UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2103 & 2105

September Term, 2015

IN RE: DEVONTAYE S.

Graeff,
Friedman,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 8, 2016

These consolidated appeals arise from a decision by the Circuit Court for Prince George's County, sitting as a juvenile court, to commit Devontaye S., appellant, to the custody of the Department of Juvenile Services ("DJS") for a Level B, non-community based placement. On September 23, 2015, DJS filed petitions in juvenile case numbers JA-15-0128 and JA-15-0417 seeking to revoke appellant's probation. After a hearing on October 7, 2015, the juvenile court found that appellant had violated the terms of his probation and he was detained. At a subsequent hearing on October 27, 2015, the juvenile court committed appellant to the custody of DJS for placement in a Level B, non-community based residential facility. Appellant filed timely appeals from the judgments in both cases and we granted his unopposed motion to consolidate the appeals.

QUESTIONS PRESENTED

Appellant presents four questions for our consideration, which we have re-ordered as follows:

I. Did the juvenile court err by committing appellant, in Case No. JA-15-0417, where there was never a finding of involvement as the case had been placed on the stet docket prior to the disposition hearing?

II. Did the juvenile court err by denying appellant's motion to withdraw his admission to the violation of probation where his admission was expressly conditioned on DJS recommending community detention and electronic monitoring and DJS reneged on that agreement?

III. Did the juvenile court err when it refused to permit defense counsel to reply to information and argument presented by the prosecutor in support of the State's requested disposition?

IV. Did the juvenile court err by ordering non-community based detention?

For the reasons set forth below, we shall answer questions I and II in the affirmative. In light of our holding, we need not address the remaining questions.

FACTUAL BACKGROUND

These consolidated appeals have their genesis in two separate juvenile actions, case numbers JA-15-0128 and JA-15-0417. At a merits hearing on May 12, 2015, in case number JA-15-0128, the juvenile court found appellant involved in the delinquent acts of robbery, theft of property having a value of less than $1,000, and second-degree assault.[1] At a disposition hearing on June 9, 2015, appellant was placed on probation with Global Positioning System ("GPS") monitoring. Appellant noted an appeal from his disposition challenging the sufficiency of the evidence supporting his adjudication. In an unreported opinion, *In re: Devontaye S.*, No. 1267, Sept. Term, 2015 (filed April 4, 2016), we affirmed.

On June 29, 2015, the State filed another delinquency petition against appellant in case number JA-15-0417, alleging that he was involved in the delinquent act of theft of property having a value of less than $1,000. There was no finding of involvement in that case. Rather, on August 20, 2015, the case was placed on the stet docket on the condition that appellant abide by all laws, pay $50 in restitution to the alleged victim, and complete 72 hours of community service.

[1] A "delinquent act" is defined as "an act which would be a crime if committed by an adult." Md. Code (2013 Repl. Vol.), §3-8A-01(l) of the Courts and Judicial Proceedings Article ("CJ").

Less than a month later, DJS filed petitions for revocation of probation in both cases. DJS alleged that appellant had been placed on probation on June 9, 2015, and that he had violated the terms of his probation by failing to: attend school, regularly attend class, and apply himself; obey all lawful rules and regulations of the school; comply with GPS monitoring; complete community service hours in a timely manner; abide by rules in the home; abide by the program rules of the Violence Prevention Initiative ("VPI) Unit; and, abide by the conditions of his probation.

At a hearing on October 7, 2015, appellant's counsel advised the court that an agreement had been reached with DJS pursuant to which appellant would admit to violating the terms of his probation. Subsequently, the juvenile court found appellant in violation of the terms of his probation.

On October 27, 2015, the parties appeared for a disposition hearing. The representative for DJS and appellant's counsel advised the court that there were some concerns about appellant's intellectual aptitude and that further educational testing was necessary. The juvenile court advised the parties that it was "going to go forward with the disposition and violation today."

Counsel for appellant requested that appellant be permitted to go home so that he could work with his educational advocate and begin the process of requesting an Individualized Education Program ("IEP").[2] Counsel pointed out that appellant had not

[2] The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§1400 *et seq.*, defines an IEP as a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. §1414(d). *See* 20 U.S.C. §1401(14).

