2018 IL App (2d) 170975-U
No. 2-17-0975
Order filed March 16, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DIQUAN Y., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 17-JD-180
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Diquan Y.,	)	Patrick K. Yarbrough,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it committed respondent to the Department of Juvenile Justice.

¶ 2 The trial court adjudicated respondent, Diquan Y., a delinquent minor, finding him guilty of home invasion, armed robbery, and residential burglary. The court committed Diquan, age 17 at the time of the offense(s), to the Department of Juvenile Justice (DJJ) until age 21, or as long as the length of a comparable adult sentence, whichever came first. On appeal, Diquan accepts the court's adjudication of delinquency and determination of guilt. However, he argues that the trial court abused its discretion when it committed him to the DJJ, arguing that the DJJ was not the least restrictive placement, when the Probation Department stood ready and waiting to

supervise him in intensive probation. We determine that the trial court did not abuse its discretion, and we affirm the sentence of commitment.

¶ 3 I. BACKGROUND

¶ 4 On July 24, 2017, the State filed a delinquency petition regarding Diquan for an incident occurring on June 11, 2017. It charged: (1) home invasion, based on entering the victim's, H.E.'s, home without authority, knowing H.E. to be present and threatening H.E. with a hammer; (2) home invasion, but based on punching H.E. in the head and chest; (3) armed robbery, based on taking (two) television(s) from H.E. while threatening him with a hammer; and (4) residential burglary, based on entering H.E.'s home with the intent to commit a theft.

¶ 5 On September 20, 2017, the trial court conducted the adjudicatory hearing. The State called H.E. and police officers David Seitz, Mark Jurasek, and David Witt. According to H.E., age 16, he was lying on his bed when he heard a person push on his window-unit air conditioner. H.E., drowsy from having just taken his heart medication, asked who was there. A voice answered, "Diquan," and asked to be let in the front door. H.E. considered Diquan a friend and agreed to meet him at the front door. When H.E. opened the door, he saw that Diquan was accompanied by someone he recognized as "Zay" or "Zoe." He did not really know Zay. As Diquan entered, Diquan punched H.E. in the head, knocking him down. Diquan then punched H.E. in the chest. H.E. previously had told Diquan that he had a heart defibrillator. As H.E. looked up from the floor, he saw that Zay was holding a hammer and looked "like he gonna hit me if I tried to do something." Diquan and Zay went into the house looking for a video-game device, or an X-Box. H.E. said he no longer had the device. (He had pawned it.) Diquan and Zay took $18 cash from the dresser and each carried out a television. Diquan directed Zay to take the second television. A big, green truck waited outside for Diquan and Zay. After Diquan

and Zay got into the truck, H.E. called 911. H.E. testified: "I don't know why he['s] doing this. I never did anything to him. That's what I'm trying to figure out." H.E. then called his father. H.E. did not want to pursue charges; he just wanted the televisions returned.

¶ 6 On cross-examination, H.E. testified that he did not leave the house after being punched. He did not leave, because he was worried about his possessions. Also, the defense asked:

"Q. Do you remember talking to the police and telling them that[,] when Diquan walked out, he said, 'You know where your smoke at if you want it?'

A. Something—he probably did say. I don't—I'm not quite remembering.

* * *

Q. [Quoting from the police report]: [H.E.] said, as Diquan walked out, he said, 'You know where your smoke at if you want it.'

A. I said that? No, I didn't say that.

Q. You're sure?

A. Yes, sir."

¶ 7 David Seitz, a Winnebago County sheriff's deputy, testified that he responded to a call that a young man had been injured. He arrived to H.E.'s home to see H.E. on the porch, visibly shaken. H.E.'s father was home. H.E. told Seitz that Diquan and Zay stole two televisions. H.E. and his father walked Seitz through the home. It "appeared" to Seitz that two televisions were missing, but, on cross-examination, Seitz conceded that he had not been in the home before, so he could not know for sure. He did not take pictures of H.E.'s injuries. (He did not testify to the injuries.)

¶ 8 Mark Jurasek, a Winnebago County sheriff's detective, testified that, shortly after the incident was reported, he went to Diquan's home. Jurasek spoke with Diquan's mother, Queen.

