YEAR 2005 CASE SUMMARIES

By The Honorable Pat Garza

Associate Judge 386th District Court San Antonio, Texas

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Hearsay testimony permissible by TYC representative at transfer hearing. [In the Matter of R.M.](05-2-04)

On November 3, 2004, the San Antonio Court of Appeals, held that the juvenile's constitutional rights were not violated when the trial court permitted a TYC representative (Cucolo) to testify based on a report summarizing the child's behavior while at TYC.

05-2-04. In the Matter of R.M., UNPUBLISHED, No. 04-03-00505-CV, 4004 Tex.App.Lexis 11908 (Tex.App.— San Antonio 11/3/04).

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. Because the issues in this appeal involve the application of well-settled principles of law, we affirm the trial court's order in this memorandum opinion under *Texas Rule of Appellate Procedure 47.4* for the following reasons:

Held: Affirmed

Memorandum Opinion:

[Text Omitted]

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 [*3] 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 dism'd 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 [*4] 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.

Conclusion: The trial court's judgment is affirmed.

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