"incurred new charges, he hasn't done anything that I would submit warrants a commitment and certainly not an out-of-home commitment in this case. And he also had a positive report from the Choice Program ... since the last Court date." Counsel asked that, in light of appellant's strengths and his need to obtain education services, he be placed on probation or "in the most restrictive scenario, to have a commitment, a community-based commitment."

The State recommended a "Level B" placement, meaning placement in a non-community based residential facility. The juvenile court questioned appellant about his name, date of birth, and age, and asked him if there was anything he wanted to tell the court. After appellant stated that he would "work hard in school" and "do the right thing, if you give me one more chance," the Court stated:

> Madam Clerk, the Court has reviewed this matter. The Court recalls this case quite clearly. And the Court recalls that this matter started with an incident in school, where the Respondent was found involved in a robbery matter.
>
> The State is correct. You got a break and you forced everybody's hand by continuing to violate. And I'm not going to – this young man needs some help. He needs some help. And apparently, we placed him back in the community, thinking he was going to get the help and he didn't take advantage of it. And the State is correct, it's not just at school. But a lot of it is at school.
>
> And I'm reading – I just don't see how he's not under control at school.

The juvenile court committed appellant to placement in a Level B, non-community based residential facility. Appellant filed a motion to modify the commitment order in case number JA-15-0417 on the ground that the case had been on the stet docket and there had

been no finding of involvement. Appellant argued that, under Maryland law, a disposition hearing is permitted only after a finding of involvement at an adjudicatory hearing and, as a result, his due process rights were violated in that particular case. The court denied the motion without a hearing on November 5, 2015.

On October 30, 2015, appellant filed an unopposed motion seeking to modify the commitment in both cases. Appellant asserted, among other things, that all of the parties agreed that a Level C, community-based commitment was appropriate for appellant. That motion was also denied without a hearing.

DISCUSSION

I.

Appellant contends that the juvenile court erred in committing him to a Level B, non-community residential facility in case number JA-15-0417 because that case had been placed on the "stet" docket and there was never a finding of involvement. He maintains that the juvenile court's finding that he violated the terms of his probation cannot stand because there had never been an adjudication in case number JA-15-0417 and, as a result, the court lacked the authority to proceed to disposition and order his commitment. We agree.

We begin by noting that juvenile proceedings are civil and not criminal in nature. *See In re Thomas J.*, 372 Md. 50, 57 (2002)(and cases cited therein). Although the proceedings are civil in nature, "[t]his does not mean that a juvenile gives up all rights that a person would be entitled to in a criminal proceeding." *In re Anthony R.*, 362 Md. 51, 69 (2000). Prior to a delinquency adjudication, an accused juvenile is entitled to many, if not

all, of the constitutional protections that are accorded a criminal defendant. *See generally In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967); *In re Anthony R.*, 362 Md. at 69-70. In *Lopez-Sanchez v. State*, the Court of Appeals acknowledged that "so many rights enjoyed by criminal defendants have been held to apply in juvenile proceedings that many of the procedural distinctions between the two types of proceedings (with the notable exception of jury trials and indictment proceedings) have all but disappeared." 388 Md. 214, 225 (2005) (citations omitted), *superceded by statute on other grounds*.

Disposition by placing a criminal case on a "stet" docket is discussed generally in Maryland Rule 4-248. Although there is no rule or other law specifically addressing stet dockets in juvenile cases, it is clear to us that the stet in case number JA-15-0417 did not operate as a finding of involvement, a dismissal, or an acquittal. As we explained in *B.H. v. Anne Arundel County Dept. of Social Services*:

> A stet in Maryland is a method of placing an indictment or criminal information in a state of suspended animation into which new vitality may be breathed through either prosecutorial or defense resuscitation. The entry of a stet in a criminal case simply means that the State will not proceed against an accused on that indictment at that time.

209 Md. App. 206, 210 n.1 (2012) (internal quotations and citations omitted).

The parties were free to condition the placement of the case on the stet docket on appellant's satisfaction of certain requirements, but the failure to satisfy one or more of those requirements did not constitute a violation of probation or a finding of involvement.[3]

[3] "Probation" is defined by the Maryland Rules governing juvenile causes as "a status created by a court order under which a child adjudicated to be delinquent (continued)

In case number JA-15-0417, there was never an adjudication. Once appellant failed to satisfy the requirements for having his case placed on the stet docket, the proper procedure was to remove the case from the stet docket and proceed with an adjudicatory hearing. CJ §3-8A-18. It is only after a finding of involvement that a court may hold a disposition hearing. CJ §3-8A-19(b)(1) ("After an adjudicatory hearing the court shall hold a separate disposition hearing"); Md. Rule 11-115(a) (if court sustains allegations after an adjudicatory hearing "it shall promptly schedule a separate disposition hearing.").

