

## Year 2004 Case Summaries

By

**Robert O. Dawson**

Bryant Smith Chair in Law  
University of Texas School of Law

[2004 Case Summaries](#)

[2003 Case Summaries](#)

[2002 Case Summaries](#)

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)

### ***TYC commitment of Mexican national upheld because of lack of supervision at home and no American placement alternatives [In re J.D.T.C.] (04-2-12).***

On April 1, 2004, the El Paso Court of Appeals upheld the TYC commitment of a Mexican national for smuggling marijuana into the United States because of lack of supervision in his home and lack of American placement alternatives.

04-2-12. In the Matter of J.D.T.C., UNPUBLISHED, No. 08-03-00179-CV, 2004 WL 722255, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-El Paso 4/1/04) Texas Juvenile Law (5th Ed. 2000).

Facts: J.D.T.C., a juvenile, appeals from a disposition order committing him to the Texas Youth Commission following adjudication that he engaged in delinquent conduct by possessing more than five pounds but under fifty pounds of marijuana.

On January 31, 2003, fifteen-year-old J.D.T.C., a Mexican citizen and resident of Ciudad Juarez, Chihuahua, Mexico, attempted to enter the United States by crossing the American canal in the vicinity of 5616 Flower Street. An agent observed Appellant and another juvenile around 8:24 that evening through a closed circuit television and noticed that they were carrying heavy backpacks. Another agent was dispatched to locate the pair. After they were apprehended, their backpacks were confiscated and a green leafy substance was found inside that tested positive as marijuana. The combined total weight of the marijuana was 65.05 pounds.

The State filed a petition alleging that Appellant engaged in delinquent conduct by committing the felony possession of less than two thousand pounds but more than fifty pounds of marijuana. The State later amended its petition alleging instead that Appellant engaged in delinquent conduct by committing the felony possession of fifty pounds or less but more than five pounds of marijuana. At the adjudication hearing, Appellant stipulated to the evidence, and the juvenile court found that he had engaged in delinquent conduct as alleged in the petition. A juvenile probation officer, Araceli Bowden, prepared a pre-disposition report and recommended that Appellant be committed to the care, custody, and control of the Texas Youth Commission (TYC). This report was admitted into evidence without objection and Bowden testified on behalf of the State.

Appellant resides in Ciudad Juarez with his grandmother, his father, and his aunt and uncle and their two children. He also has three brothers and sisters who occasionally stay at the house when not staying with their maternal grandmother. Bowden recommended that Appellant be placed in TYC because he is in need of rehabilitation and is a danger to himself and the community. She did not recommend that Appellant be placed in the Mexican National Children's Program (MNCP), a type of supervised probation for Mexican juvenile offenders, because his offense was a felony. While exceptions can be made for felony offenders under the MNCP, the MNCP requires the existence of some supervision and control over the child. Appellant's grandmother indicated that he followed rules at home and only left home without permission on occasion when she believed he was working odd jobs. She did not know that Appellant already had three alerts for illegal entry into the United States as reported by the Department of Immigration and Naturalization. Nor was she aware that Appellant was affiliated with gang members. Appellant admitted that he skipped school and that he had used cocaine, marijuana, and alcohol in the past.

Based upon the evidence, the juvenile referee found that Appellant was in need of rehabilitation and that the protection of the public and the juvenile so required. He concluded that it was in Appellant's best interest to be placed outside his home because his grandmother and father had no supervision, control, or discipline over him or that he did not lend himself to supervision, control, or discipline. Finally, the referee concluded that no effort could be made to prevent or eliminate removal because the juvenile was an illegal alien and there were no programs or alternatives to prevent removal. Appellant was committed to TYC.

Held: Affirmed.

## Opinion Text: SUFFICIENCY OF THE EVIDENCE

Appellant alleges that the evidence is legally and factually insufficient to support his commitment to TYC. The juvenile court's findings of fact are reviewable for legal and factual sufficiency of the evidence to support them by the same standards as are applied in reviewing the legal or factual sufficiency of the evidence supporting a jury's answers to a charge. In the Matter of A.S., 954 S.W.2d 855, 861 (Tex.App.-El Paso 1997, no pet.); In the Matter of J.P.O., 904 S.W.2d 695, 699-700 (Tex.App.-Corpus Christi 1995, writ denied). We do not disturb the juvenile court's disposition order in the absence of an abuse of discretion. A.S., 954 S.W.2d at 861; In the Matter of E.F., 535 S.W.2d 213, 215 (Tex.Civ.App.-Corpus Christi 1976, no writ). The juvenile court's exercise of discretion in making an appropriate disposition is guided by the requirements of Section 54.04 of the Family Code. A.S., 954 S.W.2d at 861. Section 54.04(c) provides that the trial court may not make place a juvenile outside of his home unless it finds that the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation. Tex.Fam.Code Ann. § 54.04(c)(Vernon Supp.2004). Further, in order to commit a child to TYC, the court must additionally find that placement outside of the child's home is in the child's best interest and that reasonable efforts were made to prevent or eliminate the need for the child's removal from the home. Tex.Fam.Code Ann. § 54.04(i). The juvenile court included the required statutory language in its order of disposition.