Jurasek told Queen that H.E.'s father would not pursue charges if the televisions were returned. Queen represented that she did not know about the televisions, but she would try to find them and return them. Jurasek provided Queen with his contact information, but he never heard from her.

¶ 9 David Witt, a Winnebago County sheriff's detective, testified that he administered the photo line-up. H.E. identified Diquan. H.E. did not identify Zay. (It is unclear from the record whether the authorities knew Zay.) The defense moved for a directed finding, which the trial court denied.

¶ 10 The defense recalled Seitz. Seitz testified, over objection, that H.E. told him that Diquan said, "You know where your smoke at if you want it."

¶ 11 Diquan testified on his own behalf. According to Diquan, H.E. invited him over to smoke marijuana. H.E. told Diquan to come in through the window to avoid H.E.'s father. Diquan brought his friend, Zay. When Diquan and Zay went to the window, H.E. told them to come to the front door, because his father was not home after all. The three boys smoked marijuana together; they were all high. Diquan asked H.E. for the video-game device, because it was his. H.E. told him that he had pawned the device years ago. Diquan was mad, so he took the remaining marijuana as compensation. After Diquan took the marijuana, H.E. threatened that his brother would shoot Diquan. Diquan replied, "You know where your smoke at if you want it." H.E. hit Diquan to prevent him from taking the marijuana, so Diquan hit H.E. Diquan's counsel asked: "At any point while you were in the house, did you or Zay have a hammer?" Diquan answered: "Yes, sir. And I forgot to bring that in. [H.E.] tried to go for the hammer." After H.E. went for the hammer, Diquan and Zay fled the house. Diquan's cousin picked them

up. Diquan denied stealing the televisions. On cross-examination, Diquan admitted that he was at H.E.'s house on the day in question and that he punched H.E.

¶ 12 The State recalled H.E. H.E. testified that he had invited Diquan to his home in the past, but not the day of the incident. He did not arrange to have Diquan and Zay sneak in through the window to avoid his father. He did not smoke marijuana on the day of the incident.

¶ 13 The trial court, stating that the case came down to credibility, found Diquan guilty of counts II, III, and IV: home invasion (based on punching H.E. when entering the home); armed robbery (in that Diquan and Zay acted in concert, and Zay threatened H.E. with a hammer when taking the televisions); and residential burglary. It found Diquan not guilty of count I, home invasion (based on threatening H.E. with a hammer when entering the home).

¶ 14 In preparation for the sentencing hearing, the Probation Department submitted a social-history report with three addendums. In its report, the Probation Department recommended intensive probation, stating that Diquan was not a significant danger to the community and that he had a lot of potential. The second addendum noted that Diquan had graduated from Youth Recovery Court on May 30, 2017, 12 days prior to the incident. The third addendum noted that Diquan had been accepted to Riverside Resolve inpatient treatment based on past marijuana usage. The report further noted that Diquan had a one-year-old daughter who lived with her mother.

¶ 15 The State questioned the reliability of the Probation Department's report. The report denied that Diquan exhibited any homicidal ideation, but, in middle school, Diquan had threatened to shoot and kill his principal. Over the years, as conceded by the Probation Department, Diquan has "bullied [people], threatened people, violently destroyed property, [and] engaged in assaultive behavior causing serious injury and requiring medical attention." More

recently, he threatened to snap the neck of an DJJ staff member and made numerous other threats to harm staff. The State characterized the instant offense as involving a "severe act of aggression," in that Diquan punched H.E. in the chest, knowing H.E. to have a defibrillator.

¶ 16 The State urged the court against intensive probation. In its view, Diquan had already participated in what could be considered intensive probation, particularly the two-year-long Youth Recovery Court, but he had squandered those opportunities. Drawing from the probation report, the State recounted that, over five years,[1] Diquan had: two probation violations; twice been held in a detention facility; declined the school-offered IEP because it interfered with school football (but then he was expelled); been kicked out of Job Corps for fighting; failed to follow the direction of mental-health professionals by going off of his medication for bipolar disorder; and *committed the instant offense just 12 days after completing Youth Recovery Court*. The State argued that, with the escalating and violent nature of Diquan's offenses, commitment to the DJJ best served to protect the community and Diquan, exposing him to adult consequences while still providing him with social services and treatment.

