2017 IL App (4th) 160618-U

NOS. 4-16-0618, 4-16-0619, 4-16-0620 cons.

FILED
January 24, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Savion L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Logan County
v.	)	Nos. 13JD30
SAVION L.,	)	14JD60
Respondent-Appellant.	)	15JD41
	)	
	)	Honorable
	)	William Gordan Workman,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not commit error at a juvenile delinquency dispositional hearing by failing to explicitly state that "commitment to the Department of Juvenile Justice is the least restrictive alternative," (705 ILCS 405/5-750 (West Supp. 2015)) where the court heard evidence about less restrictive alternatives and explained its reasoning for choosing incarceration in the Department instead of those alternatives.

¶ 2 In August 2015, respondent minor, Savion L. (born October 3, 1998), was charged with retail theft. In January 2016, he pleaded guilty to that charge. In March 2016, the trial court conducted a sentencing hearing, during which the court heard evidence about whether to place respondent with his parents, in a residential facility, or in the Department of Juvenile Justice (Department). After considering that evidence, the court explained its reasoning for sentencing respondent to a term in the Department. Respondent appeals, arguing that the court committed error by failing to comply with section 5-750(1)(b) of the Juvenile Court Act of 1987

(705 ILCS 405/5-750(1)(b) (West 2014)), which required the court to make an express finding that "commitment to the [Department] is the least restrictive alternative." We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2013, the State filed a petition for adjudication of wardship in Logan County case No. 13-JD-30, alleging that respondent was a delinquent minor for having committed residential burglary (720 ILCS 5/19-3(a) (West 2012)), theft (720 ILCS 5/16-1(a)(4) (West 2012)), criminal damage to property (720 ILCS 5/21-1(a) (West 2012)), burglary (720 ILCS 5/19-1(a) (West 2012)), and criminal trespass to vehicle (720 ILCS 5/21-2 (West 2012)). Later that month, respondent pleaded guilty to residential burglary and burglary, and the other charges were nol-prossed. The trial court sentenced respondent to five years of probation.

¶ 5 In December 2014, the State filed a petition to revoke respondent's probation, alleging that he had violated the terms of his probation by committing armed violence (720 ILCS 5/33A-2(a) (West 2014)) and aggravated battery (720 ILCS 5/12-3.05(a)(1), (c), (f)(1) (West 2014)). In addition, that same month, the State filed a petition for adjudication of wardship in Logan County case No. 14-JD-60, alleging that respondent committed armed violence and aggravated battery—the same allegations the State made in the petition to revoke respondent's probation in case No. 13-JD-30.

¶ 6 In April 2015, respondent entered a plea agreement, pursuant to which he (1) admitted the allegation contained in the petition to revoke in case No. 13-JD-30, accusing him of committing aggravated battery; and (2) pleaded guilty to one count of aggravated battery in case No. 14-JD-60. The trial court sentenced respondent to a term of probation to expire upon respondent's 21st birthday in both case Nos. 13-JD-30 and 14-JD-60.

¶ 7 In August 2015, the State filed a petition to revoke respondent's probation in case Nos. 13-JD-30 and 14-JD-60, alleging that respondent had committed retail theft (720 ILCS 5/16-25(a)(1) (West 2014)). In addition, the State filed a petition for adjudication of wardship in Logan County case No. 15-JD-41 based on the same alleged act of retail theft.

¶ 8 In January 2016, respondent entered an agreement in which he admitted committing retail theft as the State alleged in the petition to revoke probation in case Nos. 13-JD-30 and 14-JD-60 and as alleged in the petition for adjudication of wardship in case No. 15-JD-41.

¶ 9 In March 2016, the trial court conducted a sentencing hearing on all three case numbers. The State presented evidence and argued that "[e]very viable least restrictive alternative other than the [Department] had been used." Respondent argued that placement at Arrowhead Ranch, a residential treatment facility, was an appropriate, less restrictive alternative to incarceration in the Department. After hearing evidence and argument, the court made the following statements:

> "The court finds that the minor's parents are not fit and are not able to control this individual. He has tried it with both his mother, he's tried it with his father, and has not—neither one of them have been able to correct him or keep him under control or prevent him from criminal activities. It is necessary to ensure the protection of the public. These are offenses which are classified as violent offenses, *** in particular, the aggravated battery which resulted in great bodily harm to the victim in that case.
>
> The court finds that the [Department] will provide needs that this individual will need, they will make those—he does have a significant criminal background, probation has been tried multiple times, [and] he was on probation for the

residential burglary and the burglary when he committed the aggravated battery. He was on probation for the residential burglary, the aggravated battery, and the burglary when he committed the latest offense of retail theft.

