

[Cite as *In re P.S.*, 2009-Ohio-5269.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:)	
)	CASE NO. 08 MA 239
P.S.,)	
)	
ALLEGED DELINQUENT CHILD.)	OPINION
)	
)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Juvenile Division, Case No. 2008 JA 136.

JUDGMENT: Affirmed.

APPEARANCES:

For Appellee: Attorney Paul J. Gains
Prosecuting Attorney
Attorney Ralph M. Rivera
Assistant Prosecuting Attorney
21 W. Boardman St., 6th Floor
Youngstown, OH 44503

For Appellant: Attorney Gus Theofilos
First National Tower
Suite 910
Youngstown, OH 44503

JUDGES:
Hon. Mary DeGenaro
Hon. Joseph J. Vukovich
Hon. Gene Donofrio

Dated: September 25, 2009

DeGenaro, J.

{¶1} Appellant P.S. appeals the October 23, 2008 dispositional order of the Mahoning County Court of Common Pleas, Juvenile Division that adopted the Magistrate's decision to impose a 90 day term of detention, subsequent to a bench trial and adjudication of delinquency for Obstructing Official Business, a second degree misdemeanor in violation of R.C. 2921.31 if committed by an adult.

{¶2} P.S. argues that the trial court abused its discretion by imposing a maximum term of confinement for punitive rather than rehabilitative purposes, and as a way of punishing P.S. for the additional crimes for which she was not adjudicated. P.S. does not appeal the underlying finding of delinquency.

{¶3} The trial court acted within its discretion in imposing a 90 day term of confinement. The disposition was within the statutory range, and the trial court was permitted to consider circumstances surrounding the offense as factors during the dispositional hearing. Accordingly, the decision of the Juvenile Court is affirmed.

Facts

{¶4} On January 18, 2008, the Canfield Police Department filed a complaint of delinquency against P.S., alleging two counts of Aggravated Arson, in violation of R.C. 2909.02(A)(1)-(2), first and second degree felonies, respectively, if committed by an adult, and one count of Obstructing Official Business, in violation of R.C. 2921.31 if committed by an adult. The complaint stemmed from a May 4, 2007 fire started in P.S.'s art classroom at the Mahoning County Career and Technical Center, which caused between fourteen and fifteen million dollars in property damage. Eight fire districts and over fifty-five firefighters responded to the fire. The Canfield Police Department interviewed P.S. at least three times subsequent to the fire.

{¶5} During P.S.'s June 16, 2008 merits hearing, Detective Andrew Bodzak testified that, in attempting to determine which student may have had a lighter in their possession at the time of the incident, he asked P.S. if she smoked. P.S. reported that she did not smoke, although after being confronted about conflicting statements from other students, P.S. then stated that she used to smoke. During a third interview, P.S.

admitted that she did still smoke on occasion. Bodzak also testified that multiple students had reported to him that they had first noticed the fire right after P.S. asked another student, Kyle Lane, if he would take her to buy cigarettes after school. Bodzak stated that P.S. initially denied having made such a statement, and later stated that she did not remember whether or not she had made that statement.

{¶6} P.S. testified that on the day of the fire, she had poured a chemical thinner into a bucket in order to clean up rubber cement on a table in her classroom. Between the first and second time that she went to dip her cleaning sponge into the bucket, the contents caught fire. P.S. testified that she did not have a lighter with her that day. P.S. testified that she occasionally smoked cigarettes but did not ever buy herself cigarettes and thus does not consider herself a smoker, which is why she told Bodzak that she did not smoke, and therefore had given a truthful answer.

{¶7} In addition to P.S. and Bodzak, the magistrate heard the testimony of twelve other witnesses at P.S.'s merits hearing. However, the additional testimony was not made part of the record on appeal.

{¶8} The magistrate issued a decision dismissing the charges of delinquency by commission of aggravated arson, and made a finding of delinquency by commission of obstruction of official business. Upon receiving no timely objections and on finding no error, the Juvenile Court issued a judgment entry adopting the magistrate's decision on July 25, 2008. P.S. did not appeal the decision, and the underlying delinquency finding is not at issue in this appeal.

