2012 IL App (2d) 100879-U
No. 2-10-0879
Order filed February 28, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DARRELL T., A Minor	)	Appeal from the Circuit Court of Stephenson County.
	)	No. 09-JD-57
(The People of the State of Illinois, Petitioner-Appellee, v. Darrell T., Respondent-Appellant).	)	Honorable Theresa L. Ursin, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing respondent to the Department of Juvenile Justice: the court reasonably found that such commitment was "necessary," as respondent's criminal history demonstrated that only a secure facility would keep him from reoffending, and exhaustive efforts to place him in a secure inpatient treatment facility had failed.

¶ 1 At issue here is whether the incarceration of the minor, Darrell T., was necessary to protect the public. We hold that the court was well within its discretion to conclude so, and we therefore affirm the minor's sentence.

¶ 2 I. BACKGROUND

¶ 3 On July 13, 2009, the State filed a petition for adjudication of wardship of the minor, who was then 13 years old. The second amended petition, filed August 4, 2009, alleged that the minor had committed retail theft (720 ILCS 5/16A-3(a) (West 2008)) (theft of a candy bar on July 7, 2009), two instances of residential burglary (720 ILCS 5/19-3(a) (West 2008)) (burglary of the house of Beth Stuart on July 30, 2009, and of the house of Peggy Althoff on July 31, 2009), theft of property worth more than $300 but less than $10,000 (720 ILCS 5/16-1(a)(1)(A) (b)(4) (West 2008)) (taking a 42-inch television in the Althoff burglary), and resisting a peace officer (fleeing) (720 ILCS 5/31-1(a) (West 2008)).

¶ 4 The court initially had the minor detained, but then, on August 4, 2009, allowed him to be released on electronic monitoring. On August 25, 2009, the State asked that the minor be detained again; it said that he had failed to charge the ankle monitor, so that it was nonfunctional for one stretch of more than 20 hours and other shorter periods. (The minor's mother told the court that she and the minor initially had difficulty knowing when they had attached the device to the charger properly.) His probation officer, Susan K. Vondra, reported other frequent compliance problems. Further, she reported that the minor had two positive drug tests while on monitoring.

¶ 5 On September 21, 2009, Vondra reported that the Gateway Foundation treatment center had found the minor to be an appropriate candidate for residential addiction treatment, but that the minor "would not commit to non-aggression and cooperation in their program" and therefore could not be admitted. She was seeking his admission to a different program. The minor had also reportedly made a false 911 call.

¶ 6 On September 25, 2009, the State filed a third amended petition for wardship. This added a third, September 24, 2009, residential burglary charge (burglary of the house of Miranda Bigelow)

and associated offenses. In the third burglary, the minor had again stolen a 42-inch television as well as other electronic items.

¶ 7 On October 19, 2009, the court, under a plea agreement, adjudicated the minor delinquent; the minor admitted to a residential burglary and associated theft, and the court placed him on probation until October 19, 2014. The court told the minor that, if he violated the terms of his probation, it would have little option other than to send him to the Department of Juvenile Justice (DOJJ).

¶ 8 On December 4, 2009, the State petitioned to revoke his probation. The petition was based on his absence from school and his failing two drug tests. A report from Vondra recommended that the minor be confined "during the pendency of the *** proceedings."

¶ 9 The court ordered that the minor have further drug treatment. The minor admitted misdemeanor theft and violations of the probation terms, and the State agreed not to recommend more than a 90-day evaluation period in the DOJJ.

¶ 10 The court had a sentencing hearing on March 16, 2010. At that point, the minor was in a home tutoring program. Tetrahydrocannabinol (THC) levels in his drug tests were increasing. Vondra and the court discussed other treatment options at length. Vondra mentioned that the minor had expressed distaste for inpatient treatment. She recommended a 90-day evaluation for the minor at the DOJJ. The minor's mother said that the minor's behavior had been much better since he was released from detention, but qualified the statement by saying that she was speaking of his behavior "at home."

¶ 11 The court continued the sentencing hearing for 30 days. It ordered the minor to rejoin an anger management program he had left because he was in detention. It ordered the minor's family

to contact Rosecrance drug treatment center within 72 hours and have the center decide what proper treatment would be.

