NO. 2018-1182

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 105845

IN RE: A.W., a minor child

APPELLEE'S MERIT BRIEF

Counsel for Defendant-Appellant

MARK A. STANTON
Cuyahoga County Public Defender

CULLEN SWEENEY
FRANK CAVALLO
Assistant Public Defenders
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
Phone: (216) 443-7583
csweeney@cuyahogacounty.us

Counsel for Plaintiff-Appellee

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecutor

***ANTHONY T. MIRANDA (0090759)**
TASHA L. FORCHIONE (0085814)
JEFFREY M. MAVER (0091126)
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
Phone: (216) 443-7416
Fax: (216) 443-7602
amiranda@prosecutor.cuyahogacounty.us
*counsel of record

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INTRODUCTION

The proposition of law presented by A.W. is legally unremarkable in that it holds juveniles are entitled to know what conduct will result in the imposition of an adult sentence. Neither the trial court, the majority of the appellate court affirming A.W.'s conviction, nor the State of Ohio has argued to the contrary. The real issue is whether A.W. was notified in this case that he must participate in treatment. The record is replete with statements by the trial court to A.W. that he must participate in treatment. He refused, which delayed his overall treatment, and when he eventually participated he did so only superficially.

In this appeal, A.W. attempts to raise several issues that are not properly before the Court. Though he argued in the lower court that his right to notice was implicated at sentencing, he now argues that it was implicated at the plea hearing. A.W. has never raised the voluntariness of his plea in this litigation. He also devotes one-quarter of his argument to the second proposition of law, which this Court did not accept.

Any legal decision in this case will be of limited application to cases not involving the underlying complicated facts. This appeal is a request for error correction and does not raise an issue of great public or general interest. For these reasons, the State of Ohio respectfully asks that this Court dismiss the appeal as improvidently allowed.

STATEMENT OF CASE

In April 2014, the State of Ohio filed a complaint alleging that A.W. was delinquent in committing rape, kidnapping, and gross sexual imposition. The case centered upon sexual conduct that occurred in August 2013 between A.W., then seventeen years old, and the victim, A.A., then thirteen years old. A.W. failed to appear and an arrest warrant was issued in April 2014. He was

arrested in May 2015, and was arraigned, but another arrest warrant was issued in September 2015. A.W. was again arrested about one year later in May 2016.

On September 7, 2016, the Juvenile Division of the Cuyahoga County Court of Common Pleas (hereinafter "trial court") held a probable cause hearing. It noted that A.W. was then twenty years old and that a significant amount of time passed in the case because A.W. was "AWOL". 9/7/16 Hearing Tr. at 4-5, 7. The hearing was continued to September 13, 2016, at which time the State amended the complaint to include a notice of its intent to seek a serious youthful offender sentence. 9/13/16 Hearing Tr. at 75-76. A.W. then admitted to committing a first-degree felony rape. 9/13/16 Hearing Tr. at 87.

Plea / Admission Hearing

At the admission hearing, the trial court emphasized that A.W. cannot get into fights while in the custody of the Ohio Department of Youth Services ("ODYS"). 9/13/16 Hearing Tr. at 78. It specifically explained to A.W. the consequences of failing to abide by ODYS orders: "And you understand that if in fact you don't do what you're supposed to do in ODYS, that they can impose the sentence and you can be sentenced from anywhere between 3 to 11 years for the charge a felony of the first degree if committed by an adult." 9/13/16 Hearing Tr. at 84. At the end of the hearing, the trial court specifically mentioned that sex offender treatment would be required: "Mom, grandma, what I'm going to put in the journal entry is that he be placed at Paint Creek so he can do what we call sex offender treatment. I know you don't want to believe this about your baby, but we're looking at three cases that are all sexually based. So somewhere along the line he has not learned what's appropriate." 9/13/16 Hearing Tr. at 90-91.