¶ 17 Defense counsel argued that Diquan should be sentenced to a five-year intensive probation program, as recommended by the Probation Department. Specifically, Diquan would begin inpatient treatment at Riverside Resolve to address his past marijuana use. Then, Diquan would receive in-home confinement and progress to a curfew structure. Diquan would receive counseling for his anger issues and take the proper medication. In support of this recommendation, defense counsel represented that Diquan had an "okay" rapport with staff at the

[1] Diquan first appeared in juvenile court at age 12, following two separate battery charges. However, the probation report reveals that, at age 10, Diquan committed criminal damage to a vehicle.

DJJ and participated in services. He "did well" in the Youth Recovery Court, where he addressed his mental-health issues, which included diagnoses of bipolar disorder and oppositional defiant disorder. Also, the Probation Department *wanted* to work with Diquan and were advocating to give him another chance. Defense counsel characterized this as an "unusual" recommendation and a sign that the Probation Department saw "a great deal of potential" in Diquan. Diquan wished to become a good role-model for his one-year-old daughter and return to play an active role in her life.

¶ 18 Diquan provided a statement. Diquan asked for forgiveness and averred that he would cooperate with services. He wanted an opportunity to be with his daughter. Referring to the trial, he stated: "I'm not going to say it was a bad decision what had happened to me being guilty, [but] it was some lies in there, and I feel like it's unfair. Like the part about he saying we never smoked."

¶ 19 The trial court acknowledged that the Probation Department indicated that it had not exhausted all resources and still wished to work with Diquan in intensive probation. The court explained, however, that this factor did not trump the safety of the community, the opportunities Diquan had already had on probation, his past behavior while on probation, his involvement in escalating violent behavior, and his many threats toward others. The court also acknowledged that Diquan suffered from mental-health issues: "Defense counsel and [Diquan] indicate that [Diquan] is now interested in taking medication, [and Diquan] understands he has an anger problem." The court noted, however, that Youth Recovery Court had attempted to address these mental-health issues: "[Youth Recovery Court] is a mental[-]health court for minors and *** has a great deal of supervision, and it requires cooperation from minors as well as parents so that the minor can successfully change behavior due to mental[-]health issues." The court stated that,

while in the DJJ, Diquan could "continue with [his] education, participate in anger-management counseling, substance abuse counseling, and any other counseling that's available that [he] would like to participate in." The court concluded:

> "Your commitment to the [DJJ] is necessary to ensure the protection of the public from the consequences of [the] criminal activities of yourself[.]
>
> A commitment to the [DJJ] is the least restrictive alternative based on the evidence that efforts were made to locate less restrictive alternatives [than] secured confinement and *those efforts were unsuccessful because of escalated delinquency after services provided*." (Emphasis added.)

The court sentenced Diquan to the DJJ until age 21, or as long as the length of a comparable adult sentence, whichever came first. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Diquan raises no direct challenge to the trial court's finding of guilt. Rather, he argues that the trial court's decision to commit him to the DJJ until age 21 was an abuse of discretion. The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq*. (West 2017)) is a statutory creature with parameters and application defined solely by the legislature. *People v. P.H.*, 145 Ill. 2d 209, 223 (1991). Juvenile sentencing orders must be reviewed in light of the purposes and policies of the Act. *In re Wealer*, 42 Ill. App. 3d 479, 480 (1976). We review the trial court's sentence in juvenile cases for an abuse of discretion. *In re Griffin*, 92 Ill. 2d 48, 54 (1982).

¶ 22 The trial court may commit a juvenile to the DJJ if it finds that:

> "(1) *** (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 it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent*; and (b) commitment to the Department of Juvenile Justice 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. Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:

(A) Age of the minor.

(B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor." (Emphases added.) 705 ILCS 405/5-750(1) (West 2017).