¶ 12 At the next hearing, on April 26, 2010, the minor's mother reported that he was on a waiting list for intensive outpatient treatment. She said that he had complied with the requirement for anger management, but had not stayed within his required range for electronic monitoring. Vondra confirmed this, noting further that the THC levels measured in the minor's drug tests had risen. Because the minor had shown some improvement in his behavior, and because the court thought the minor might get inpatient drug treatment, it sentenced the minor to a further year of probation.

¶ 13 The State next filed another petition to revoke the minor's probation. This was based on his failure to charge the electronic monitoring device—apparently when he left the April 26 sentencing hearing—and not being at his house when someone went to investigate. The court allowed the minor to continue on electronic monitoring.

¶ 14 The next petition to revoke came on May 21, 2010. This was based on an accusation of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)). The petition alleged that, on May 18, 2010, the minor had damaged two doors, a window screen, and the window sill of the house of Donald Davis. The facts suggested an attempted break-in. There was also an associated allegation of criminal trespass to real property (720 ILCS 5/21-3(a)(1) (West 2010)).

¶ 15 On June 7, 2010, the court had a bench trial on the criminal-damage-to-property charge. The evidence showed a daytime attempted forced entry to a house. The minor contested the State's evidence that he was the would-be intruder. The court ruled that the State had proven the probation violation. The evidence tended to show that the minor and another minor had tried to use ordinary

tools, such as screwdrivers, to attempt to force open the door and window of a house in their neighborhood.

¶ 16 The social investigation report, prepared by Vondra, stated that "all community resources have been exhausted for this minor" and recommended that he be committed to the DOJJ. An evaluation from Rosecrance stated that a counselor had evaluated the minor, deemed him cannabis dependent, and recommended intensive outpatient services. It placed him on a waiting list. The court expressed concern that the burden on the family of transporting the minor for the intensive outpatient treatment (in Rockford, when they were in Freeport) was simply too high for plausible compliance.

¶ 17 The sentencing hearing took place on June 21, 2010. The minor's mother testified in mitigation, stating that he had only just started intensive outpatient drug treatment. She said that he had been to about five sessions. Her testimony also suggests that she had moved to a new neighborhood to get the minor into a better environment.

¶ 18 The court noted the minor's long history of offenses and interventions. It took particular note that the minor was uncooperative in detention.

¶ 19 The court said that it would not order a commitment of 90 or 120 days with evaluation because it deemed that the treatment options in a "straight commitment" were better. The court ruled that commitment was necessary to protect the public from the minor's criminal activity.

¶ 20 The court committed the minor to the DOJJ for an indeterminate period. The minor filed a motion to reconsider the sentence that the court denied, and the minor timely appealed.

¶ 21 II. ANALYSIS

¶ 22 The minor now asserts that the sentence was an abuse of discretion because the commitment to the DOJJ was not necessary; he asserts that inpatient drug treatment would have better served the minor and the public. We review a trial court's choice of disposition in a delinquency case for abuse of discretion. *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009). No abuse of discretion occurred here.

¶ 23 The governing standard here is that of section 5-750 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-750(1) (West 2010)) for commitment of a minor to the DOJJ. That section limits commitment of minors with effective parents or guardians to when it is "necessary":

> "(1) Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740 or; (b) it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent." 705 ILCS 405/5-750(1) (West 2010).

¶ 24 The minor asserts that his commitment was *not* necessary for the protection of the public. We deem it to have been within the discretion of the court to find that commitment *was* necessary. This is so even if one reads "necessary" in its strict sense—that is, indispensable, without substitute. The minor's record made it clear to a high degree of certainty that, if the court had allowed him to remain in his home, he would reoffend, probably by committing burglaries. Therefore, the only way, other than the DOJJ, that the court might have been able to protect the public would have been a secure inpatient treatment facility. The court made clear that this was its preferred placement for the

minor essentially from the outset. However, Vondra and the minor's mother both made notable efforts, without success, to find such a placement. Vondra concluded that "all community resources have been exhausted for this minor." The record contains nothing to suggest that this conclusion was incorrect.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we hold that the sentence imposed was not an abuse of discretion, and we therefore affirm it.

¶ 27 Affirmed.