The juvenile court could not proceed to disposition or order appellant's commitment unless and until appellant had been adjudicated involved in the underlying delinquent act alleged in the juvenile petition in case number JA-15-0417. As no adjudicatory hearing was ever held in case number JA-15-0417, and no finding of involvement ever made, we shall vacate the juvenile court's finding that appellant violated the terms of his probation and its disposition committing appellant to a Level B, non-community based residential facility.

II.

Appellant next contends that the juvenile court erred in denying his motion to withdraw his admission to the violation of probation because that admission was expressly conditioned on DJS recommending community detention and electronic monitoring and DJS reneged on that agreement. We agree and explain.

… is to remain subject to supervision of the Court under conditions the Court or the agency designated by it deems proper, but is not removed from his home." Md. Rule 11-101(b)(5).

Preliminarily, as we have already noted, appellant was never on probation in case number JA-15-0417. The placement of that case on the stet docket was merely premised on appellant's satisfaction of certain requirements which, if not fulfilled, could result in the removal of that case from the stet docket and an adjudicatory proceeding on the allegations set forth in the juvenile petition. Nevertheless, our holding, *infra*, applies to case number JA-15-0417 to the extent that appellant's admission to violating his probation also constituted an admission that he failed to satisfy the requirements supporting the placement of case number JA-15-0417 on the stet docket.

With respect to case number JA-15-0128, appellant was adjudicated involved and placed on probation on June 9, 2015. DJS filed a petition to revoke his probation alleging that he had been suspended from school multiple times, failed to comply with GPS monitoring, and failed to complete the required community service. At the October 7, 2015 hearing on the violation of probation, counsel for appellant advised the court that the parties "were able to reach an agreement for an admission." Appellant confirmed for the court that he wished to admit to violating the terms of his probation. Thereafter, the court found appellant "in violation of his probation."

The parties and the court proceeded to discuss appellant's detention as follows:

THE COURT:	I'll hear you regarding the Respondent's detention status.
[APPELLANT'S COUNSEL]:	Your Honor, our agreement and understanding is that what the State will be asking for is electronic monitoring. The Department has asked for the EM reporting center. We don't have any objection to those being implemented.

We understand there's some serious concerns being expressed at school. We have an educational advocate who is going to help us with Devontaye's IEP status. Devontaye either had or was evaluated for an IEP in elementary school and we think he needs some serious educational support to help him succeed in school. And to give him these three weeks, if he is on electronic monitoring, to show that he can abide by the rules of school and attend class when he is supposed to.

For that reason we would ask that if he is detained that he be on community detention, electronic monitoring.

THE COURT: Okay.

[THE STATE]: Your Honor, the State is asking for electronic monitoring, but the probation officer might have a different recommendation.

THE COURT: Say that again?

[THE STATE]: The DJS representative has a different recommendation.

THE COURT: Okay. Yes, ma'am?

[DJS REPRESENTATIVE]: Your Honor, at this time the Department requests that he be detained, so I'm asking if that could be conducted –

THE COURT: Okay.

[APPELLANT'S COUNSEL]: Excuse me, Your Honor.

THE COURT:	Okay. See everyone back here on – Mr. Sheriff, the Respondent is in your custody. You know, it's amazing –
[APPELLANT'S COUNSEL]:	Actually, excuse me, Your Honor – actually, if we could have a moment, Your Honor, because I just –
THE COURT:	Excuse me. Excuse me. That's okay. I'm just looking at the violation, it mentions in here, it says detained in Court.
[APPELLANT'S COUNSEL]:	I understand that, Your Honor. But part of our –
THE COURT:	Mr. Sheriff, the Respondent is in your custody.
[THE STATE]:	Your Honor, actually, based on the agreement, the final agreement that the State came to, the State would not be asking for – this was not the determining –
[APPELLANT'S COUNSEL]:	Your Honor, can we approach?
THE COURT:	No. Thank you.
[APPELLANT'S COUNSEL]:	Your Honor, we move to withdraw the admission at this point, because we were told one – there was either a miscommunication or – or I'm not sure what.
THE COURT:	That has nothing to do with what the Court is going to do.
[APPELLANT'S COUNSEL]:	Well, I understand that, Your Honor, but I think that the Department's recommendation has some issues, too. So I understand if Your Honor won't do it, but I would like to move to withdraw the admission at this point.

