

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

In determinate sentence transfer hearing, trial court did not abuse its discretion in juvenile to TDCJ for the remainder of his sentence.[In the Matter of C.R.](07-1-12)

On January 10, 2007, the San Antonio Court of Appeals held that in a determinate sentence transfer hearing, the trial court may assign different weights to the factors listed in TFC §54.11(k), and it may consider other unlisted but relevant factors as well.

¶ 07-1-12. **In the Matter of C.R.**, MEMORANDUM, NO. 04-06-00494-CV, 2007 Tex.App.Lexis 114 (Tex.App.—San Antonio, 1/10/07).

Facts: In April of 2001, C.R. waived his right to a jury trial and pled true to aggravated sexual assault of a child. In accordance with the plea bargain agreement of the parties, the trial court entered its order of adjudication and sentenced C.R. to a ten-year determinate sentence at TYC with the possibility of transfer to TDCJ. After conducting a transfer hearing in May of 2006, the trial court ordered that C.R. be transferred to TDCJ for the remainder of his sentence. This appeal followed.

We review a trial court's decision to transfer a juvenile from TYC to TDCJ under an abuse of discretion standard. *In re D.L.*, 198 S.W.3d 228, 229 (Tex. App.—San Antonio 2006, *pet. denied*). In determining whether the trial court abused its discretion, we must consider the entire record to determine if the trial court acted without reference to guiding rules and principles. *Id.* If some evidence supports the trial court's decision, the trial court did not abuse its discretion. *Id.*

Held: Affirmed

Memorandum Opinion: C.R. contends that the trial court abused its discretion in ordering his transfer to TDCJ because the record does not support a transfer. In making a determination regarding transfer of a juvenile offender to TDCJ, a trial court may consider: (1) the experiences and character of the person before and after commitment to TYC; (2) the nature of the penal offense and the manner in which it was committed; (3) the abilities of the person to contribute to society; (4) the protection of the victim or the victim's family; (5) the recommendations of TYC and the prosecuting attorney; (6) the best interests of the person; and (7) any other factor relevant to the issue to be decided. *TEX. FAM. CODE ANN. § 54.11(k)* (Vernon Supp. 2006); *In re J.L.C.*, 160 S.W.3d 312, 313 (Tex. App.—Dallas 2005, *no pet.*). Evidence of each factor is not required, and the trial court need not consider every factor in making its decision. *J.L.C.*, 160 S.W.3d at 313-14; *In re R.G.*, 994 S.W.2d 309, 312 (Tex. App.—Houston [1st Dist.] 1999, *pet. denied*). The trial court may assign different weights to the factors it considers, and it may consider other unlisted but relevant factors. *J.L.C.*, 160 S.W.3d at 314; *R.G.*, 994 S.W.2d at 312.

At the transfer hearing, the trial court heard testimony from Leonard Cucolo, a TYC representative, and C.R.'s mother. The court also took judicial notice of a TYC summary report, TYC's complete file on C.R., and the evidence and judgment from C.R.'s underlying aggravated sexual assault case. The record shows that the victim of the underlying aggravated sexual assault was C.R.'s nine-year-old female cousin. During C.R.'s confinement in TYC for the offense, he had fifty-eight documented incidents of misconduct. However, he also successfully completed three specialized treatment programs and went nine months without any incidents of misconduct. As a result, he was placed on parole and released to a halfway house in June of 2004. Once on parole, he secured a job and completed sex offender and chemical dependency treatment. He was transferred to his mother's home in March of 2005.

In November of 2005, C.R. was arrested for possession of marihuana. He also tested positive for the use of marihuana that same month. C.R.'s mother testified that C.R. was driving her car when he was arrested for possession of marihuana and that the marihuana inside the car belonged to her nephew, not C.R. Nevertheless, as a result of his arrest and marihuana use, C.R. was required to complete further chemical dependency counseling. He did not complete the counseling, and he did not report to his parole officer at the next three reporting dates. C.R.'s mother testified that C.R. failed to report to his parole officer because he was at work. She stated that she called C.R.'s parole officer to tell him C.R. was working, and the parole officer said it was okay. In January of 2006, C.R. was arrested for possession of marihuana, cocaine, and heroine with the intent to deliver. C.R.'s mother testified that the drugs were discovered at C.R.'s friend's house and that C.R. went to the house only to pick up his girlfriend. Late in January of 2006, C.R.'s parole was revoked for failure to report to his parole officer.

Conclusion: Cucolo testified that he and TYC recommended that C.R. be transferred to TDCJ based on C.R.'s behavior in the community and the revocation of his parole. Cucolo stated that C.R.'s continued poor judgment made him a risk to the community. Considering TYC's recommendation, C.R.'s previous offense, his failure to comply with parole requirements, and his continued drug use and association with people engaged in criminal activity, we conclude that the trial court did not abuse its discretion in transferring C.R. to TDCJ for the remainder of his determinate ten-year sentence.

We affirm the trial court's order.