Sentence / Dispositional Hearing

On October 12, 2016, the trial court sentenced A.W. to remain in the custody of ODYS until his twenty-first birthday. At that hearing, the trial court warned A.W. that he would be brought back in 90 days and asked, "are you getting your education" and "are you participating in group therapies". 10/12/16 Hearing Tr. at 17. The trial court stated that "if, in fact, you are not doing what you're supposed to, I am going to cut the sentence at ODYS and send you to prison." 10/12/16 Hearing Tr. at 17. A.W. stated that he understood this. 10/12/16 Hearing Tr. at 18. The trial court specifically emphasized the importance of sex offender treatment:

> Court: But young man, I want sex offender treatment put in place for ODYS. You have three sex offenses. So does that mean that you're just a predator? Does that mean you're a stupid kid? What is it that makes you continually have sex offenses, and not just teenage stuff? [A.W.], they're serious, serious offenses.
> So I don't know the answer to that, but by the time you get back here in 90 days I want you to have a better understanding of what's appropriate and what's not. Do you understand me?
>
> A.W.: Yes.

10/12/16 Hearing Tr. at 18. A.W. was then transferred to the custody of ODYS.

First Review Hearing

The trial court held a review hearing on January 18, 2017. A.W.'s parole officer reported that A.W. "does not participate in any type of treatment" and "continues to deny the accusations." 01/18/17 Hearing Tr. at 4. The trial court stated that it was "not messing around" and A.W. must "either participate in the sex offender treatment" or go to prison. 01/18/17 Hearing Tr. at 5. It filed an order explicitly requiring A.W. to participate: "IT IS THEREFORE ORDERED that the youth shall participate and engage in sex offender treatment." Journal Entry Delinquency and Unruly, filed January 20, 2017.

Second Review Hearing

A second review hearing was held on March 31, 2017. At the hearing it was established that A.W. had been receiving individual sex offender programming. 03/31/17 Hearing Tr. at 5, 8. However, the group programs were filled, and a position would only become open to A.W. on April 5, 2017. 03/31/17 Hearing Tr. at 5. Court personnel pointed out that had A.W. cooperated with treatment from the beginning he could have "been finishing up Phase 1 right now on [his] way to Phase 2." 03/31/17 Hearing Tr. at 15. The trial court announced that efforts would be made to accelerate treatment to allow A.W. to complete as much treatment as possible before he turned twenty-one years old. 03/31/17 Hearing Tr. at 9-10. The trial court explicitly told A.W.: "[I]f you do everything you're supposed to, I will not impose your SYO." 03/31/17 Hearing Tr. at 10.

Third Review Hearing

A third review hearing was held on May 8, 2017, only fourteen days before A.W. turned twenty-one years old and the trial court lost jurisdiction. Dr. Alpert reported at the hearing that A.W. was "superficially engaged in his treatment." 05/8/17 Hearing Tr. at 4. Counsel for A.W. inquired about what superficial engagement meant. 05/08/17 Hearing Tr. at 13. Dr. Alpert clarified that A.W. is "going through the motions." 05/08/17 Hearing Tr. at 13.

Final Hearing

The trial court held a final hearing on May 22, 2017. Dr. Greene testified that A.W. needed "a significant amount of additional treatment." 05/22/17 Hearing Tr. at 7. She testified that he was approximately "10 to 15%" complete in the first phase of treatment. 05/22/17 Hearing Tr. at 9. If he had started treatment six months ago he could be closer to "60 to 70%" complete. 05/22/17 Hearing Tr. at 9. A.W.'s social worker, Bonita Reaves, testified as well. She explained that there

are two phases to sex offender treatment. 05/22/17 Hearing Tr. at 12-13. Phase one consists of thirty-five lessons and A.W. had completed only seven. 05/22/17 Hearing Tr. at 13. The first six lessons are essentially an introduction. 05/22/17 Hearing Tr. at 14. Phase two is the same length as phase one. 05/22/17 Hearing Tr. at 20.

Finally, Robin Palmer, testified. She is the President of the Mokita Center which contracts with the trial court to perform assessments of juveniles charged with sex offenses. 05/22/17 Hearing Tr. at 27-28. She interviewed A.W. on May 15, 2017. 05/22/17 Hearing Tr. at 29. Palmer then testified that there were twenty-five risk factors that are correlated to sexual offenses and A.W. had twenty of the twenty-five factors. 05/22/17 Hearing Tr. at 36.

Ultimately, the trial court found by clear and convincing evidence that A.W. engaged in conduct that created a substantial risk to safety by failing to undergo sexual offender treatment. 05/22/17 Hearing Tr. at 71-76. It ordered that the juvenile disposition be terminated, and the adult portion of the disposition be put into effect.

