YEAR 2005 CASE SUMMARIES

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Court of Appeals denies personal bond pending appeal because of the benefits to the juvenile of TYC treatment program [In re J.G.] (05-1-09).

On December 22, 2004, the San Antonio Court of Appeals denied personal bond on appeal because of the benefits the juvenile was receiving from the TYC treatment programs.

¶ 05-1-09. In the Matter of J.G., UNPUBLISHED, No. 04-04-00699-CV, 2004 WL 2945705, 2004 Tex.App.Lexis _____ (Tex.App.—San Antonio) 12/22/04) *Texas Juvenile Law* (6th Ed. 2004).

Facts: Relator, J.G., a 13 year old juvenile, [FN2] was adjudicated delinquent for committing aggravated sexual assault against a seven year old child, and received a determinate sentence under § 53.045 of the Texas Family Code. See Tex. Fam.Code Ann. § 53.045 (Vernon 2002). J.G. was committed to the custody of the Texas Youth Commission (TYC), with the possibility of transfer to the Texas Department of Criminal Justice, Institutional Division, for a term of ten years and one day. On October 1, 2004, J.G. filed an application in this court for release on personal bond pending resolution of his appeal.

FN2. J.G. was 12 years old at the time of the underlying delinquent conduct.

This court has independently considered J.G.'s application for release, the hearing transcript and exhibits, and the trial court's recommendation and findings of fact and conclusions of law. *In re D.W.R.*, 990 S.W.2d 446, 449 (Tex.App.—San Antonio 1999, orig. proceeding) (appellate court's jurisdiction to grant juvenile a personal bond exists independently of juvenile court's authority under § 56.01(g) of Texas Family Code). Having considered the entire record, this court is of the opinion that release should be denied. J.G. has failed to carry his burden to show that his release from commitment at TYC is in his best interest. *See id.* at 449 (burden is on juvenile to show he should be released on bond). Our primary concern when deciding whether to grant bond in a juvenile proceeding is the welfare and best interest of the juvenile. *Id.; see also In the Matter of J.V.*, 944 S.W.2d 15, 17 (Tex.App.—El Paso 1997, orig. proceeding).

J.G. asserts in his application that he should be released from TYC because he has no prior juvenile record, he has strong family support, it is a financial and emotional strain on the family to travel five hours to visit him, and he successfully complied with the terms of his prior release pending his adjudication. J.G.'s caseworker at TYC testified at the bond hearing that his academic performance and behavior at TYC are very good and are rated a "4," which is the highest category rating. She also testified, however, that J.G.'s correctional behavior is "poor" because he is not adequately participating in the daily counseling sessions and has not admitted the conduct underlying his offense; his performance rating in this area is a "1," the second lowest category. She stated that he has not yet received the treatment he needs to avoid committing another sexual offense. His caseworker further testified that his mother visits every week for the maximum allowed time period.

J.G.'s mother testified that the five hour drive to visit J.G. every week is a financial and emotional strain. She admitted that she has discouraged him from "telling his life story" to the TYC counselor "until he is ready." She also testified that, to her knowledge, he is not receiving his asthma medication, has a loose crown on one tooth that needs to be repaired, and has been exposed to tuberculosis for which he is receiving medication. J.G.'s mother also testified that she is available twenty-four hours a day to supervise him and that arrangements have been made with a sex offender-certified psychiatrist to provide him treatment if he is allowed to return home; there was no testimony, however, as to how often J.G. would receive counseling. J.G.'s step-father and other family members testified they would be available to assist his mother in providing J.G. with continual supervision. Finally, there was evidence that

J.G. complied with all conditions of his prior release, which included electronic monitoring and house arrest. In its written findings, the trial court recommended that J.G.'s request for release be denied. The trial court's findings and recommendation are not binding on this court, but we give them due deference. *In re D.W.R.*, 990 S.W.2d at 448-49.

While we acknowledge and empathize with the concerns and fears of J.G.'s parents, we conclude that, based on all the evidence presented at the hearing, it is not in J.G.'s best interest to be released on bond pending disposition of his appeal. The benefits that he is receiving at TYC in the form of daily counseling with peer interaction and a full academic classroom experience will not be available to him if he is released. There was evidence presented at the hearing that J.G.'s offense conduct is well known throughout the community. If J.G. was released to his home community, he would be isolated from the other school children and placed in an alternative education program at the same school that the complainant attends. [FN3] He would not have daily access to counselors and rehabilitative therapy as he does at TYC. The benefits that J.G. is receiving at TYC outweigh the detriments of his continued commitment. Accordingly, the application for release on personal bond is denied. Tex.R.App. P. 52.8(a). Relator shall pay all costs incurred in this proceeding.

FN3. J.G.'s aunt and uncle testified they would be willing to provide J.G. with an alternative home in a different community, but there was no evidence of the type of school or counseling arrangements that would attend that environment.

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