{¶9} The magistrate held a dispositional hearing on September 3, 2008. Both the State and the defense agreed with the recommendations of the Predisposition Report that P.S. receive probation. The magistrate provided P.S. with an opportunity to address the court, at which point she stated, "I'm glad that this is all over with finally and I just want to start back at school in October and go back to work." The magistrate later asked, "So what is over? * * * you're pretty much saying that you didn't do anything, is pretty much where you are?" to which P.S. replied, "Yeah, I just mean coming back and forth to court and missing school."

{¶10} The magistrate noted that P.S.'s intentional misrepresentations to the police helped prevent the justice system from holding anyone responsible for the starting of the fire. The magistrate further noted: "I find it distressing that, you know, you testified the way that you did, which was just really trying to split hairs on changing your testimony on, well, maybe I said that, but I didn't mean that. I smoke occasionally. And then there's testimony that you asked someone to take you to buy cigarettes the same day. First you denied it then you admit it." The magistrate stressed that P.S. needed to accept responsibility for her actions.

{¶11} In addition to other sanctions, the magistrate imposed 90 days of detention, to be served in the Mahoning County Justice Center due to P.S. having reached the age of majority in September of 2007. The magistrate stated that P.S. would be permitted to serve the 90 days on weekends and during other times when school was not in session, provided that she continue to attend school. The magistrate further imposed 40 hours of community service through speaking to local schools about the importance of being truthful and cooperative with law enforcement officers.

{¶12} P.S. filed objections to the magistrate's decision based solely upon the 90 day commitment order. In its October 23, 2008 judgment entry, the Juvenile Court noted that the fire investigation was impeded by P.S.'s misrepresentations, and that P.S. showed no remorse at the hearings. The trial court further noted that the magistrate considered the circumstances of the case in order to reach its decision, and imposed the commitment order keeping P.S.'s educational interests in mind by ordering P.S. to serve her sentence on weekends and during periods when school is not in session so long as she remains a full-time student. Finding no error, the trial court adopted the decision of the magistrate. P.S. appealed the Juvenile Court's dispositional decision. P.S. filed a transcript of the dispositional hearing, and filed a partial transcript of the adjudication hearing which is comprised of the testimony of Det. Bodzak and P.S., who chose to waive her right to remain silent.

{¶13} In her sole assignment of error, P.S. contends:

{¶14} "The sentence of the trial court constitutes an abuse of discretion, is

unreasonable, arbitrary and unconscionable and contrary to law."

{¶15} P.S. argues that the imposition of a 90 day commitment was an abuse of discretion because its purely punitive intent contravened the purposes of both the juvenile and the adult criminal sentencing rules. P.S. further argues that the disposition was an abuse of discretion because the trial court did not weigh all of the confinement options and alternatives, gave disparate treatment to a similarly situated defendant in a separate case, and in effect punished P.S. for the arson crime for which she was acquitted.

{¶16} A juvenile court enjoys the broad discretion to create a dispositional order for an adjudicated delinquent child. *In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921, at ¶6. In fact, a juvenile court is allowed more discretion in its dispositional sentencing than for comparable actions under criminal law. *In re Tiber*, 154 Ohio App.3d 360, 2003-Ohio-5155, 797 N.E.2d 161, (7th Dist.), at ¶25. An appellate court thus reviews a juvenile court's order of disposition with great deference, and must not reverse the decision absent an abuse of discretion. *In re D.S.*, *supra*; *State v. Matha* (1995), 107 Ohio App.3d 756, 760, 699 N.E.2d 504. An abuse of discretion is more than an error of judgment; it means that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140.

{¶17} P.S. was found to have committed Obstructing Official Business, a second degree misdemeanor if committed by an adult. Pursuant to R.C. 2152.19, the Juvenile Court had the discretion to impose up to a 90 day term of detention. The Juvenile Court's term of detention was thus within the permitted range. A disposition that is within the statutory range is presumed to be reasonable. *In re Taronn A.*, 6th Dist. No. L-07-1286, 2008-Ohio-2089, at ¶10; *In re Wallace*, 5th Dist. No. 2007CA00156, 2008-Ohio-1389, at ¶44; *In re B.C.*, 4th Dist. No. 06CA43, 2007-Ohio-6477, at ¶15.

