggests that trial counsel did not provide effective assistance of counsel because counsel did not file a motion to suppress appellant's confession. We find no merit in this potential argument.

{¶ 17} An admission in a delinquency proceeding is similar to a Crim.R. 11 guilty plea in a criminal proceeding. In re C.S., 115 Ohio St.3d 267, 285, 2007-Ohio-4919, 874 N.E.2d 1177, at ¶112; In re Christopher R. (1995), 101 Ohio App.3d 245, 247, 655 N.E.2d 280. As in a criminal case when a defendant pleads guilty, a juvenile who enters a delinquency admission may not raise independent claims relating to the deprivation of constitutional rights that occurred before he entered the admission. See State v. Spates (1992), 64 Ohio St.3d 269, 272, 595 N.E.2d 351 (stating that "a guilty plea represents a break in the chain of events which has preceded it in the criminal process," and precludes a criminal defendant from "rais[ing] independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea"). This means that the juvenile waives the right to claim ineffective assistance of counsel on appeal, except to the extent that counsel's alleged deficient

performance caused the admission to be less than knowing, intelligent, and voluntary. In re S.M., Lawrence App. No. 09CA5, 2009-Ohio-3118, at ¶10.

{¶ 18} In the case sub judice, by admitting to the delinquency complaint appellant waived all alleged errors that occurred before he entered the admission, except to the extent the alleged errors caused his admission to be less than knowing, intelligent, and voluntary. Because counsel's suggestion that trial counsel rendered ineffective assistance of counsel by failing to file a motion to suppress appellant's confession concerns a potential deprivation of constitutional rights that occurred before he entered the admission, appellant may not now seek to challenge counsel's decision.

{¶ 19} Accordingly, based upon the foregoing reasons, we find no merit to counsel's third potential assignment of error.

{¶ 20} Having independently reviewed the record and having found no meritorious issues, we hereby grant counsel's motion to withdraw and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

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 Division, to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Kline, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, 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.