***

*** [F]or the protection of the public *** this individual needs to be in a more secure setting, and I am going to make the assistant director of the [Department] his legal guardian, sentencing him to a term in the [Department] for a term not to exceed his 21st birthday.

*** The court felt that because of this individual's background and his conduct, he needed a more structured environment which can be provided at the [Department].

[Arrowhead Ranch], because of his background, was reluctant to accept him, they had concerns about his educational background, his aggressiveness, and we have heard not only counsel indicated there was only one documented incident and that was the incident under [No.] 14[-]JD[-]60, but we also heard today from the minor's father that he also had physical altercations with both his mother and his sister, and he also admitted, I think, himself, that there were times where he was filled with anger and aggression especially when he was not on his medication. So those are the reasons that I did not pick or choose to sentence him to Arrowhead [Ranch], not because of the cost factor."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Respondent argues that the trial court erred by sentencing him to a term in the

Department without making an explicit finding that such sentence was the "least restrictive [sentencing] alternative," as required by section 5-750 of Juvenile Court Act of 1987 (705 ILCS 405/5-750 (West Supp. 2015)). We disagree.

¶ 13 A. Statutory Language and the Standard of Review

¶ 14 Section 5-750 of the Act (*id.*) provides, in pertinent part, the following:

> "(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], *if it finds that *** (b) commitment to the [Department] is the least restrictive alternative* based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." (Emphasis added.)

¶ 15 We review a trial court's decision to commit a minor to the Department for an abuse of discretion. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22, 8 N.E.3d 1142. However, we review *de novo* the issue of whether section 5-750 of the Act requires the trial court to make an express finding that committing a respondent to the Department was the least restrictive alternative. See *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 45, 1 N.E.3d 86 (interpretation of section 5-750 is a matter of law, which we review *de novo*).

¶ 16 B. Case Law

¶ 17 In *In re Raheem M.*, we remanded for a new dispositional hearing where the trial court failed to comply with section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2012)). *Raheem M.*, 2013 IL App (4th) 130585, ¶¶ 55-56, 1 N.E.3d 86. However, in that case, the record on appeal "contain[ed] no evidence regarding efforts to identify a less restrictive alter-

native," and "the minor was not evaluated or assessed in any manner to determine whether community-based services could eliminate any perceived need to incarcerate." *Id.* ¶ 47. In addition, no community-based services were contacted prior to sentencing to determine whether they might serve as a viable less restrictive alternative. *Id.* We held that "[p]ursuant to [section 5-750 of the Act], the trial court had to consider *evidence* efforts were made to find a less restrictive alternative to secure confinement before it could sentence respondent to the [Department]." (Emphasis in original.) *Id.* ¶ 49, 1 N.E.3d 86. In conclusion, we determined that "a trial court must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement[,] and the court must state the reasons why said efforts were unsuccessful." *Id.* ¶ 50, 1 N.E.3d 86.

¶ 18 In *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 40, 5 N.E.3d 304, this court held that the trial court's alleged failure to comply with section 5-750 during a dispositional hearing did not constitute the kind of "clear and obvious" error necessary to reverse under the plain-error doctrine. The *Javaun I.* court distinguished its case from the facts of *Raheem M.* In *Javaun I.*, the parties presented the trial court with alternatives to incarceration in the Department, such as a residential treatment facility and home confinement. The record on appeal did not establish that the court had failed to consider those alternatives. *Id.* ¶ 43. Therefore, we held that no clear and obvious error occurred during the dispositional hearing. *Id.*