{¶18} As a portion of her argument, P.S. contends that the Juvenile Court contravened the principles of R.C. 2929.21 and R.C. 2929.22(C) by failing to make the findings required for a maximum penalty. However, as this case proceeded under the juvenile rules, the rules of adult misdemeanor sentencing would not apply to the Juvenile

Court. *In re Tiber*, supra.

{¶19} Further, pursuant to the April 3, 2003 amendments to R.C. 2152.26, the Juvenile Court had the discretion to place P.S. in an adult detention facility once she was over the age of eighteen. R.C. 2152.26(F)(2). Given the discretionary language of the juvenile dispositional provisions, the Juvenile Court was not required to weigh each confinement option or articulate specific findings on the record in order to justify its selection of each particular type of sanction. *Id.*; R.C. 2152.19(A). However, as discussed below, the Juvenile Court was obligated to ensure that the disposition served the overriding purposes of the juvenile criminal provisions. R.C. 2152.01.

{¶20} P.S. is correct that the main objective of the juvenile system is rehabilitation rather than punishment. *In re Woodson* (1994), 98 Ohio App.3d 678, 681, 649 N.E.2d 320. However, the purposes of delinquent juvenile disposition are not only "to provide for the care, protection, and mental and physical development of children," but they are also to "protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender." R.C. 2152.01(A).

{¶21} "The juvenile justice system, together with its rehabilitative objective, is purely a statutory creation * * * and it may contain punitive elements." *Matha* at 760, quoting *Woodson* at 682. Confinement is not imposed for pure punishment's sake, and can instead be "consistent with the overall rehabilitative objective of the juvenile justice system." *Woodson* at 682. Confinement may be imposed as "a means and method of education and rehabilitation," *Matha* at 760, quoting *In re Samkas* (1992), 80 Ohio App.3d 240, 244, 608 N.E.2d 1172, and specifically in this case, to hold the offender accountable for her actions.

{¶22} According to the facts of the underlying adjudication, P.S. gave equivocal responses to police questioning regarding whether she smoked. Detective Bodzak testified that P.S.'s statements as to whether she smoked was one of multiple inconsistencies that impeded his investigation. The record indicates that P.S. and the other students present during the incident gave conflicting explanations as to how the fire initially started, how the fire escalated, who had possession of a lighter that day, and who

was joking about setting the chemicals on fire shortly before they caught fire. Even though the dispositional hearing focused on the issue of whether P.S. was a smoker, the underlying partial record indicates that there were additional ways in which P.S. and all of the students frustrated the investigational efforts beyond the specific context of discovering who smoked cigarettes. For example, the police records of the students' narrative reports indicate that P.S. and other students contacted each other as the police were in transit from one interview to another on June 11, 2007, to warn that more police interviews were being conducted.

{¶23} P.S. maintained throughout the proceedings that she did not consider herself a smoker, which is why she believed her answers during the investigation were technically truthful. However, the context of the investigations makes it clear that the police were not trying to determine who among the students had decided to define themselves as a full time smoker as a matter of identity, or for the purposes of citing students for underage smoking. Even though P.S. misled the police in an artful manner by relying on semantics, the result remains that she misled the police, and her adjudication is a foregone conclusion. During the dispositional hearing, P.S.'s choice of words when addressing the court indicate that she was only relieved that the inconvenience of having to go through her proceedings was over, and made no indication that she understood that she had in fact misled the police and impeded the investigation.

{¶24} Juv.R. 34(B)(2) vests the juvenile court with broad discretion when fashioning a dispositional order. *Tiber*, supra. During its dispositional determination, a juvenile court can consider the testimony offered at trial as well as the juvenile's demeanor and lack of remorse. See *State v. Clay*, 7th Dist. No. 08 MA 2, 2009-Ohio-1204, at ¶176. Nowhere in the record does P.S. express remorse or even the understanding that she misled the police, even after having been adjudicated as having impeded an investigation. Nowhere does P.S. admit that, for example, she may have been afraid to admit that she was a smoker in the presence of her parents, or that some other motivation or fear caused her to equivocate to the police. Even in the Pre-Disposition Report, P.S. still maintained the position that she considers herself a non-

smoker as she does not smoke on a regular basis, and the reason why she answered no when questioned whether or not she smoked.

