

[Cite as *In re R.M.*, 2003-Ohio-872.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81085

IN THE MATTER OF:

R.M., MINOR

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JOURNAL ENTRY  
AND  
OPINION

CHARACTER OF PROCEEDING

:

CIVIL APPEAL FROM  
COURT OF COMMON PLEAS  
JUVENILE COURT DIVISION  
CASE NO. 00106389

JUDGMENT

:

AFFIRMED.

DATE OF ANNOUNCEMENT  
OF DECISION

:

FEBRUARY 27, 2003

APPEARANCES:

For Appellant:

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Attorney at Law  
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For Appellee:

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KENNETH A. ROCCO, A. J.,

{¶1} Appellant R.M. appeals from the order of the juvenile court that found him to be in violation of his probation and committed him to the custody of the Ohio Department of Youth Services (“ODYS”).

{¶2} In his five assignments of error, appellant first challenges the juvenile court’s original order of disposition made after the court determined him to be a delinquent child. With regard to the original proceeding of adjudication and disposition, appellant claims the juvenile court improperly failed to appoint for him a guardian ad litem and improperly permitted him to enter an admission to the charge, and that he was denied his constitutional right to effective assistance of counsel. Additionally, appellant claims that in the most recent proceeding, he was denied not only his constitutional rights to effective assistance of counsel, but also his rights to due process and equal protection of the laws on the basis juvenile court personnel neglected to “implement” the rehabilitative services the court previously ordered.

{¶3} Appellant, however, filed no appeal from the original final order of disposition. Consequently, this court may not address his first three assignments of error. Appellant’s two remaining assignments of error lack support in the record. The juvenile court’s order, therefore, is

affirmed.

{¶4} Appellant's appeal results from a complaint filed against him on July 17, 2000 in the Cuyahoga County juvenile court. The complaint alleged appellant, who was then thirteen years old, was delinquent by reason of having committed an act, which, if committed by an adult, would constitute the offense of burglary.

{¶5} On August 30, 2000 the matter proceeded to an initial hearing. Appellant appeared with his legal guardian, his sixty-eight-year-old great-aunt, P. C.

{¶6} The juvenile court read the complaint to appellant, then asked him if he desired to exercise his right to the services of an attorney. Appellant declined, assuring the court he had consulted with P. C. before making that decision. The juvenile court went on to advise appellant of the consequences of an admission to the charge, but appellant nevertheless entered his admission. The juvenile court thereupon adjudged appellant to be delinquent.

{¶7} The court next considered a motion that alleged appellant had violated his probation in another case. Appellant also waived his right to an attorney for purposes of the motion and admitted this offense. Both matters immediately proceeded to disposition.

{¶8} Appellant's probation officer informed the court appellant had been unruly toward his family members, thus they had requested a change of placement for him. After a discussion on the record, the juvenile court ordered appellant placed into the temporary custody of the Cuyahoga County Department of Children and Family Services ("CDCFS"). Appellant was remanded to the juvenile detention center for "placement planning." The court filed the foregoing order on September 5, 2000.

{¶9} Appellant's cases next were considered three weeks later. Appellant's probation

officer informed the court that he and the other representatives of the county agencies involved had consulted with P. C. They recommended appellant's return to P. C.'s legal custody, with a referral for enrollment at "Abraxas," a facility with a program that addressed "chemical dependency issues." On September 29, 2000 the juvenile court entered an order to that effect.

{¶10} Five months later, appellant's probation officer filed a motion alleging appellant had failed to comply with the program. A hearing was requested, and eventually held on May 22, 2001. The juvenile court appointed an attorney to represent appellant at the hearing. Thereafter, the court terminated appellant's placement in the program and placed appellant on probation with home detention. Appellant's probation was "Subject to the rules of th[e] court," and to be reviewed at a hearing held on June 26, 2001.

{¶11} By the day of the review hearing, the juvenile court had received a poor report from appellant's home detention officer. On that date, the juvenile court issued an order removing appellant from P. C.'s custody, placing into the custody of the ODYS for a minimum period of six months to a maximum of his attainment of the age of twenty-one, but suspending the placement. Appellant further was ordered to continue on conditional probation with participation in the probation department's "WrapAround services."

{¶12} Only a month later, appellant's probation officer filed a motion in the juvenile court that alleged appellant had violated the foregoing order by being noncompliant. The juvenile court issued a warrant for appellant's detention. Appellant eventually was located in September, 2001.

{¶13} The court called appellant's case for a formal probation violation hearing on October 4, 2001. By that time, appellant had been charged with delinquency in another case, and also had been involved in a violent incident that required he receive medical attention for injuries he had

received.

{¶14} After listening to appellant's probation officer's account, the court found appellant to be in violation of his probation. On October 17, 2001 the court issued its order to that effect. Appellant was re-committed to ODYS for a minimum period of six months to a maximum of his attainment of the age of twenty-one.

{¶15} However, the juvenile court's order dated October 17, 2001 stayed appellant's commitment; a review hearing on the matter was set for November 20, 2001. The review hearing took place as scheduled.

{¶16} Appellant's probation officer indicated appellant by that time had been participating in some of the offered programs, but had been reprimanded for "confrontations" at school. The juvenile court subsequently issued an order dated December 6, 2001 continuing the matter, with an additional review hearing set for February, 2002.

{¶17} The hearing commenced on February 22, 2002. Appellant's court-appointed attorney indicated appellant had no excuse for his actions. Appellant added he "admit[ted] to what [he] did wrong and [he couldn't] say too much." At that point, the juvenile court revoked appellant's probationary freedom.

