

Workman, Chief Justice, concurring:

I concur with the result reached by the majority. However, in addition to the direction provided by the majority for remand, I would emphasize that the most substantial problem in this case appears not to have even been addressed. These children committed an act of wanton vandalism indicating some deep-seated source of anger or psychological problem. An important tenet of our juvenile law has been to determine the underlying causation of the juvenile criminal conduct, with the goal of intervening and addressing the source of the problem.

Pursuant to West Virginia Code § 49-5-13(a) (1996), regarding granting probation to a juvenile, “[t]he court, upon its own motion, or upon request of counsel, may order a psychological examination of the child.”

Pursuant to § 49-5-13(b), “[f]ollowing the adjudication, the court shall

conduct the dispositional proceeding, giving all parties an opportunity to be heard." The provision specifies as follows:

In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the child and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the child and the child's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the child is in need of extra-parental supervision: (A) Place the child under the supervision of a probation officer of the court or of the court of the county where the child has his or her usual place of abode or other person while leaving the child in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the child's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to section twenty-five, article seven, chapter twenty of this code, or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the child, that a child is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the child, the court may place the child in temporary foster care or temporarily commit the child to the state department or a child welfare

agency. The court order shall state that continuation in the home is contrary to the best interest of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department of human services, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the supreme court of appeals;

(5) Upon a finding that the best interests of the child or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the child to an industrial home, correctional institution for children, or other appropriate facility for the treatment, instruction and rehabilitation of juveniles: Provided, That the court maintains discretion to consider alternative sentencing arrangements. Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense. The order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible;

(6) Upon an adjudication of delinquency pursuant to subdivision (3) or (4), section four, article one of this chapter, and upon a finding that the child is so totally unmanageable, ungovernable

and antisocial that the child is amenable to no treatment or restraint short of incarceration, commit the child to a rehabilitative facility devoted exclusively to the custody and rehabilitation of children adjudicated delinquent pursuant to said subdivision. Commitments shall not exceed the maximum period of one year with discretion as to discharge to rest with the director of the institution, who may release the child and return him or her to the court for further disposition.

The order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; or

(7) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the child to a mental health facility in accordance with the child's treatment plan; the director may release a child and return him to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

We explained in State ex rel. West Virginia Dept. of Health and Human Resources v. Frazier, 198 W.Va. 678, 482 S.E.2d 663 (1996), that “[g]eneral jurisdiction over juvenile proceedings is vested in the circuit

courts pursuant to West Virginia Code § 49-5-2(a) (Supp.1996)” and “specific authority to render decisions regarding the disposition of juveniles is expressly granted to circuit courts by West Virginia Code § 49-5-13 (Supp.1996).” Id. at 682, 482 S.E.2d at 667. We also emphasized that “[t]he extent of a circuit court's discretion in placing juveniles is evidenced by the wide range of dispositional options available: community-based programs, rehabilitative facilities, correctional institutions, extra-parental supervision through probation officers, temporary shelter placement, or temporary placement with the DHHR.” Id. at 683, 482 S.E.2d at 668.

In State v. McDonald, 173 W.Va. 263, 314 S.E.2d 854 (1984), we explained that “[t]he entire tenor of W.Va. Code, 49-5-13, is to provide substantial flexibility for sentencing of persons who committed offenses when they were juveniles.” See State v. Ball, 175 W.Va. 652, 337 S.E.2d 310 (1985). “We have long recognized that the purpose of our juvenile law is to promote the rehabilitation of troubled children, rather than to punish them.” Id.

The majority indicates that the record fails to disclose any particular program of treatment or therapy for these children. On remand, therefore, the lower court should endeavor to determine underlying problems causing these children to behave in the manner they did and address them through some program of counseling or rehabilitation. Otherwise, we will in all likelihood be dealing with these children as adult criminals when they reach their majority.