Direct Appeal

A.W. filed a direct appeal and raised several arguments. First, he argued that the trial court violated his due process rights when it invoked his adult sentence for failing to complete sex offender treatment because such treatment was never ordered by the court in its sentencing entry. The majority of the lower court held regardless of whether the trial court ordered the treatment, it was ordered by ODYS. *In re A.W.*, 8th Dist. Cuyahoga No. 105845, 2018-Ohio-2644, ¶ 25-26. The majority also held that A.W. had clear notice at the hearing in the trial court that he was expected to complete the treatment programs. *In re A.W.*, ¶ 31.

A.W. argued that the trial court erred in invoking the adult sentence because it was impossible to complete treatment before A.W. turned twenty-one and that there was no evidence

that he engaged in misconduct. The majority recognized that the trial court "simply expected participation and progress in the required therapies" and noted that A.W. "could have avoided the adult sentence if he complied with the required therapies when they were offered to him in December 2016". *In re A.W.*, ¶ 33. The majority decision of the lower court also held that failure to actively participate in sex offender treatment may constitute misconduct. *In re A.W.*, ¶ 36-48. It relied upon a decision from the Ninth District Court of Appeals which reached the same conclusion. *See In re D.J.*, 9th Dist. Summit Nos. 28472, 28473, 2018-Ohio-569.

A.W. also argued that the trial court violated his constitutional right against self-incrimination by considering statements he was compelled to make as part of his sex offender treatment. The majority decision acknowledged that A.W.'s statements were privileged under the Fifth Amendment but held that the "record contains sufficient evidence to support the trial court's decision to invoke A.W.'s adult sentence without" the statements. *In re A.W.*, ¶ 57. It noted that A.W. was described as "superficially engaged" in treatment and was just "going through the motions". *In re A.W.*, ¶ 60.

STATEMENT OF THE FACTS

A.A. was sixteen years old when she testified in court. 09/07/16 Hearing Tr. at 33. Three years earlier, when she was thirteen years old, she went to a festival in Warrensville Heights. 09/07/16 Hearing Tr. at 35, 37. She received a message on her phone from a male she met through social media. 09/07/16 Hearing Tr. at 41-43. They started having conversations a day or two before the incident, she did not know his name, and they had never met in person. 09/07/16 Hearing Tr. at 67.

The male and A.A. walked "behind the trees" and he "started kissing" her and "inserted his private into" her vagina. 09/07/16 Hearing Tr. at 44-45, 63. She testified that she "tried to

stop and he wouldn't let" her and she asked him to stop "several times". 09/07/16 Hearing Tr. at 44, 46. A.A. tried to signal to people passing by but he "either hit" her or "put his hands above" her face". 09/07/16 Hearing Tr. at 44. The victim identified A.W. as the boy who sexually assaulted her. 09/07/16 Hearing Tr. at 53.

A.W. stipulated that he was seventeen years old when the offense occurred. 09/07/16 Hearing at 11. After he admitted to committing the offense, he told the trial court that A.A. told him she was sixteen years old and initiated the sex. 09/13/16 Hearing Tr. at 88.

LAW AND ARGUMENT

Proposition of Law 1: The adult portion of an SYO sentence cannot be invoked for failure to complete ODYS programming unless the offender was given notice that the failure to comply could trigger invocation of the adult sentence and it was possible for the offender to have completed it.

The sole question presented in this appeal is whether the trial court's notice to A.W. that he must participate in sex offender treatment complies with the federal Due Process Clause.

I. A.W. was provided notice that he must participate in sex offender treatment.

The State agrees with the general proposition that an offender, whether juvenile or adult, must receive notice of a requirement before being held responsible for the failure to fulfill it. That proposition of law is legally unremarkable and nothing in the Eighth District's decision below contravenes it.

a. Plea Hearing

A.W. argues that due process of law required that he be notified that failure to participate in sex offender treatment could result in the invocation of the serious youthful offender sentence. However, for the first time in this litigation, A.W. now asserts that such notice was required at the *plea* hearing. *See* Merit Brief of Appellant at 15 ("does not give the juvenile proper notice of that possibility at the time of his plea"). In the lower court, A.W. argued that notice was required at

the sentencing hearing. *See* Appellant's Br. at 16 ("the juvenile court did not provide A.W. with notice, at the time of his dispositional hearing"). A.W. has never challenged the voluntariness of his plea pursuant to Juv.R. 29.

