



previously suspended sentence to the Department of Youth Services (“DYS”). For the following reasons, the judgment of the trial court will be reversed and remanded for further proceedings.

I

{¶ 2} In early July 2007, a complaint was filed alleging that B.T., age 14, was delinquent for engaging in sexual conduct with a nine-year-old neighbor. Specifically, B.T. was charged with rape (cunniligus) and gross sexual imposition (causing the victim to touch his penis). On August 24, 2007, B.T. admitted the rape, and the count of gross sexual imposition was dismissed. In October 2007, B.T. was adjudicated a delinquent child and sentenced to DHS, but his sentence was suspended. He was placed on probation indefinitely and ordered to complete juvenile sex offender counseling. B.T. was also placed temporarily in the custody of Family and Children Services of Clark County (“FCSCC”), because his family was homeless and unable to meet his needs. Initially, the adult girlfriend of B.T.’s older half-brother was named his legal guardian, but he was later placed in foster care.

{¶ 3} In September 2009, a probation violation was filed against B.T. for failing “to comply with his counseling objectives” and failing to follow instructions from his foster parents. B.T. was arraigned on November 9, 2009. His probation officer and his caseworker from FCSCC were present, and B.T. was in the legal custody of FCSCC at the time.

{¶ 4} When addressing a group of juvenile offenders which was present for arraignment, the trial court informed the juveniles, including B.T., that the court wanted to make sure that they understood the charges against them, that they had

the right to be represented by an attorney, and that they had the right to a trial. When the court addressed B.T. individually, it did not address his right to counsel or waiver of counsel. B.T. indicated that he understood the probation violation and wanted to admit to it. The trial court asked the caseworker whether she believed that B.T. knew what he was doing in admitting the probation violation; she answered in the affirmative and indicated that she was also “in agreement with his admission.”

The court accepted B.T.’s admission.

{¶ 5} B.T. remained in detention, and the trial court conducted a dispositional hearing on November 25, 2009. At that hearing, in response to questioning by the court, B.T. indicated that he did not have a lawyer and had not talked with one. B.T.’s mother was present at the hearing, but she did not have custody of B.T. at that time. At the dispositional hearing, the trial court did question B.T. about whether he had spoken to a lawyer or wanted to do so. B.T. indicated that he would proceed without a lawyer. The court also asked B.T. if he wanted to discuss that decision with his mother, and B.T. had a conversation with her off the record, after which B.T. reaffirmed his decision to proceed without a lawyer. B.T.’s mother also stated that he understood this decision and wanted to proceed without counsel.

{¶ 6} Following the dispositional hearing, the trial court imposed the previously suspended sentence and ordered that B.T. be sent to DYS for a minimum of twelve months or, at a maximum, until the age of 21.

{¶ 7} B.T. raises three assignments of error on appeal.

{¶ 8} B.T.'s first and second assignments of error state:

{¶ 9} "THE JUVENILE COURT VIOLATED B.T.'S RIGHT TO DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; SECTIONS 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION; OHIO R.C. 2151.352; AND JUVENILE RULES 3, 4, AND 29.

{¶ 10} "B.T.'S ADMISSION WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY, IN VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; SECTIONS 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION; AND JUVENILE RULE 29."

{¶ 11} B.T. claims that his constitutional and statutory rights to counsel were violated at the time of his admission and at his dispositional hearing. He contends that his rights were violated when the trial court failed to appoint counsel for him at the arraignment on the probation violation, because no parent or guardian was present to counsel him. He also argues that the court did not engage in a "meaningful dialogue" with him about his right to counsel. B.T. relies on *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919.

{¶ 12} The State concedes that, prior to B.T.'s admission at the arraignment, the trial court failed to address him personally about his right to an attorney or his willingness to waive that right and failed to inquire about whether a parent or guardian had counseled him about waiving his right to counsel. The State agrees with B.T.'s argument that his conviction must be reversed because no parent or

guardian was present at arraignment to advise him and he was not afforded an opportunity to talk with an attorney.

{¶ 13} “[A] juvenile facing delinquency proceedings is entitled to due process of law, as guaranteed by the Ohio and United States Constitutions. See *In re C.S.*, [at] ¶¶71-73, 79, citing *In re Gault* (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527.