¶ 23 It is apparent from the record that the trial court considered these factors in a reasoned and thorough manner before committing Diquan to the DJJ. Diquan was 17 at the time of the offense (Factor A). His criminal history dated back to age 10 (criminal damage to a vehicle), and his first appearance in juvenile court occurred at age 12 (battery). Among other offenses, he committed an aggravated battery at age 13 and probation violations at age 15. (Factor B). The court reviewed the social-history report (Factor C), taking note of the threats Diquan had made to his teachers and classmates at school and the many suspensions received (Factor D). Diquan had been evaluated for an IEP, which he turned down so that he could play football (where he was later expelled) (Factor D). Diquan and his parents knew that he suffered from mental-illness (Factor E, mental health) and anger-management issues (Factor E, emotional health), yet, once outside supervision, they decided that Diquan did not need his medication. Diquan had received numerous services over the years (Factor F), including probation, Job Corps, prior periods of commitment, and, most recently, the Youth Recovery Court. The court reasonably deemed these services unsuccessful (Factor F). Diquan did not learn from the Youth Recovery Court, because, *within 12 days*, he went off of his medication and committed the instant offense. The court noted that, in the DJJ, Diquan could "continue with [his] education, participate in anger-management counseling, substance abuse counseling, and any other counseling that's available that [he] would like to participate in [(Factor G)]."

¶ 24 Diquan challenges the trial court's reasoning, arguing that the court: (1) failed to consider (1a) a less restrictive alternative and (1b) Diquan's mental-health status; and (2) violated the purposes of the Act in committing him to the DJJ. We are not convinced by these arguments.

¶ 25 Diquan's first argument, that the court failed to consider certain factors, is absolutely refuted by the record. The court certainly considered that a less restrictive placement was available. It specifically noted that the Probation Department wished to work with Diquan in intensive probation. It reasonably determined, however, that intensive probation was not appropriate. The court explained that commitment to the DJJ was necessary to ensure the protection of the public from the consequences of criminal activity. It also noted that previous less restrictive placements "were unsuccessful because of escalated delinquency after services provided."

¶ 26 Also, the trial court recognized Diquan's mental-health issues. It stated that Diquan had just completed Youth Recovery Court, a program designed to closely supervise the juvenile's mental-health treatment and related behavior. The program had not worked. Once out of the program, Diquan went off of his medication. The court noted that, in the DJJ, Diquan would have access to medication and counseling.

¶ 27 Diquan's second argument, that the trial court violated the purposes of the Act, is also unavailing. The court should administer the provisions of the Act in a "spirit of humane concern" for all involved. *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006) (citing 705 ILCS 405/1-2(2) (now West 2017)). Thus, while a main goal of the Act is to protect citizens from juvenile crime, the court should also aim to correct and rehabilitate the minor. *Id*. We do not find the court's decision to commit Diquan to the DJJ to be at all inconsistent with the purposes of the Act. The Act states that one of its purposes is "to hold each juvenile offender directly

accountable for his or her acts." 705 ILCS 405/5-101(1)(b) (West 2017). And, as we have discussed, the court's prior attempts to correct Diquan's behavior have not worked, and Diquan has not been successful with less restrictive rehabilitation methods.

¶ 28 Diquan cites research and public policy articles supporting the position that incarceration leads to greater rates of recidivism as compared to community-based sentences. See, *e.g.*, Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, at 4-7 (2006) (http:www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf) (last visited March 7, 2018); and Thomas J. Dishion, Joan McCord & Francois Poulin, *When Interventions Harm: Peer Groups and Problem Behavior*, American Psychologist Vol. 54, No. 9, at 755-764. Reasons for the difference are that, while incarcerated, minors associate with anti-social peers, identify with deviancy, and lose connections with family, mentors, school, and employment. *Id*. We agree with these points in a broad sense. However, Diquan fails to acknowledge that, between the ages of 12 and 17, he *did* receive community-based sentences, and he, nevertheless, continued to engage in escalating delinquent behavior. At some point, incarceration must become the natural consequence for Diquan's criminal actions. The trial court did not abuse its discretion in committing Diquan to the DJJ.

¶ 29 III. CONCLUSION

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

¶ 31 Affirmed.