"This Court has held that a criminal defendant may not raise constitutional errors on appeal unless such were specifically found to have been raised below". *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277, fn 1 (1986); *State v. Phillips*, 27 Ohio St.2d 294, 302, 272 N.E.2d 347 (1971) ("It is an established rule of long standing in this state that a constitutional question, either in a civil or criminal action, can not be raised in the Supreme Court unless it was presented and urged in the courts below."). This Court has stated that "justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination." *Sizemore v. Smith*, 6 Ohio St.3d 330, 453 N.E.2d 632, fn.2 (1983). A.W. did not argue in the lower court that notice was required at the plea hearing. Therefore, that argument has been forfeited.

A.W. has failed to cite to any case in which a court has held that a juvenile is entitled at a plea hearing to notice of a list of actions or inactions that would result in the invocation of the adult sentence. Juv.R. 29(D) governs a juvenile court's obligations upon accepting a juvenile's admission to a complaint. It requires that the juvenile have an "understanding of the nature of the allegations and the consequences of the admission" and of the rights that are being waived. The rule does not require the information that A.W. now asks this Court to hold is constitutionally necessary.

"All the Due Process Clause requires is that the law give sufficient warning that men may conduct themselves so as to avoid that which is forbidden." *Rose v. Locke*, 423 U.S. 48, 50, 96 S.Ct. 243 (1975). This means that notice of the trial court's sentencing conditions is required at the dispositional hearing, not the plea hearing. An adult who pleads guilty and anticipates being

placed on community control sanctions is not informed *at the plea hearing* what the list of sanctions will be. To require such notice at the plea hearing would dramatically change how pleas are taken in Ohio.

Even if this Court held that a trial court must explain at the plea hearing what actions will result in the invocation of the adult sentence, the trial court provided such an explanation in this case. The trial court explained to A.W. that "if in fact you don't do what you're supposed to do in ODYS, that they can impose the sentence and you can be sentenced from anywhere between 3 to 11 years for the charge a felony of the first degree if committed by an adult". 9/13/16 Hearing Tr. at 84. It also specifically mentioned that sex offender treatment would be ordered: "what I'm going to put in the journal entry is that he be placed at Paint Creek so he can do what we call sex offender treatment." 9/13/16 Hearing Tr. at 90-91.

b. Dispositional Hearing

The State acknowledges that the Due Process Clause required that A.W. be informed at the dispositional hearing that he will be required to participate in sex offender treatment. But A.W. does not contest that such information was given to him. At the dispositional hearing, the trial court stated it wanted "sex offender treatment put in place" and warned A.W. that he would be brought back in 90 days and asked, "are you getting your education" and "are you participating in group therapies". 10/12/16 Hearing Tr. at 17-18. The trial court stated that "if, in fact, you are not doing what you're supposed to, I am going to cut the sentence at ODYS and send you to prison". 10/12/16 Hearing Tr. at 17. Finally, the trial court emphasized that he has "three sex offenses" and that in 90 days it wanted him to "have a better understanding of what's appropriate and what's not." 10/12/16 Hearing Tr. at 18.

A.W. argues that the trial court told him that the adult sentence would only be invoked if he was fighting in ODYS. Merit Br. of Appellant at 16 (referencing 09/13/16 Hearing Tr. at 78). He refers to a statement the trial court made at the plea hearing, not the sentencing hearing. At the same hearing, the trial court specifically mentioned that A.W. was going to "do what we call sex offender treatment." 09/13/16 Hearing Tr. at 90. Then, at sentencing, the trial court explicitly ordered A.W. to participate in group therapy and warned that if he did not do what he was supposed to do, he would be sent to prison. It was clear to A.W. at the sentencing hearing that he must participate in group therapies.

II. The requirement that A.W. participate in sex offender treatment was not impossible; the trial court never required completion of the program.

The second argument A.W. presents in support of his due process claim is that it was factually impossible for him to complete sex offender treatment before he turned twenty-one years old. It is true that because of A.W.'s years of delay in this case, insufficient time remained for A.W. to complete a sex offender treatment program. But A.W.'s argument is built upon the false premise that the trial court required completion of the program. The Eighth District recognized that the trial court "never conditioned the adult portion of his sentence on completion of the entire sex offender program." *In re A.W.*, ¶ 32. The trial court itself indicated that it wanted A.W. to have a "*better* understanding of what's appropriate and what's not." *In re A.W.*, ¶ 32 (emphasis added).