¶ 19 In *In re H.L.*, 2016 IL App (2d) 140486-B, ¶ 43, 54 N.E.3d 264, the Second District held that section 5-750(1)(b) of the Act requires the trial court "to make *an express finding* that commitment to the Department is the least restrictive alternative." (Emphasis added.) In that case, the trial court heard evidence of other, less-restrictive alternatives that had already been imposed upon the respondent but had been unsuccessful. At the sentencing hearing, the court ad-

dressed those alternatives and ultimately decided that "it is necessary to ensure the protection of the public that [the respondent] be committed [to the Department]." *Id.* ¶ 34. The *H.L.* court held that an implicit finding that commitment was the least restrictive alternative—even if supported by the evidence in the record—was insufficient because the Act required an express finding. *Id.* ¶¶ 49-52. *H.L.* did not cite or discuss *Raheem M.* or *Javaun I.*

¶ 20 C. Plain Error

¶ 21 Respondent concedes that he failed to preserve this issue for appellate review by failing to raise it first in the trial court. However, respondent urges this court to reach the issue as plain error.

¶ 22 Under the plain-error doctrine, we may review an unpreserved claim of error only if a clear and obvious error occurred in the trial court and either (1) the evidence in the trial court was so closely balanced that the error may have altered the result of the proceedings or (2) the error was so serious that it affected the fairness of the proceedings and "challenged the integrity of the judicial process." *People v. Raney*, 2014 IL App (4th) 130551, ¶ 41, 8 N.E.3d 633; Ill. S. Ct. R. 615(a) (eff. Aug.27, 1999). First we determine whether a clear and obvious error occurred.

¶ 23 D. Whether the Trial Court Committed a Clear and Obvious Error

¶ 24 In this case, respondent's claim of error does not meet the requirements of the plain-error doctrine because, first of all, no clear and obvious error occurred.

¶ 25 Respondent argues that the trial court "never made an express finding (verbal or written) that committing [respondent] to the [Department] was the 'least restrictive [sentencing] alternative.' " We disagree that the court's failure to make such an express finding constituted clear and obvious error.

¶ 26 In this case, the trial court was presented with and considered evidence about less

restrictive alternatives. As the trial court explained on the record at the sentencing hearing, "because of [respondent's] background and his conduct, he needed a more structured environment which can be provided at the [Department]." The court explained that placement with respondent's parents had already been tried and had not been successful. As to respondent's argument that the Arrowhead Ranch treatment center was a less restrictive alternative, the court explained that the treatment center in question "was reluctant to accept him" and "had concerns about his educational [background and] his aggressiveness." Because of those concerns, the court concluded "those are the reasons I did not pick or choose to sentence him to [the treatment center], not because of the cost factor." The court, therefore, "[had] before it evidence of efforts made to locate less restrictive alternatives to secure confinement" and "[stated] the reasons why said efforts were unsuccessful." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 50, 1 N.E.3d 86.

¶ 27 Although the trial court did not utter the words "least restrictive alternative," the statements the court made on the record show that the court considered alternatives to detention—specifically, (1) continued residence with a parent and (2) the Arrowhead Ranch treatment center—and determined that those alternatives were unacceptable. The court cited specific alternatives and specific reasons why those alternatives were unsatisfactory. The court therefore complied with section 5-570 of the Act.

¶ 28 To the extent that *H.L.* stands for the proposition that section 5-750(1)(b) of the Act requires the trial court to use "magic words," we decline to follow that holding. We have spoken before about our distaste for "magical incantations." *People v. Shaw*, 2015 IL App (4th) 140106, ¶¶ 60-63, 44 N.E.3d 665. In juvenile dispositional proceedings, the essential requirements of section 5-750 of the Act are that the trial court both was presented with and considered evidence about less restrictive alternatives and eventually found that commitment to the Depart-

ment was the least restrictive alternative. The Act does not itself contain an express requirement that the court make an express finding quoting the language of the Act. See 705 ILCS 405/5-750 (West Supp. 2015) (never using the term "express"). Nonetheless, we suggest it would be better practice if trial courts would recite the "magic words" provided by section 5-750 of the Act (705 ILCS 405/5-750 (West Supp. 2015)). That way, the present issue will (hopefully) cease to arise in future appeals.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court's judgment.

¶ 31 Affirmed.