

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2720

September Term, 2014

IN RE: DA'RHON J.

Berger,
Arthur,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: April 4, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

In a juvenile petition, filed on December 12, 2014 in Wicomico County, Maryland, it was alleged that appellant, Da'rhon J., was delinquent because of his involvement in a physical altercation that would constitute second degree assault if it had been committed by an adult. At the adjudication hearing on January 20, 2015, (Simpson, J.), appellant admitted involvement in the incident. On February 24, 2015, at the disposition hearing before the Circuit Court of Wicomico County (Sarbanes, J.), appellant was found to be a delinquent child and committed to the Department of Juvenile Services (“DJS”) for placement at the community-based, residential level with all standard conditions and certain special conditions. The commitment, however, was stayed pending the review of appellant’s completion of the aforementioned conditions. This timely appeal was filed on February 27, 2015, in which appellant raises the following issue for our review, which we quote:

Did the juvenile court abuse its discretion in imposing "stayed commitment," that is, a community-based, residential commitment, instead of supervised probation, under the circumstances of this case?

FACTS AND LEGAL PROCEEDINGS

On January 20, 2015, at the adjudicatory hearing, appellant admitted his involvement in the physical altercation at issue. The State read a statements of facts, which included the State's version of events leading up to the assault. The only part of the statement of facts to which appellant agreed, however, was the assault. Accordingly, the agreed facts are that appellant was sixteen years old at the time of the incident, October 27, 2014. He was ordered to go to the principal’s office and, when the principal arrived to enforce the order, appellant

punched him once on the jaw. The principal suffered "some redness and swelling" where appellant punched him.

On February 24, 2015, at appellant's disposition hearing, a representative of DJS recommended that he "be placed on a period of community-based residential level" treatment, with the placement subject to being stayed and that appellant be allowed to remain in the community with his parents. The DJS representative also recommended that appellant be required to complete the following:

- Attend and successfully complete the anger management [treatment] within 90 days;
- Attend and complete the Choice Program¹ within 90 days;
- Re-engage in mental health treatment and follow all recommendations including medication management;
- Pay full restitution to the victim, Don Brady, in the amount determined by the court within 6 months;
- Abide by a daily curfew of 8:00 p.m. unless modified by the [DJS];
- Obey all rules of the parent's home; and
- Complete any other program or condition deemed necessary by the Department.

DJS also requested a review of appellant's case within 60 days.

¹ "The Choice Program is a community-based, family-centered case management approach to delinquency prevention and youth development." THE CHOICE PROGRAM AT UMBC, <http://www.choiceprograms.org/pgs.cfm?linkID=1> (last visited Mar. 3, 2016).

On cross-examination of the DJS representative, appellant questioned the reason for a “stayed commitment versus placing him on a period of supervised probation,” to which the representative responded that the recommendation was partially based on “the restitution amounts that could possibly be ordered” and appellant’s “continued need for mental health treatment.” According to the DJS representative, once a juvenile is removed from the community, restitution payments can be stopped for the duration of the removal.

At disposition, appellant was "committed to the [DJS] for placement at the community-based resident level with the placement to be stayed," with "all standard conditions" and certain "special conditions," including many of DJS’s recommendations.² Appellant's counsel, in juvenile court, objected to the use of a "stayed commitment," arguing for "supervised probation with the exact same terms and conditions as laid out in the Department's report." The objection was overruled.

STANDARD OF REVIEW

"The matter of disposition in a juvenile case is committed to the sound discretion of the juvenile judge, to be disturbed on appeal only upon a finding that such discretion has been abused." *In re Hamill*, 10 Md. App. 586, 592 (1970); *accord In re Julianna B.*, 179 Md. App. 512, 575 (2008), *vacated on other grounds*, 407 Md. 657 (2009).

² Anger management classes, the Choice Program, mental health treatment, medication management, restitution (if any) to the principal and attending school without "disruptions, suspensions or unexcused absences."

DISCUSSION

Appellant asserts that he was given a “commitment” to the DJS for “placement at the community-based resident level with the placement to be stayed,” to which appellant objected, requesting “supervised probation.” Appellant submits that “stayed commitment” is not provided for under Maryland law, and that the statute provides for either “commitment” or “probation.” Appellant suggests that “stayed commitment” is an impermissible hybrid of the two and that his disposition should be reversed.