{¶18} On March 1, 2002 the juvenile court filed the order from which appellant instituted this appeal. The order re-stated appellant had been adjudicated delinquent and was committed to the custody of ODYS for a minimum period of six months to a maximum period of his attainment of the age of twenty-one. This time, the juvenile court did not include in its order either a "stay" of disposition or probation.

{¶19} Appellant presents the following five assignments of error:

{¶20} “1. The juvenile court erred by failing to appoint a guardian ad litem who would effectively represent Appellant’s interests.

{¶21} “2. Appellant, a fourteen (14) year old, mildly mentally retarded child, was denied his right to counsel and due process of law, and equal protection of the laws, when the trial court accepted his purported waiver of the right to counsel, without first determining that Appellant understood that the court would provide an attorney to represent him at public expense.

{¶22} “3. Appellant, a fourteen (14) year old, mildly mentally retarded child, was denied the right to counsel, due process of law, and equal protection of the laws, when the trial court accepted his admission to a delinquency charge, based upon a complaint alleging burglary, a felony of the fourth degree, without a written waiver of counsel.

{¶23} “4. Appellant was denied the right to effective assistance of counsel at the hearing held on February 21, 2002, when his court-appointed counsel demonstrated an obvious lack of preparation and failed to present any mitigation on behalf of Appellant.

{¶24} “5. Appellant was denied due process of law and equal protection of the law by the repeated failure of the juvenile court personnel to implement the interim orders of the trial court, thereby denying Appellant the rehabilitative services contemplated by the trial court.”

{¶25} In his first three assignments of error, appellant challenges either actions taken or omissions made concerning the original adjudication and disposition.

{¶26} The juvenile court’s original adjudication and disposition of the charge against appellant, of delinquency by reason of having committed burglary, was filed on September 5, 2000. On that date, the juvenile court adjudicated appellant delinquent, and ordered him committed to the temporary custody of CDCFS. Although pursuant to Juv.R. 35(C), the dispositional entry became

effective on that day, appellant filed no appeal from the order. *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, paragraphs 26 & 27; *In re Pearl* (Oct. 18, 2001), Cuyahoga App. No. 79071; *In re Parker* (Mar. 15, 2001), Cuyahoga App. No. 78132, footnote 1.

{¶27} Similarly, the juvenile court placed appellant into the custody of ODYS on June 26, 2001. The juvenile court's decision to suspend the commitment in order to permit appellant to "remain" on probation did not affect its finality for purposes of appeal. Juv.R. 34(G); *In re: Pearl*, supra; cf., *In re Cross*, supra.

{¶28} Lacking timely notices of appeal from the first two orders of disposition entered in this case, this court may not address appellant's first three assignments of error. Juv.R. 34(C); R.C. 2505.02; App. R. 4(A); cf., *In re Anderson*, 92 Ohio St.3d 63, 2001-Ohio-131.

{¶29} Appellant's fourth and fifth assignments of error challenge the ultimate determination that he had violated the terms of his probation and also revoked the stay of the earlier order of commitment to the custody of ODYS. Appellant filed a timely appeal of this order. *Id.*

{¶30} Appellant initially contends his court-appointed trial counsel rendered constitutionally ineffective assistance at the hearing held on February 21, 2002. In order to prevail on this contention, appellant must demonstrate both that counsel's performance fell below an objective standard of reasonable representation and that appellant was prejudiced thereby. *In re York* (2001), 142 Ohio App.3d 524. The record does not support such conclusions.

{¶31} The juvenile court in this case had permitted appellant a great deal of leniency prior to the ultimate hearing. For a period of nearly two years, it had attempted to rehabilitate appellant by several different means, but without success. In the face of this leniency, there is little counsel could present in the way of mitigation at the hearing held on February 21, 2002; indeed, appellant himself

by that time conceded his responsibility in failing to take advantage of the numerous opportunities offered to him.

{¶32} Counsel cannot be faulted merely for failure to perform vain acts. Therefore, appellant cannot demonstrate he received ineffective assistance, and his fourth assignment of error is overruled. *In re Shubutidze* (Mar. 8, 2001), Cuyahoga App. No. 77879, appeal not allowed (2001), 92 Ohio St.3d 1442.

{¶33} Appellant's fifth assignment of error presents a similar argument, viz., that the juvenile court personnel failed in their duty owed to him in the proceedings, thereby violating his constitutional rights. Once again, however, appellant's argument cannot be credited, because the record reflects the opposite.

{¶34} The transcripts of the hearings held in this case, together with the reports submitted to the juvenile court, demonstrate a caring and diligent attitude toward appellant on the parts of his children's services providers, including his probation officers. Appellant apparently asserts since efforts directed toward his rehabilitation remained unsuccessful, juvenile court personnel did not do all in their power to implement the juvenile court's efforts to rehabilitate him. To give credence to this argument negates appellant's own responsibility for his actions. The record reveals appellant was given several opportunities to learn positive behaviors, but simply refused to do so.

{¶35} For the foregoing reasons, appellant's fifth assignment of error also is overruled.

{¶36} The order of the juvenile court is affirmed.

It is ordered that appellant recover of appellee 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 Court of Common Pleas Juvenile Court Division to carry this judgment into execution.

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

KENNETH A. ROCCO  
ADMINISTRATIVE JUDGE

MICHAEL J. CORRIGAN, J.            and

JOSEPH J. NAHRA, J.            CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).