### Standards of Review

In Point of Error One, Appellant challenges the legal sufficiency of the evidence to support the referee's findings. Appellant contends that this court should use the criminal standard of review viewing the evidence in the light most favorable to the finding and determining whether any rational trier of fact could have found the elements of the requirements proven beyond a reasonable doubt. However, we have traditionally applied the civil no evidence standard of review to legal sufficiency challenges of juvenile disposition orders. See A.S., 954 S.W.2d at 858. In reviewing the legal sufficiency, we consider only the evidence and inferences tending to support the findings under attack and set aside the judgment only if there is no evidence of probative force to support the findings. A.S., 954 S.W.2d at 858; In the Matter of T.K.E., 5 S.W.3d 782, 785 (Tex.App.-San Antonio 1999, no pet.).

In Point of Error Two, Appellant challenges the factual sufficiency of the evidence to support the referee's findings. In reviewing this factual sufficiency challenge, we view all of the evidence but do not view it in the light most favorable to the challenged findings. See A.S., 954 S.W.2d at 860; R.X.F. v. State, 921 S.W.2d 888, 900 (Tex.App.-Waco 1996, no writ); see also Clewis v. State, 922 S.W.2d 126, 129 (Tex.Crim.App.1996). Only if the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust will we conclude that the evidence is factually insufficient. See A.S., 954 S.W.2d at 860; R.X.F., 921 S.W.2d at 900, citing Cain v. Bain, 709 S.W.2d 175, 176 (Tex.1986) and Clewis, 922 S.W.2d at 129.

### Evidence Offered at the Disposition Hearing

We have already noted that Appellant resided in Ciudad Juarez with his grandmother, his father, and his aunt and uncle and their two children. His father was often away from home due to work and he had been arrested for public intoxication. Appellant began school at age nine and completed grades one through six, but the probation officer had no records of Appellant's secondary school attendance. His grandmother did not report any behavioral problems at home and indicated that Appellant followed her rules. She was unaware that Appellant already had three alerts for illegal entry into the United States or that he was affiliated with gang members. Appellant had an IQ that evidenced mild retardation and diminished his ability to profit from talk therapy or counseling. Appellant also had a girlfriend who was pregnant.

Bowden recommended TYC for Appellant because he would receive an education, vocational training, counseling, and drug and alcohol awareness training. She believed he would best respond to a structured environment with clear behavioral controls in the educational setting offered by TYC. She also expressed her concern that Appellant's safety was at stake if he returned to Mexico due to the people with whom he associated. When asked whether boot camp would be a viable alternative to TYC, Bowden replied that it was not an option for a juvenile who was a Mexican national. On cross-examination, Bowden was asked whether she remembered that Appellant was involved in boxing, soccer, or a church youth group. She did not remember receiving such information. Evidence was offered that Appellant had started attending secondary school, that he got good grades, that he did not have a criminal record in Mexico, and had no behavioral problems at school.

Dr. Guido Barrientos testified for Appellant. He conducted a psychological evaluation which indicated that Appellant had an IQ of 65 and would have trouble in his education. He was shown a copy of Appellant's grades at Delta Academy, where he had scored from 70 to 88 in his classes. When asked whether these grades were consistent with his finding of mental retardation, the doctor replied that good grades are not measures of intelligence but are the result of group standards. His recommendation that Appellant be placed in a more structured environment was based not only on Appellant's IQ but also on the home environment, the number of children in the family, the juvenile's place of residence, his past history of school failure, his not attending school and roaming the streets, and his

level of reasoning and acclimation to peer influence. While the juvenile told Dr. Barrientos that he had been attending school, had won awards for his good grades and computer skills, and was a star soccer player, the doctor found evidence of truancy and the juvenile acknowledged he usually skipped school to hang out with friends. Doctor Barrientos concluded that since Appellant was out on the streets, easily influenced by his peers, and not supervised by his grandmother, he would likely reoffend. Dr. Barrientos opined that boot camp would be beneficial for Appellant, but when he was told that boot camp was not an option due to the juvenile's citizenship, he was not familiar with other options.

Appellant testified that he committed the offense because he needed money. His girlfriend was due to have the baby soon and he needed to pay to attend secondary school. He had worked in the past at Edificaciones Gura, a roofing company, and El Chino, a sandwich shop, and also had sold cassettes. He last worked with his father in the construction business about a month before trial. He was attending school until he was detained and explained that there was no evidence of his grades because the school gave students a test then offered them a job to integrate them into the work industry. He entered the United States illegally on three previous occasions because he wanted to live with his sister and attend school in El Paso.

#### Application of Standards to the Evidence

Appellant argues that he should not have been committed to TYC because there were other alternative placement programs available in the community that would have been better suited to his individual needs. He offered no other alternatives in his testimony nor in his brief on appeal. The record contains evidence that the trial court did consider alternatives. Bowden testified that Appellant's alternatives were limited because he was a Mexican national. He was not a candidate for the MNCP because he had committed a felony offense. While there are exceptions allowing those with felony offenses to enter the Mexican probation program, Appellant must have proper supervision at home in order to qualify. See *In the Matter of M.A.C.*, 999 S.W.2d 442 (Tex.App.-El Paso 1999, no pet.). As we have detailed, the record supports the court's findings that Appellant was not properly supervised at home. Finding the evidence both legally and factually sufficient, we conclude that the court did not abuse its discretion in committing Appellant to TYC. We overrule Points of Error One and Two and affirm the judgment of the juvenile court.

---

[2003 Case Summaries](#)

[2002 Case Summaries](#)

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)