

Year 2003 Case Summaries

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Juvenile court did not abuse its discretion in transferring juvenile sex offender to TDCJ despite lack of sex offender treatment [In re D.T.] (04-1-15).

On December 31, 2003, the Waco Court of Appeals held that the juvenile court did not abuse its discretion in transferred a juvenile sex offender to TDCJ who was not offered sex offender treatment because he would not acknowledge responsibility for the committing offense.

04-1-15. In the Matter of D.T., UNPUBLISHED, No. 10-03-076-CV, 2003 WL 23120203, 2003 Tex.App.Lexis ____ (Tex.App.-Waco 12/31/03) Texas Juvenile Law (5th Ed. 2000).

Facts: A jury found D.T. engaged in delinquent conduct by committing the offense of aggravated sexual assault of a four-year-old child. After a disposition hearing, the jury determined that D.T. was in need of rehabilitation and could not be provided the quality of care and level of support and supervision that he would need to meet the conditions of probation. The verdict on disposition was a commitment to the Texas Youth Commission (TYC) for a period of ten years with the possibility of transfer to prison. There is no indication in the record that D.T. appealed this decision.

Almost two years later, in October of 2002, TYC referred D.T. to the court for approval of his transfer to prison. See Tex. Hum. Res.Code Ann. § 61.079 (Vernon 2001). D.T. was 17 years old at the time of the referral. The court conducted a release/transfer hearing and ordered D.T. transferred to prison to serve the remainder of his ten year sentence. See Tex. Fam.Code Ann. § 54.11 (Vernon Supp.2004).

Held: Affirmed.

Opinion Text: In his sole issue on appeal, D.T. contends the court abused its discretion in transferring him to prison due to no evidence or insufficient evidence. Specifically, he contends that the TYC representative could not provide the court with evidence supporting the Commission's recommendation and that TYC did not provide him with adequate opportunity or resources for rehabilitation.

At a transfer/release hearing the court may consider written reports from probation officers, professional court employees, professional consultants, or employees of TYC, in addition to the testimony of witnesses. Tex. Fam.Code Ann. § 54.11(d) (Vernon Supp.2004). The court may also consider the experiences and character of the person before and after commitment to the youth commission, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the youth commission and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided. Tex. Fam.Code Ann. § 54.11(k) (Vernon Supp.2004).

But the court is not required to consider all of the factors, and it is expressly allowed to consider unlisted but relevant factors. In re C.L., Jr., 874 S.W.2d 880, 886 (Tex.App. Austin 1994, no pet.). Evidence of each listed factor is not required. Id. Similarly, the court may assign different weights to the factors it considers. Id.

We will follow the existing case law which uniformly holds that, when reviewing the trial court's decision to transfer a juvenile from TYC to prison, the reviewing court employs an abuse of discretion standard. In re C.D.T., 98 S.W.3d 280, 283 (Tex.App. Houston [1st Dist.] 2003, pet. denied); In re T.D.H., 971 S.W.2d 606, 610 (Tex.App. Dallas 1998, no pet.). The reviewing court must view the entire record to determine if the trial court acted without reference to guiding rules and in an arbitrary manner. C.D.T., 98 S.W.3d at 283; T.D.H., 971 S.W.2d at 610. An abuse of discretion does not exist if the court bases its decision on conflicting evidence. J.R.W. v. State, 879 S.W.2d 254, 257 (Tex.App. Dallas 1994, no writ). And we do not review factual issues under legal or factual insufficiency standards. Id. EVIDENCE

The court heard testimony from Leonard Cucolo, the TYC court liaison, a juvenile probation officer, D.T., his mother, and his pastor. The court also took into consideration 4 exhibits of TYC documents and one report from TYC summarizing the Commission's position. The court noted that it had these five exhibits for a month. All five exhibits were admitted into evidence without objection.

D.T.'s behavior at TYC was less than model. The record showed that D.T., in 22 months in placement, had at least 173 documented incidents of misconduct which included self-referrals, disruption of the program, and assaultive behavior. He was segregated from the general population and placed in a security unit 22 times due to the seriousness of the misconduct or for his uncooperative behavior. According to TYC's written summary, the last time D.T. was placed in the security unit was in November, a month after his referral to juvenile court. In December, he spat at a staff member. D.T. denied most of the reported misconduct incidents, contending that the staff lied about him.

In addition to this evidence, there was conflicting testimony regarding in what "phase" D.T. was currently placed. The phases ranged from zero, being poor, to four, being the highest phase obtainable while confined. Cucolo initially testified that D.T. was in phase one. He later checked the documents admitted and discovered that as of November, the last time documents were compiled, D.T. was in phase two. D.T. had just been demoted from phase three. D.T. testified that as of the hearing, he was in phase three.

At the time of his referral to the juvenile court, D.T.'s academic progress fluctuated. He had an I.Q. of 114 but had not obtained a G.E.D. and had only earned two credits toward his high school diploma. D.T. contended that he took the G.E.D. in November and graduated in December. He admitted, though, that he accomplished this after his referral back to court.

According to the documentary evidence before the court, D.T. never rose above a phase 2 in his correctional therapy. He did not complete his assignments necessary to be promoted to phase 3. And he would not admit his responsibility for the offense he was found to have committed. At the hearing, D.T. accepted responsibility. The TYC reports also indicated that D.T. showed a lack of empathy for his victims. His primary service worker could not recommend specialized treatment for D.T. because he had not made sufficient progress in the general resocialization program. The last psychological evaluation conducted on D.T. concluded that D.T. was unmotivated and was unlikely to benefit from additional treatment in TYC.

TYC unanimously recommended that D.T. be transferred to prison. The prosecutor echoed that recommendation.

D.T. contends that Cucolo did not testify about all the factors listed in the family code and was incorrect in what he did testify about. As we stated earlier, the State is not required to produce evidence on all the listed factors. And, an abuse of discretion does not exist if the court bases its decision on conflicting evidence.

D.T. also contends that TYC did not provide him with the opportunity to advance in his behavior and treatment because it did not place him in a specialized sex offender program. The Ellis County Juvenile Probation Department and an early psychological evaluation recommended such treatment. However, D.T. had been afforded the opportunity to participate in a sex offender program in Dallas before his commitment to TYC. After almost five months, D.T. made little progress toward successful completion of the program. D.T. had limited participation in the program and his parents were uninvolved in his treatment. Generally, his parents were uncooperative with the juvenile justice system. But because D.T. had not progressed in the general resocialization program at TYC, he was not a candidate for the sex offender's program.

After reviewing the entire record, we hold that the court did not abuse its discretion. D.T.'s sole issue is overruled.