

Review of Recent Juvenile Cases (2008)

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

Trial Court did not abuse it's discretion by committing child to TYC for misdemeanor offense prior to September 1, 2007.[In the Matter of S.J.F.](08-2-5)

On October 10, 2007, the San Antonio Court of Appeals found that the trial court did not abuse it's discretion by committing child to TYC for misdemeanor offense prior to statute changing disallowing TYC commitments for misdemeanor offenses.

¶ 08-2-5. **In the Matter of S.J.F.**, ___S.W.3d.___, No. 04-06—619, 2007 Tex.App.Lexis 8034 (Tex.App.— San Antonio, 10/10/07).

Facts: On or about May 28, 2006, S.J.F. attempted to burglarize a thrift shop in San Antonio. He was fourteen years old at the time. After being arrested and charged, S.J.F. pled true to the offense and was adjudicated. As S.J.F. had previously been adjudicated for the felony offense of burglary of a habitation in Jefferson County, he was eligible for TYC commitment.¹ *TEX. FAM. CODE ANN. §§ 54.04(d)(2) & (t)* (Vernon Supp. 2006). At the disposition hearing, S.J.F.'s probation officer recommended TYC commitment based on the previous adjudication for Burglary of a Habitation by Force in Jefferson County, as well as the fact that S.J.F. was then on probation for theft, an offense committed two years earlier in May of 2004. The probation officer also noted that S.J.F. had several violations of placement and further, was having numerous problems at school because of non-compliance with rules, including cursing at teachers and walking out of the classroom. The State also recommended TYC commitment and asked the court to take into consideration three referrals for Conduct Indicating a Need for Supervision ("CINS").

1 It is unclear from the record when this offense was committed.

Defense counsel recommended that S.J.F. be placed on probation for twelve months, with a restitution order, and an order that S.J.F. wear an electronic monitor. S.J.F.'s mother told the court that S.J.F. was going to counseling and seeing a psychiatrist; however, she downplayed the attempted burglary of the thrift shop by accusing the witness of having had an argument with S.J.F.'s aunt on the day of the incident.²

2 The record also reflects that S.J.F.'s mother was charged with Theft by Check and Possession of Marijuana in Jefferson County, and that her common law husband was incarcerated in the Texas Department of Corrections for over seven years for Robbery and Possession of Cocaine under 28 grams. Further, S.J.F.'s mother had a history of failing to follow through concerning S.J.F.'s appointments.

The trial court ultimately ordered S.J.F. to be committed to the TYC and entered the following findings: 1) S.J.F. has previously been adjudicated for burglary of a habitation; 2) S.J.F. has been afforded several probations, including deferred prosecution and court ordered probation; 3) S.J.F. has been referred to day treatment and

the intensive clinical services unit; 4) S.J.F. has been unable to comply with conditions of probation, regardless of the numerous opportunities given; 5) reasonable efforts have been made to prevent or eliminate the need for the child's removal from the child's home and to make it possible for the child to return home; 6) the child in the child's home cannot be provided the quality of care and level of support and supervision he needs to meet the conditions of probation; 7) at this time, there is no suitable placement facility available for the child; and 8) it is in the best interest of the child and the community that the child be committed to TYC. It is from this order committing S.J.F. to TYC that S.J.F. now appeals.

Held: Affirmed

Opinion: In his sole issue, S.J.F. contends the trial court abused its discretion in committing him to TYC because the record indicates that probation would have been more appropriate.

At the time of the disposition in this case, the court could commit a youth to TYC without a determinate sentence if the court found that: 1) there was a need for disposition; 2) the child engaged in delinquent conduct that violated a penal law of the State of Texas of the grade of misdemeanor; and 3) the child had a previous felony adjudication. *See TEX. FAM. CODE ANN. §§ 54.04(d)(2) & (t)*.³ Further, commitment to TYC is permitted if the trial judge finds the following: (1) it is in the child's best interest to be placed outside the home; (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home; and (3) while in the home, the child cannot receive the quality of care and level of support and supervision needed to meet the conditions of probation. *TEX. FAM. CODE ANN. § 54.04(i)* (Vernon Supp. 2006).

³ Effective September 1, 2007, a court cannot commit a child to TYC for a misdemeanor, regardless of the child's previous adjudications. *Compare TEX. FAM. CODE ANN. § 54.04 (d)(2) with TEX. FAM. CODE ANN. § 54.04 (d)(2)* (West 2007).

Although appellate counsel admits that S.J.F. "has had many opportunities in his life to straighten out, and that he ignored or disregarded most of those opportunities," counsel maintains that S.J.F. was turning his life around when this case was tried.⁴ However, the record reflects that S.J.F. pled true to the offense of burglary of a building, and the trial court found the charge to be true on August 22, 2006. Additionally, S.J.F. had previously been adjudicated for the felony offense of burglary of a habitation in Jefferson County and was, therefore, eligible for TYC commitment. *See TEX. PENAL CODE ANN. §§ 30.02 (c)(1) & 15.01(d)* (Vernon 2003). Further, there was evidence that S.J.F. repeatedly failed to comply with his probationary conditions and despite numerous opportunities, continued to engage in repeated behavioral problems in school. And although S.J.F.'s trial counsel sought to have S.J.F. wear an electronic monitor, there was evidence that S.J.F. was not being provided the quality of care and level of support and supervision in his home that he needed to otherwise meet the conditions of probation. As the trial court's findings are supported by the record, it did not abuse its discretion. *In re T.K.E., 5 S.W.3d at 784*.

⁴ Appellate counsel appears to argue that probation would have been more appropriate in this case given that S.J.F. would have been ineligible for commitment to TYC for a misdemeanor had the misdemeanor been committed on or after September 1, 2007. Nevertheless, we review an order committing a juvenile to TYC under an abuse of discretion standard and cannot say that the trial judge abused its discretion here by applying the law in effect at that time. *In re T.K.E., 5 S.W.3d at 784*.

Conclusion: Accordingly, we affirm the trial court's order.

