IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1998 Term

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No. 25195

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STATE OF WEST VIRGINIA,
Appellee,

v.

CRAIG D.,
Appellant.

Appeal from the Circuit Court of Fayette County
Honorable Charles M. Vickers, Judge
Juvenile Petition No. 97-JD-36

AFFIRMED

Submitted: November 12, 1998
Filed: December 4, 1998

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE STARCHER dissents and reserves the right to file a dissenting opinion.

SYLLABUS

"In a juvenile proceeding it is the obligation of a trial court to make a record at the dispositional stage when commitment to an industrial school is contemplated under W.Va. Code, 49-5-13(b)(5) (1978) and where incarceration is selected as the disposition, the trial court must set forth his reasons for that conclusion. In this regard the court should specifically address the following: (1) the danger which the child poses to society; (2) all other less restrictive alternatives which have been tried either by the court or by other agencies to whom the child was previously directed to avoid formal juvenile proceedings; (3) the child's background with particular regard to whether there are pre-determining factors such as acute poverty, parental abuse, learning disabilities, physical impairments, or any other discrete, causative factors which can be corrected by the State or other social service agencies in an environment less restrictive than an industrial school; (4) whether the child is amenable to rehabilitation outside an industrial school, and if not, why not; (5) whether the dual goals of deterrence and juvenile responsibility can be achieved in some setting less restrictive than an industrial school and if not, why not; (6) whether the child is suffering from no recognizable, treatable determining force and therefore is entitled to punishment; (7) whether the child appears willing to cooperate with the suggested program of rehabilitation; and, (8) whether the child is so uncooperative or so ungovernable that no program of rehabilitation will be successful without the coercion inherent in a secure facility." *State ex rel. D.D.H. v. Dostert*, 165 W.Va. 448, 269 S.E.2d 401 (1980).

Per Curiam:

The appellant in this case, Craig D.,[1] appeals a final order of the Circuit Court of Fayette County entered on December 11, 1997. In that order, the 17-year-old appellant was placed in the custody of the Department of Corrections until he is 19 years of age. In this appeal, the appellant argues that the circuit court failed to consider less restrictive alternatives, and thereby erred in placing him with the Department of Corrections.

The Court has before it the petition for appeal, all matters of record, and the briefs of counsel. For the reasons set forth below, we affirm the final order of the circuit court.

I.

On September 22, 1997, in Gauley Bridge, West Virginia, 17-year-old Craig D. robbed Richard Hayhurst, a 61-year-old motel clerk, by the presentment of a gun. The victim was threatened and placed in fear, not knowing (as Craig D. later contended) that the weapon was a toy gun. Craig D. took $219.00 from Mr. Hayhurst and fled the scene.

[1]Consistent with our past practice in juvenile cases, we do not use the last names of the parties. *See In the Matter of Jonathan P.*, 182 W.Va. 302, 303 n.1, 387 S.E.2d 537, 538 n.1 (1989).

Craig D. was arrested the next day, and a juvenile petition was filed alleging that the infant committed the offense of "aggravated robbery." On October 17, 1997, pursuant to a plea agreement, Craig D. made an admission before the circuit court to the offense of "unaggravated robbery" in violation of *W.Va. Code*, 61-2-12 [1961].

As a part of the plea agreement, the State recommended to the circuit court at the December 11, 1997 dispositional hearing that Craig D. receive extra-parental supervision provided by the probation department, as provided for in *W.Va. Code*, 49-5-13(b)(3)[1997]. At that hearing, the circuit court reviewed on the record a "social summary" prepared by the probation department. The summary indicated that Craig D. was in the 12th grade at Gauley Bridge High School with "a total cumulative grade point average of 1.7837 with problems in excessive tardiness and insubordination." Between the time of the plea hearing and the dispositional hearing, Craig D. had "accumulated eight tardies and if he gets one more, he will be expelled."

