

YEAR 2004 CASE SUMMARIES

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Okay to permit TYC official to testify in a release/transfer hearing about facts learned from other TYC employees [In re R.M.] (04-4-17).

On November 3, 2004, the San Antonio Court of Appeals held that it was not error for the juvenile court judge in a release/transfer hearing under the determinate sentence act to permit a TYC official to testify about facts learned from other TYC employees.

04-4-17. In the Matter of R.M., UNPUBLISHED, No. 04-03-00505-CV, 2004 WL 2450882, 2004 Tex.App.Lexis ____ (Tex.App.-San Antonio 11/3/04) Texas Juvenile Law (6th Ed. 2004).

Facts: R.M. was sentenced to a ten-year determinate sentence after pleading true to aggravated sexual assault of a child. R.M. appeals the trial court's order transferring him from the Texas Youth Commission to the Texas Department of Criminal Justice-Institutional Division.

Held: Affirmed.

Opinion Text: 1. In his first issue, R.M. contends he was denied due process when TYC did not provide him access to more than 6,000 dormitory log sheets documenting his behavior while in the custody of TYC. When the dormitory log sheets were first discussed at R.M.'s hearing, the court questioned Leonard Cucolo, a TYC official, whether the log sheets could be produced. Cucolo responded that the logs could be produced if defense counsel wanted to review the records. Although defense counsel indicated he wanted to review the records, counsel complained that the court was shifting the burden of reviewing all of the documents onto R.M. Defense counsel, however, never alleged any due process violation at that time. By not raising his due process complaint in the trial court, R.M. waived his right to raise this issue on appeal. See Tex.R.App. P. 33.1(a). Nevertheless, the record reflects R.M. received access to the dormitory logs in question. The record shows the trial court recessed R.M.'s hearing so that R.M. could review the dormitory logs before the court made its final determination regarding R.M.'s transfer to TDCJ. We therefore reject R.M.'s argument that he was denied due process.

2. In his second issue, R.M. contends the trial court erred in permitting Cucolo to testify based on his report summarizing R.M.'s behavior while at TYC. R.M. argues that, because Cucolo did not have personal knowledge of all the information summarized in the report and was not qualified as an expert, his testimony constituted inadmissible hearsay. R.M.'s argument, however, ignores that a transfer/release hearing is a "second chance hearing" after the juvenile has already been sentenced to a determinate number of years. In re D.S., 921 S.W.2d 383, 387 (Tex.App.-Corpus Christi 1996, writ dismissed w.o.j.). The hearing does not need to meet the same stringent due process requirements as a trial in which a person's guilt or innocence is decided. In re J.M.O., 980 S.W.2d 811, 813 (Tex.App.-San Antonio 1998, pet. denied). Therefore, the court is not precluded from considering hearsay testimony at a transfer/release hearing. In re C.D.T., 98 S.W.3d 280, 283 (Tex.App.-Houston [1st Dist.] 2003, pet. denied). We therefore hold the trial court did not err in permitting Cucolo to testify based on his report summarizing R.M.'s behavior while at TYC. See *id.* (holding juvenile's constitutional rights were not violated by the admission of hearsay evidence).

3. In his third issue, R.M. contends his due process rights were violated because he did not receive adequate notice of his conduct that warranted his transfer to TYC. However, R.M. failed to raise this complaint when the transfer/release hearing began. Because R.M. did not raise his complaint in the trial court, we hold he has waived this contention. See Tex.R.App. P. 33.1(a).

4. In his fourth issue, R.M. contends the conditions of his confinement are cruel and unusual in violation of the Eighth and Fourteenth Amendments of the United States Constitution because he has been denied treatment for his "sexual disease." Again, however, R.M. failed to raise this complaint in the trial court and thus waived his right to raise this issue on appeal. See *id.* In any event, the record demonstrates that R.M. received treatment for his condition while at TYC through counseling sessions with a psychologist and a resocialization program offered by TYC.