THE COURT: Okay.

[THE STATE]: The State doesn't object.

THE COURT: Okay. See you all back on the 27th.

The following day, counsel for appellant filed a consent motion to modify appellant's detention status by releasing him from detention and placing him on electronic monitoring. Counsel explained that prior to the October 7th hearing, appellant had reached an agreement with the State and DJS pursuant to which appellant would admit to violating his probation in exchange for a recommendation by the State and DJS that he be placed on electronic monitoring pending disposition and that the representative for DJS reneged on that agreement when, at the hearing, she requested that appellant be detained. Counsel for appellant asserted that he had spoken with the supervisor of the DJS representative who advised that it was the "official position" of DJS that appellant should be placed on electronic monitoring. Counsel further explained that if the parties had not come to an agreement with respect to electronic monitoring, he would have requested a contested hearing in order to present evidence to mitigate the alleged violation of probation. The juvenile court denied the motion to modify appellant's detention status without a hearing.

Although there is no authorization for a plea of guilty in a delinquency proceeding, an admission by a juvenile by answer or in open court, has the same effect. *See In re Appeal No. 544*, 25 Md. App. 26, 42-43 (1975). Accordingly, admissions may be effectively accepted and considered by a court only under the standard applicable to the waiver of constitutional rights. *Id.*

We have long held that a court considering a criminal matter has the discretion to deny a motion to withdraw an admission or plea, but the court "abuses its discretion if it fails to permit withdrawal of a guilty plea when the contemplated benefit which induced the plea is not accorded." *McCormick v. State*, 38 Md. App. 442, 457 (1978). *See also Santobello v. New York*, 404 U.S. 257, 262 (1971)(when plea rests in any significant way on promise or agreement of prosecutor, so that it can be said to be part of the inducement or consideration, the promise must be fulfilled); *Miller v. State*, 272 Md. 249, 252-54 (1974)(where State failed to live up to its promise, which was part of the inducement or consideration for defendant's guilty plea, defendant may have his guilty plea vacated); *Snowden v. State*, 33 Md. App. 659, 663-66 (1976)(defendant had option to withdraw plea where State made sentencing recommendation in violation of plea agreement); Similarly, a juvenile court has the discretion to deny a motion to withdraw a juvenile's admission, but will abuse its discretion by failing to permit the withdrawal of the admission when the contemplated benefit which induced the admission is not accorded. *See In re James B.*, 54 Md. App. 270, 275-76 (1983)(recognizing right to withdraw from agreement or admission).

It is irrelevant to this analysis that DJS was merely making a recommendation and that the ultimate decision rested in the hands of the juvenile court. In this case, Devontaye S.'s decision to admit to a violation of his probation was induced by DJS's promise to recommend that he be permitted to remain in the community on electronic monitoring.[4]

[4] We cannot condone DJS's failure to keep its word to Devontaye. One of the key objectives of the juvenile system is to reintegrate and help juvenile offenders "becom[e] responsible and productive members of society." CJ §3-8A-02(a)(1)(iii). Society wants juvenile offenders to learn appropriate methods of interacting with the world, (continued)

The failure of the juvenile court to permit appellant to withdraw his admission when the contemplated benefit which induced that admission was not accorded to him constituted an abuse of discretion. As a result, we shall vacate the juvenile court's findings that appellant violated the terms of his probation in case number JA-15-0128, that he failed to comply with the requirements to have case number JA-15-0417 remain on the stet docket, the adjudication in case number JA-15-0417 that appellant was involved in the alleged delinquent act, and the dispositions imposed in both cases.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT IN CASE NOS. JA-15-0417 AND JA-15-0128 VACATED; BOTH CASES REMANDED FOR FURTHER PROCEEDINGS; COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

including appropriate interaction with and toward authority. In our view, it is critical for representatives of the State to model that same behavior and treat juvenile offenders honestly and fairly.