
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Trial court properly ordered juvenile transferred from TYC to the TDCJ to complete determinate sentence. [In the Matter of C.G.](05-2-22)

On April 1, 2005, the Dallas Court of Appeals (5th Dist.) held that the trial court did not abuse its discretion by transferring juvenile to the TDCJ and that its decision was firmly rooted in defendant's identifiable misconduct while at TYC.

05-2-22. In the Matter of C.G., MEMORANDUM, No. 05-04-01176, 2005 Tex.App.Lexis 2482 [Tex.App.– Dallas (5th Dist.) 4/1/05]

Facts: The 304th Judicial District Court, Dallas County, Texas, entered an order transferring defendant juvenile from a youth facility to the Texas Department of Criminal Justice (TDCJ) to complete the remainder of his determinate 13-year prison sentence. Defendant appealed.

Held: Affirmed

Memorandum Opinion: In his sole issue, appellant contends the trial court abused its discretion by ordering him transferred to the TDCJ. We review the trial court's decision to transfer a juvenile from the TYC to the TDCJ under an abuse of discretion standard. *In re T.D.H.*, 971 S.W.2d 606, 610 (Tex. App.- Dallas 1998, no pet.). In deciding whether the trial court abused its discretion, we review the entire record to determine if the trial court acted without reference to any guiding rules or principles. *Id.* If some evidence supports the trial court's decision, there is no abuse of discretion. *Id.* We do not substitute our decision for that of the trial court, and reverse only if the trial court acted in an unreasonable or arbitrary manner. *Id.*

At the hearing to transfer a juvenile to the TDCJ, the court may consider: (1) the experiences and character of the person before and after commitment to the TYC; (2) the nature of the penal offense and the manner in which the offense was committed; (3) the abilities of the person to contribute to society; (4) the protection of the victim of the offense or any member of the victim's family; (5) the recommendations [*3] of the TYC and the prosecuting attorney; and (6) the best interests of the juvenile and any other relevant factors. See *TEX. FAM. CODE ANN. § 54.11(k)* (Vernon Supp. 2004-05); *In re R.G.*, 994 S.W.2d 309, 312 (Tex. App.-Houston [1st Dist.] 1999, pet. denied). Evidence of each factor is not required, and the trial court need not consider every factor. *R.G.*, 994 S.W.2d at 312. The trial court may assign different weights to the factors it considers, and it may consider unlisted but relevant factors. *Id.*

At the transfer hearing, Leonard Cucolo, a representative for the TYC, testified that the TYC

recommended transfer to the TDCJ for several reasons. During the three years since appellant's commitment to Giddings State School, a TYC facility, Cucolo characterized appellant's academic and behavioral conduct as poor. Cucolo stated appellant had only achieved three credits towards his high school diploma and had 125 documented incidents of misconduct, including exposing himself to a female staff member, assaulting a peer, and aiding-and-abetting in an incident resulting in serious injury to a student. Additionally, Cucolo [*4] stated that appellant had not successfully completed his chemical dependency treatment program and that he was not admitted into the capital and serious violent offenders treatment program because of his behavior and poor response to other programs. Also, Cucolo noted appellant's psychological evaluation, admitted into evidence, which indicates appellant was diagnosed with an anti-social personality disorder and that he is highly unlikely to make any further progress in treatment at TYC.

In his testimony, appellant challenged the accuracy and the severity of the documented incidents of misconduct. He stated that he had written a grievance about the documented incident of misconduct regarding his aiding-and-abetting in an assault, that the superintendent had answered his grievance, and that the incident should have been removed from his record. He also stated that some of the incidents involved minor infractions such as failure to properly make up his bed. He added the lack of a case worker for four months had hampered his ability to complete the chemical dependency treatment, and, if allowed to stay at the TYC, he would succeed in these programs in the future and become a positive [*5] role model.

After reviewing the record, we cannot conclude the trial court abused its discretion in transferring appellant to TDCJ. Cucolo's testimony about incidents of misconduct, the diagnosis of anti-social behavior, and the TYC's recommendation for transfer constitute evidence supportive of the trial court's decision. Although appellant challenged the evidence, the trial court was free to accept or reject appellant's testimony. We resolve appellant's issue against him.

Conclusion: We affirm the trial court's order.