

Review of Recent Juvenile Cases (2009)

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

Appellate court has authority to allow respondent to be released on personal bond pending appeal.[In the Matter of A.W.B.](09-1-6)

On December 18, 2008, the Amarillo Court of Appeals concluded that Respondent had failed to meet his burden of showing sufficient reason why the appellate court should supersede the judgment of the trial court and release him on personal bond pending appeal.

¶ 09-1-6. **In the Matter of A.W.B.**, No. 07-08-0345-CV, 2008 WL 5245897 (Tex.App.-Amarillo, 12/18/08).

Facts: Appellant, A.W.B., has filed a motion for personal bond requesting that a bond be set pending appeal pursuant to [Texas Family Code section 56.01\(g\)](#).

The record before us reflects that A.W.B. was found to have engaged in delinquent conduct by committing aggravated sexual assault on a child, sexual assault on a child, and indecency with a child. The trial court found that it would be in A.W.B.'s best interest to be placed outside of the home and committed him to the care, custody, and control of the Texas Youth Commission. The trial court further found that commitment was appropriate because (1) the seriousness of the offenses require that A.W.B. be placed in a restrictive environment to protect the public, (2) A.W.B. has a history of aggressive behavior, (3) A.W.B. has a history of persistent delinquent behavior, and (4) local resources are inadequate to properly rehabilitate A.W.B.

In his motion, A.W.B. contends that, at the disposition hearing, evidence was adduced that A.W.B. had no prior juvenile referrals, had complied with all of the conditions of release during the seven months preceding his hearing, was considered a low risk for committing additional crimes, and had the support and supervision of his parent and grandparents. In addition, the probation officer assigned to A.W.B.'s case recommended probation at the disposition hearing. Finally, A.W.B. suffers from Asperger's Disorder and the Texas Youth Commission cannot provide appropriate care for his disorder. Because of this condition, A.W.B. contends he has been targeted by bullies at the Texas Youth Commission and is in fear for his safety.

Held: Motion denied.

Opinion: [Texas Family Code section 56.01\(g\)](#) vests this Court with discretion to allow a juvenile to be released on bond pending an appeal. [Tex. Fam.Code Ann. § 56.01\(g\)](#) (Vernon 2002); [In re J.V., 944 S.W.2d 15, 17 \(Tex.App.-El Paso 1997, no writ\)](#). However, the burden is on the juvenile to show that he should be released on bond. [In re J.V., 944 S.W.2d at 17](#). Thus, the only issue before us is whether A.W.B. has established that this Court should exercise its discretion to supersede the trial court's judgment and allow A.W.B. to be released on personal bond pending appeal. The merits of the adjudication and disposition orders are not before us.

The grounds for a personal bond presented by A.W.B. in his motion are primarily the same grounds that were presented to the trial court at the disposition hearing. The record reflects that the trial court was aware of A.W.B.'s Asperger's Disorder as well as his compliance with the conditions of release preceding the disposition hearing. The trial court also heard the testimony of the probation officer assigned to this case and his recommendation that A.W.B. be placed on probation. However, the trial court concluded that the appropriate disposition would be to commit A.W.B. to the care, custody, and control of the Texas Youth Commission. We do not believe that these grounds are sufficient to establish that A.W.B. should be released on bond pending appeal.

The only additional information presented by A.W.B. to satisfy his burden of showing that he should be released on a personal bond pending appeal is that he has been threatened and targeted by bullies while in the care, custody, and control of the Texas Youth Commission. However, a review of the testimony presented at the motion for new trial hearing reveals that the staff at the Texas Youth Commission have taken appropriate steps when they have been informed of any issues relating to the way that other juveniles are treating A.W.B. On the only occasion in which staff was informed of a problem, A.W.B. was placed in protective custody. However, A.W.B. testified that he has not informed staff members of other problems or issues that he has encountered.

Conclusion: While this Court is aware that commitment with the Texas Youth Commission may not be ideal for A.W.B., we conclude that A.W.B. has failed to meet his burden of showing sufficient reason why we should supersede the judgment of the trial court and release A.W.B. on personal bond pending appeal. *Id.* at 17. Therefore, we deny A.W.B.'s motion.