While the short amount of time between A.W.'s dispositional hearing and his twenty-first birthday was not ideal, A.W. made the problem worse. He refused to participate from December 9, 2016 through January 18, 2017, which squandered more than one month of time he could have engaged in a treatment program. And even after he was enrolled in programs, he was going through the motions and only superficially engaged. A.W.'s conduct wasted time that could have

been used to reduce the risk of recidivism that he posed, and his conduct was properly considered by the trial court in invoking the adult sentence.

III. The trial court's actions were not constitutionally arbitrary.

A.W.'s assertion that the invocation of the adult sentence was arbitrary is made without citation to any legal authority, which makes legal response difficult. "The touchstone of due process is protection of the individual against arbitrary action of government." *Meachum v. Fano*, 427 U.S. 215, 226, 96 S.Ct. 2532 (1976). In *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064 (1983), the Supreme Court of the United States addressed whether the state's revocation of probation for failure to pay a fine violated the Due Process Clause. It held that courts must "determine that petitioner did not make sufficient bona fide efforts to pay his fine". *Bearden*, at 674.

In this case, the trial court repeatedly informed A.W. that he was required to participate in sex offender treatment. A.W. delayed his treatment for months. Even after he enrolled in programs he was only superficially engaged. His progress in the program was minimal and he still posed a risk of recidivism to the community. Throughout this case, A.W. had notice of hearing dates, notice of the trial court's expectations, and the opportunity to contest the allegations that he was not participating. Simply put, the procedures adhered to in this case were not arbitrary.

IV. A.W.'s challenge to the sufficiency of evidence to support invocation of the serious youthful offender specification is not properly before the Court.

A juvenile court may invoke the adult portion of a serious youthful offender dispositional sentence if it finds by clear and convincing evidence that the person "has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim." R.C. 2152.14(B)(2). The Eighth District found that A.W.'s "limited treatment . . . was not enough to reduce his likelihood of recidivism" and he therefore "continued to pose a substantial risk to the

safety of the community." *In re A.W.*, ¶ 43. The Ninth District Court of Appeals similarly held that failure to complete sex offender treatment is sufficient evidence that a juvenile is engaged in conduct that creates as substantial risk to the safety of the community. *In re D.J.*, 9th Dist. Summit Nos. 28472, 28473, 2018-Ohio-569, ¶ 11.

In A.W.'s memorandum in support, he asked this Court to accept his second proposition of law challenging whether a juvenile's failure to engage in treatment can form the basis to invoke the adult sentence. This Court declined to accept that proposition of law. *See 11/07/18 Case Announcements #2*, 2018-Ohio-4496. A.W. did not seek reconsideration of that order pursuant to S.Ct.Prac.R. 18.02. The Court lacks jurisdiction to consider a proposition of law not accepted by a majority of the Court. *See Elec. Classroom of Tomorrow v. Ohio Dep't of Educ.*, Slip Opinion 2018-Ohio-3126, ¶ 21 (holding that propositions of law not accepted "are not properly before us, and we will not address them.")

CONCLUSION

Since admitting to the underlying crime, A.W. was consistently advised throughout the lower proceedings that the trial court expected him to engage in sex offender treatment. He initially refused which squandered the remaining time that the trial court retained jurisdiction. A.W. then engaged in treatment but only superficially. Because of his initial refusal and later superficial engagement, A.W. learned little from his mistakes and continued to pose a risk of reoffending upon release. For these reasons, the trial court properly invoked the adult sentence and the State of Ohio respectfully asks this Court to affirm.

Respectfully submitted,

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecuting Attorney

/s/ Anthony T. Miranda
_____
ANTHONY T. MIRANDA (0090759)
TASHA L. FORCHIONE (0085814)
JEFFREY M. MAVER (0091126)
Assistant Prosecuting Attorneys
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
Phone: (216) 443-7416
Fax: (216) 443-7602
amiranda@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

A copy of the foregoing Appellee's Merit Brief was sent via electronic mail to Cullen Sweeney, Deputy Public Defender at csweeney@cuyahogacounty.us, Frank Cavallo, Assistant Public Defender, at fcavallo@cuyahogacounty.us, and Marsha L. Levicki, Esq., at mlevick@jlc.org, on March 15, 2019.