Like an adult’s guilty plea, a juvenile’s admission to an alleged offense implicates important procedural safeguards.’ *In re G. W.*, Clark App. Nos. 2008 CA 124, 2008 CA 125, 2009-Ohio-4324, at ¶17. Due process requires that a juvenile facing commitment have the right to counsel at every stage of the proceedings. *In re C.S.* at ¶78, citing *In re Gault*, 387 U.S. at 36. In Ohio, a juvenile’s right to counsel has been codified and expanded in R.C. 2151.352.” *In re Brandon M.*, Clark App. No. 2009 CA 48, 2009-Ohio-6579, at ¶35.

{¶ 14} In *In re C.S.*, the supreme court held that, in delinquency proceedings, a juvenile may waive his constitutional right to counsel “if he is counseled and advised by his parent, custodian, or guardian. If the juvenile is not counseled by his parent, guardian, or custodian and has not consulted with an attorney, *he may not waive his right to counsel.*” (Emphasis added.) *In re C.S.* at ¶98. Further, when addressing a juvenile regarding a waiver of counsel, the court must “engage in a meaningful dialogue with the juvenile” and “scrupulously ensure that the juvenile fully understands, and intentionally and intelligently relinquishes, the right to counsel.” *Id.* at ¶106, ¶107.

{¶ 15} The trial court did not comply with these exacting requirements at B.T.’s arraignment. B.T. appeared in court with his probation officer and his

caseworker from FCSCC. (B.T. was in the custody of FCSCC at that time pursuant to a permanent planned living arrangement.) The trial court did not inquire whether B.T. had a parent or guardian present before he admitted his probation violation and did not ask whether the probation officer or caseworker had discussed the issue of waiving counsel with him.<sup>1</sup> The court asked the caseworker whether she believed that B.T. knew what he was doing in admitting the probation violation and whether she agreed with it, and she answered affirmatively. The trial court did not address B.T. individually regarding his right to counsel other than the judge's comment at the outset of the proceedings, to all of the juveniles present, that they had a right to counsel and that the process of getting a court-appointed attorney could be explained "if you're interested."

{¶ 16} Based on these facts, we agree with B.T. and the State that the trial court failed to adequately address B.T.'s right to counsel at his arraignment and to ensure that he had knowingly and intelligently waived that right. Moreover, the trial court failed to comply with the requirement that B.T. consult with an attorney before waiving his right to counsel because neither a parent nor guardian was present in court with him.

{¶ 17} B.T.'s argument that his rights were also violated at the dispositional

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<sup>1</sup>In his brief, B.T. anticipates an argument by the State that his caseworker served as his "guardian" by virtue of his placement in the custody of FCSCC. We do not endorse the suggestion that the caseworker was B.T.'s "guardian," nor do the parties cite any authority for this view. We note, however, that even if the caseworker could have been considered B.T.'s guardian in these proceedings, the trial court did not explore any potential conflict of interest between the caseworker and B.T., and the caseworker could not have waived the right to counsel on B.T.'s behalf. See *In re C.S.* at ¶100.

hearing is moot in light of our conclusion that the admission was not properly entered.

{¶ 18} The first assignment of error is sustained.

III

{¶ 19} B.T.'s third assignment of error states:

{¶ 20} "THE JUVENILE COURT VIOLATED B.T.'S RIGHT TO NOTICE AND DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION; AND JUV.R. 35, WHEN IT FAILED TO FOLLOW THE REQUIREMENTS OF JUV.R. 35."

{¶ 21} Under this assignment of error, B.T. contends that he was not properly notified of the probation violation and that, as such, the trial court lacked jurisdiction to impose the suspended sentence. In light of our conclusion that B.T.'s admission was not properly entered and must be vacated, we need not address his arguments with respect to the dispositional hearing. See App.R. 12 (A)(1)(c).

IV

{¶ 22} The judgment of the trial court will be reversed, and this matter will be remanded for further proceedings.

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FAIN, J. and DONOFRIO, J., concur.

(Hon. Gene Donofrio, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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