The State responds that the juvenile court did not abuse its discretion regarding the scope of the disposition when it decided to place appellant on a community-based, residential commitment, which the court stayed, as opposed to placing him on supervised probation. The State argues that the juvenile court’s disposition was both permissible under that law and appropriately formulated to address the best interest of the child, under the facts of the case.

Md. Code Ann., Cts. & Jud. Proc., § 3-8A-19³ governs the disposition of a child and provides, in pertinent part:

(d)(1) In making a disposition on a petition under this subtitle, the court may:

(i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;

(ii) Subject to the provisions of paragraphs (2) and (3) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile

³ Acts 2014, c. 158, § 1, eff. Oct. 1, 2014.

Services, the Department of Health and Mental Hygiene, or a public or licensed private agency *on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle*, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is terminated with approval of the court or as required under § 3-8A-24 of this subtitle; or

(iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

(Emphasis added).

Md. Code Ann., Cts. & Jud. Proc., §3-8A-02 governs the purposes and construction of the subtitle and provides that

(a) The purposes of this subtitle are:

(1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:

(i) Public safety and the protection of the community;

(ii) Accountability of the child to the victim and the community for offenses committed; and

(iii) Competency and character development to assist children in becoming responsible and productive members of society;

(2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;

(3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;

(4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(7) To provide to children in State care and custody:

(i) A safe, humane, and caring environment; and

(ii) Access to required services; and

(8) To provide judicial procedures for carrying out the provisions of this subtitle.

(b) This subtitle shall be liberally construed to effectuate these purposes.

(Emphasis added).

In Maryland, the purpose of juvenile confinement is rehabilitatory, not punitive. In *Smith v. State*, 399 Md. 565, 580 (2007), the Court said, "[W]e have repeatedly noted that the Legislature intended the juvenile justice system to be guided generally by principles of protection and rehabilitation of the individual rather than a societal goal of retribution and punishment." (citations omitted) (internal quotation marks omitted). Indeed, the very core of "the Juvenile Causes Act⁴ is that a child does not commit a crime when he commits a delinquent act He is not to be punished but afforded supervision and treatment to be made aware of what is right and what is wrong " *In re William A.*, 313 Md. 690, 695 (1988) (quoting *In re Davis*, 17 Md. App. 98, 104 (1973)). To that end, juvenile offenders

⁴ Md. Code Ann., Cts & Jud. Proc., title 3, subtitle 8A.

are in a “separate system” that is “civil in nature”; “juvenile proceedings are not criminal in nature” *In Re Victor B.*, 336 Md.85, 91 (1994). *See also In re Nancy H.*, 197 Md. App. 419, 428 (2011) (“Juvenile dispositions are considered civil in nature, and not criminal convictions.” Furthermore, juvenile dispositions are specific to the goals of juvenile rehabilitation, in that, they are subject to modification and revision to further the “best interest of the child.” MD. RULE 11–116(a).

In the case *sub judice*, at disposition, the juvenile court committed appellant at a community-based, residential level with that commitment stayed, pending the outcome of a later review. The court committed appellant “on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02” *See supra*. Appellant argues that the juvenile court must be constrained to order either probation or confinement, but not a “hybrid.” Appellant’s legal theory, however, that a “hybrid” disposition is unsupported by law is not tenable. The very language of the law and its oft-stated purpose, *i.e.* in the best interest of the child, allows for dispositions, in the discretion of the juvenile court, that will effect the best possible outcomes for the child. In the instant case, appellant asserts that the court could either give him probation or confine him, but not craft a comprehensive disposition that can accommodate his various needs, *i.e.*, mental health treatment and the needs required by the law, *i.e.*, restitution. As the language of the statute provides, the law requires a liberal construction to further its intended purpose. § 3-8A-02(b), *supra*. *See also In re Nancy H.*, 197 Md. App. at 428 (“The Legislature has mandated that this subtitle [§3-

8A-02] be *liberally construed to effectuate its purposes.*”). Accordingly, we affirm the decision of the Circuit Court for Wicomico County.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**