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/s/ Anthony T. Miranda
_____
ANTHONY T. MIRANDA (0090759)
Assistant Prosecuting Attorney

Ohio Juv. R. 29

Rules current through rule amendments received through January 22, 2019

Ohio Court Rules > Ohio Rules Of Juvenile Procedure

Rule 29. Adjudicatory hearing

(A) Scheduling the hearing. The date for the adjudicatory hearing shall be set when the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint alleging a violation of a section of the Revised Code that may be violated by an adult and that does not request a serious youthful offender sentence, and if the child is in detention or shelter care, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.

The prosecuting attorney's filing of either a notice of intent to pursue or a statement of an interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention or shelter care.

The hearing of a removal action shall be scheduled in accordance with *Juv.R. 39(B)*.

If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or for a reasonable time beyond thirty days to obtain service on all parties or complete any necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days after the complaint is filed.

The failure of the court to hold an adjudicatory hearing within any time period set forth in this rule does not affect the ability of the court to issue any order otherwise provided for in statute or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of any order of the court.

(B) Advisement and findings at the commencement of the hearing. At the beginning of the hearing, the court shall do all of the following:

(1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;

(2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under *Juv.R. 30* where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;

(3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;

(4) Appoint counsel for any unrepresented party under *Juv.R. 4(A)* who does not waive the right to counsel;

(5) Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

(C) Entry of admission or denial. The court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial, except in cases where the court consents to entry of a plea of no contest.

(D) Initial procedure upon entry of an admission. The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

(E) Initial procedure upon entry of a denial. If a party denies the allegations, the court shall:

(1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;

(2) Order the separation of witnesses, upon request of any party;

(3) Take all testimony under oath or affirmation in either question-answer or narrative form; and

(4) Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings; by clear and convincing evidence in dependency, neglect, and abuse cases, and in a removal action; and by a preponderance of the evidence in all other cases.

(F) Procedure upon determination of the issues. Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to *Civ.R. 52*.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in *Juv.R. 27(B)(1)* and to relative placement in accordance with *Juv.R. 7(F)(3)*.

History

Amended, eff 7-1-76; 7-1-94; 7-1-98; 7-1-01; 7-1-04.

End of Document

ORC Ann. 2152.14

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 172 (HB 511).

Page's Ohio Revised Code Annotated > Title 21: Courts — Probate — Juvenile (Chs. 2101 — 2153) > Chapter 2152: Delinquent Children; Juvenile Traffic Offenders (§§ 2152.01 — 2152.99)

§ 2152.14 Motion to invoke adult portion of dispositional sentence.

(A)

(1) The director of youth services may request the prosecuting attorney of the county in which is located the juvenile court that imposed a serious youthful offender dispositional sentence upon a person under *section 2152.121* or *2152.13 of the Revised Code* to file a motion with that juvenile court to invoke the adult portion of the dispositional sentence if all of the following apply to the person:

(a) The person is at least fourteen years of age.

(b) The person is in the institutional custody, or an escapee from the custody, of the department of youth services.

(c) The person is serving the juvenile portion of the serious youthful offender dispositional sentence.

(2) The motion shall state that there is reasonable cause to believe that either of the following misconduct has occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

(a) The person committed an act that is a violation of the rules of the institution and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(b) The person has engaged in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim.

(B) If a person is at least fourteen years of age, is serving the juvenile portion of a serious youthful offender dispositional sentence imposed under *section 2152.121* or *2152.13 of the Revised Code*, and is on parole or aftercare from a department of youth services facility, or on community control, the director of youth services, the juvenile court that imposed the serious youthful offender dispositional sentence on the person, or the probation department supervising the person may request the prosecuting attorney of the county in which is located the juvenile court to file a motion with the juvenile court to invoke the adult portion of the dispositional sentence. The prosecuting attorney may file a motion to invoke the adult portion of the dispositional sentence even if no request is made. The motion shall state that there is reasonable cause to believe that either of the following occurred and shall state that at least one incident of misconduct of that nature occurred after the person reached fourteen years of age:

(1) The person committed an act that is a violation of the conditions of supervision and that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult.

(2) The person has engaged in conduct that creates a substantial risk to the safety or security of the community or of the victim.