The court also noted on the record that Craig D. and his girlfriend, who was then 16 years of age, had a daughter who was born 6 days after the robbery of Richard Hayhurst, and that in the nearly 3 months since the crime Craig D. had only seen the child on three occasions. The court indicated that there were tensions between Craig D's family and the family of his girlfriend.

The court also indicated that while Craig D.'s parents were of the belief that their son "was influenced by other people" to rob Mr. Hayhurst, the parents continued to

let Craig associate with these people. The court also found that Craig's parents did little to assist him in his school performance.

Based upon the facts and circumstances presented in the social summary and at the dispositional summary, the court concluded that commitment to the Department of Corrections was an appropriate disposition for Craig D. The court imposed such commitment until Craig's 19th birthday, or May 22, 1999.

II.

Craig D. contends that the circuit court failed to make the necessary factual findings at the dispositional hearing that no less restrictive alternative was available, and that the court's failure to grant Craig D. extra-parental supervision was an abuse of discretion.

The State, meanwhile, argues that the circuit court's decision was procedurally sound and well within its discretion. The State asserts that while the circuit court did not make specific findings of fact that no less restrictive alternative was available, the court did make a record supporting Craig D.'s placement with the Department of Corrections.

W.Va. Code, 49-5-13(b)(5) [1997] authorizes a circuit court to commit a juvenile to a correctional institution for juveniles "upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency[.]" When a circuit court contemplates commitment to a correctional

facility, it is required to make a record and set forth its reasons for selecting that dispositional alternative. As we explained in Syllabus Point 4 of *State ex rel. D.D.H. v. Dostert*, 165 W.Va. 448, 269 S.E.2d 401 (1980):

> In a juvenile proceeding it is the obligation of a trial court to make a record at the dispositional stage when commitment to an industrial school is contemplated under W.Va. Code, 49-5-13(b)(5) (1978) and where incarceration is selected as the disposition, the trial court must set forth his reasons for that conclusion. In this regard the court should specifically address the following: (1) the danger which the child poses to society; (2) all other less restrictive alternatives which have been tried either by the court or by other agencies to whom the child was previously directed to avoid formal juvenile proceedings; (3) the child's background with particular regard to whether there are pre-determining factors such as acute poverty, parental abuse, learning disabilities, physical impairments, or any other discrete, causative factors which can be corrected by the State or other social service agencies in an environment less restrictive than an industrial school; (4) whether the child is amenable to rehabilitation outside an industrial school, and if not, why not; (5) whether the dual

> goals of deterrence and juvenile responsibility can be achieved in some setting less restrictive than an industrial school and if not, why not; (6) whether the child is suffering from no recognizable, treatable determining force and therefore is entitled to punishment; (7) whether the child appears willing to cooperate with the suggested program of rehabilitation; and, (8) whether the child is so uncooperative or so ungovernable that no program of rehabilitation will be successful without the coercion inherent in a secure facility.

In *Dostert*, we stressed that it is important that a circuit court develop a record that "discloses conclusively that [it] has considered all relevant factual material and dispositional theories[.]" 165 W.Va. at 471, 269 S.E.2d at 416. We also emphasized that "'discretionary, dispositional decisions of the trial courts should only be reversed where they are not supported by the evidence or are wrong as a matter of law.'" *Id.*

In this case the circuit court conducted a sufficiently detailed dispositional hearing in an effort to determine the most suitable dispositional alternative. The circuit court considered Craig D.'s school conduct, as well as his parents' inability to provide proper supervision. The court found that Craig D.'s offense was serious, regardless of whether the gun was real or a toy, because Craig D. could just as easily have gotten killed during the robbery. While Craig D. had no prior involvement with the juvenile justice

system, the court concluded that rehabilitation was more likely in a secure facility because the appellant would receive more direction, and would be more likely to understand and take responsibility for his actions.

After reviewing the record, it is apparent that the circuit court explored the seriousness of the appellant's offense, and the likelihood of rehabilitation in a correctional facility. The circuit court was therefore within its discretion in committing Craig D. to the Department of Corrections.

Accordingly, the final order of the Circuit Court of Fayette County is affirmed.

Affirmed.