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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., concurring:

In this proceeding, the juvenile contended that he was denied the right to allocution during the dispositional phase of his prosecution. The majority opinion agreed with the juvenile, reversed the dispositional order of the trial court, and remanded the case for a new dispositional hearing to permit the juvenile to exercise his right to allocution. I fully concur in the resolution of this issue. I have chosen to write separately to clarify another issue that will be addressed on remand; the use of a multidisciplinary team in juvenile delinquency proceedings.

***The Use of a Multidisciplinary Team in Juvenile
Delinquency Proceedings Is Statutorily Limited***

One of the issues raised by the juvenile in this case was that he had a statutory right to have a multidisciplinary team participate in the dispositional phase of his prosecution. The State argued that, under the facts of this case, there was no statutory right to have a multidisciplinary team involved. The majority disposed of this issue in footnote 9 of the opinion by remanding the issue for further development. I do not disagree with remanding this issue, but I believe the majority opinion should have gone further and provided some guidance to the trial court in light of the broad language used in Syllabus

point 3 of *E.H. v. Matin*, 201 W. Va. 463, 498 S.E.2d 35 (1997).

In *Matin*, a juvenile was found delinquent, placed in the custody of the Department of Health and Human Resources (hereinafter referred to as “DHHR”), and sentenced to an out-of-state facility. The case came to this Court on certified questions, one of which asked whether the use of a multidisciplinary team was statutorily mandated under the facts of the case. The *Matin* Court answered the question in the affirmative, and in so doing set out the following in Syllabus point 3: “The language of W. Va. Code § 49-5D-3 is mandatory and requires the Department of Health and Human Resources to convene and direct treatment teams not only for juveniles involved in delinquency proceedings, but also for victims of abuse and neglect.” Viewed under the facts presented in *Matin*, Syllabus point 3 of that opinion is sound. However, that syllabus point was not intended to be as broad as its language implies because W. Va. Code § 49-5D-3 imposes limitations on the use of multidisciplinary teams in juvenile delinquency proceedings.

The relevant language of the statute is found in W. Va. Code § 49-5D-3(a)(2) (2004) (Repl. Vol. 2004), which reads as follows:

Treatment teams shall assess, plan and implement a comprehensive, individualized service plan . . . for juveniles and their families involved in . . . delinquency proceedings *when . . . the court is considering placing the juvenile in the department’s custody or placing the juvenile out-of-home at the department’s expense* pursuant to the provisions of section thirteen of said article. In any such . . . delinquency case, the juvenile probation officer shall notify the local office of the department of health and human resources and the

division of juvenile services at least five working days before the court proceeding in order to allow the multidisciplinary treatment team to convene and develop a comprehensive individualized service plan for the child.

Plainly then, under W. Va. Code § 49-5D-3(a)(2), the use of a multidisciplinary team is mandatory in a juvenile delinquency proceeding only when the court is considering (1) placing the juvenile in DHHR's custody, or (2) placing the juvenile out-of-home at DHHR's expense. Although we may question the wisdom of limiting the use of multidisciplinary teams to only these two situations, "[o]ur job is not to weigh the wisdom of . . . a statute." *West Virginia Health Care Cost Review Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 339, 472 S.E.2d 411, 424 (1996). *Accord State ex rel. City of Charleston v. Bosely*, 165 W. Va. 332, 352 n.3, 268 S.E.2d 590, 601 n.3 (1980) (Neely, C.J., dissenting) ("Courts cannot be concerned with legislative policy or the mere wisdom or lack of wisdom of the statute in question."). The Legislature has spoken in clear and unambiguous terms in limiting the use of multidisciplinary teams in delinquency proceedings. Consequently, the trial court's inquiry into this issue on remand must be guided by the statutory restrictions imposed on the use of multidisciplinary teams.

In view of the foregoing, I concur.