(C) If the prosecuting attorney declines a request to file a motion that was made by the department of youth services or the supervising probation department under division (A) or (B) of this section or fails to act on a request made under either division by the department within a reasonable time, the department of youth

services or the supervising probation department may file a motion of the type described in division (A) or (B) of this section with the juvenile court to invoke the adult portion of the serious youthful offender dispositional sentence. If the prosecuting attorney declines a request to file a motion that was made by the juvenile court under division (B) of this section or fails to act on a request from the court under that division within a reasonable time, the juvenile court may hold the hearing described in division (D) of this section on its own motion.

(D) Upon the filing of a motion described in division (A), (B), or (C) of this section, the juvenile court may hold a hearing to determine whether to invoke the adult portion of a person's serious juvenile offender dispositional sentence. The juvenile court shall not invoke the adult portion of the dispositional sentence without a hearing. At the hearing the person who is the subject of the serious youthful offender disposition has the right to be present, to receive notice of the grounds upon which the adult sentence portion is sought to be invoked, to be represented by counsel including counsel appointed under Juvenile Rule 4(A), to be advised on the procedures and protections set forth in the Juvenile Rules, and to present evidence on the person's own behalf, including evidence that the person has a mental illness or intellectual disability. The person may not waive the right to counsel. The hearing shall be open to the public. If the person presents evidence that the person has a mental illness or intellectual disability, the juvenile court shall consider that evidence in determining whether to invoke the adult portion of the serious youthful offender dispositional sentence.

(E)

(1) The juvenile court may invoke the adult portion of a person's serious youthful offender dispositional sentence if the juvenile court finds all of the following on the record by clear and convincing evidence:

(a) The person is serving the juvenile portion of a serious youthful offender dispositional sentence.

(b) The person is at least fourteen years of age and has been admitted to a department of youth services facility, or criminal charges are pending against the person.

(c) The person engaged in the conduct or acts charged under division (A), (B), or (C) of this section, and the person's conduct demonstrates that the person is unlikely to be rehabilitated during the remaining period of juvenile jurisdiction.

(2) The court may modify the adult sentence the court invokes to consist of any lesser prison term that could be imposed for the offense and, in addition to the prison term or in lieu of the prison term if the prison term was not mandatory, any community control sanction that the offender was eligible to receive at sentencing.

(F) If a juvenile court issues an order invoking the adult portion of a serious youthful offender dispositional sentence under division (E) of this section, the juvenile portion of the dispositional sentence shall terminate, and the department of youth services shall transfer the person to the department of rehabilitation and correction or place the person under another sanction imposed as part of the sentence. The juvenile court shall state in its order the total number of days that the person has been held in detention or in a facility operated by, or under contract with, the department of youth services under the juvenile portion of the dispositional sentence. The time the person must serve on a prison term imposed under the adult portion of the dispositional sentence shall be reduced by the total number of days specified in the order plus any additional days the person is held in a juvenile facility or in detention after the order is issued and before the person is transferred to the custody of the department of rehabilitation and correction. In no case shall the total prison term as calculated under this division exceed the maximum prison term available for an adult who is convicted of violating the same sections of the Revised Code.

Any community control imposed as part of the adult sentence or as a condition of a judicial release from prison shall be under the supervision of the entity that provides adult probation services in the county. Any post-release control imposed after the offender otherwise is released from prison shall be supervised by the adult parole authority.

History

148 v S 179, § 3 (Eff 1-1-2002); *149 v H 393*. Eff 7-5-2002; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2016 HB 158*, § 1, effective Oct 12, 2016.

End of Document

Rules current through rule amendments received through January 22, 2019

S.Ct. Prac. R. 18.02. Motion for reconsideration

(A) Time to file. Except as provided in S.Ct.Prac.R. 12.08(B), any motion for reconsideration must be filed within ten days after the Supreme Court's judgment entry or order is filed with the Clerk of the Supreme Court.

(B) Basis for filing.A motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions:

(1) Refusal to accept a jurisdictional appeal;

(2) The sua sponte dismissal of a case;

(3) The granting of a motion to dismiss;

(4)A decision on the merits of a case.

(C) Amicus curiae. An amicus curiae may not file a motion for reconsideration. An amicus curiae may file a memorandum in support of a motion for reconsideration within the time permitted for filing a motion for reconsideration.

(D) Refusal to file. The Clerk shall refuse to file a motion for reconsideration that is not expressly permitted by this rule or that is not timely.

History

Eff 6-1-94. Amended, eff 4-1-96; 4-1-00; 7-1-04; 1-1-08; 1-1-10; amended 12-5-12, effective 1-1-13.