{¶25} The Juvenile Court noted its concern that P.S. would not take responsibility for her actions or show remorse for having helped to impede the investigation of a grave matter, and ordered confinement in connection with that concern. Moreover, the Juvenile Court imposed P.S.'s confinement in such a way so as not to impede her educational efforts, which further indicates that the sentence promoted rehabilitative, not purely punitive, objectives.

{¶26} The record does not reflect that the Juvenile Court was attempting to punish P.S. for the arson offenses even though she was not adjudicated for them. Instead, the Juvenile Court was permitted to consider the underlying circumstances of her adjudication for obstructing official business. Given that Juv.R. 34(B)(2) vests a juvenile court with even more discretion in its dispositional determination than for comparable adult sentencing under criminal law, a juvenile court has the discretion to consider facts introduced at the juvenile's merits hearing, even related to offenses for which the juvenile was found not delinquent. See *State v. Donald*, 7th Dist. No. 08 MA 154, 2008-Ohio-4638, at ¶42-44 ("a sentencing judge may take into account facts introduced at trial relating to other charges, even ones of which the defendant has just been acquitted"), citing *United States v. Watts* (1997), 519 U.S. 148, 117 S.Ct. 633, 136 L.Ed.2d 554, and *State v. Wiles* (1991), 59 Ohio St.3d 71, 78, 571 N.E.2d 97. A consideration of the arson was necessary in order to understand the context in which P.S. obstructed official business. P.S. did not mislead the police during an investigation of, for example, a petty theft at the school. She misled the police during an investigation of a serious crime, a crime which caused over fourteen million dollars in damage, put the lives of over six hundred students and one hundred school employees at risk, and caused a great expenditure of public resources by requiring eight different fire districts to extinguish the fire.

{¶27} The Juvenile Court, as the trier of fact, was in the best position to determine the appropriateness of P.S.'s disposition, based on the facts presented at the merits

hearing. Given that P.S. maintained that she had not done anything wrong by equivocating to investigators, the investigation P.S. impeded was regarding a serious crime which caused great injury to the public, the Juvenile Court tailored the disposition with P.S.'s educational goals in mind, the Juvenile Court's decision to order confinement in this case did not contravene R.C. 2152.01(A), and was not purely punitive.

{¶28} As an additional argument, P.S. asserts that the Juvenile Court contravened R.C. 2929.21(B) because the terms of her commitment were inconsistent with the adult misdemeanor sentence that Layne received for his actions during the same incident. Pursuant to R.C. 2152.01(B), “[d]ispositions under this chapter shall be * * * consistent with dispositions for similar acts committed by similar delinquent children * * *.” This language mirrors the language in the comparable statute on adult misdemeanor sentencing, R.C. 2929.21(B) (“A sentence imposed for a misdemeanor * * * shall be * * * consistent with sentences imposed for similar offenses committed by similar offenders.”).

{¶29} The State contends that Layne’s sentence is dehors the record and must be ignored completely. The State is partially incorrect: The magistrate’s July 8, 2008 decision indicates that Layne testified during P.S.’s merits hearing, and stated that he had pleaded no contest to a count of obstructing official business. Thus, Layne’s prosecution is not entirely dehors the record underlying P.S.’s appeal. However, Layne’s testimony was not included in the partial transcript provided to this court, and it is not likely that the totality of circumstances regarding Layne’s own proceedings was included. It is not possible to make an accurate comparison as to P.S.’s and Layne’s specific actions underlying the offenses charged against them. Moreover, as P.S. concedes, Layne received probation subsequent to entering a plea. Because the outcome of Layne’s proceeding was obtained pursuant to a plea deal, we cannot say that the trial court gave disparate treatment here.

{¶30} Given the gravity of the underlying criminal investigation that P.S. was adjudicated delinquent for obstructing, to wit aggravated arson, which caused millions of dollars in damages and endangered the lives of hundreds of students, teachers and responding police and firefighters, as well as the broad discretion a juvenile court has in

entering a dispositional order as found by this court in *Tiber*, supra, the juvenile court's decision to impose a 90 day term of confinement was not an abuse of discretion. Accordingly, P.S.'s sole assignment of error is meritless, and the judgment of the trial court is affirmed.

Vukovich, P.J., concurs.

Donofrio, J., concurs.