

YEAR 2004 CASE SUMMARIES

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Juvenile court did not abuse its discretion in revoking determinate sentence probation [In re R.K.] (04-4-06).

On September 24, 2004, the Dallas Court of Appeals held that the juvenile court did not abuse its discretion in revoking determinate sentence probation instead of transferring respondent to criminal court for continued supervision as an adult.

04-4-06. In the Matter of R.K., UNPUBLISHED, No. 05-03-01265, 2004 WL 2133856, 2004 Tex.App.Lexis ____ (Tex.App.-Dallas 9/24/04) Texas Juvenile Law (6th Ed. 2004).

Facts: Asserting the trial court abused its discretion, appellant appeals the trial court's order committing him to the Texas Youth Commission for ten years.

The record shows that on October 16, 2001, appellant was found to have committed the offense of aggravated assault and, as a result, he received a determinative sentence of ten years' commitment to the Texas Youth Commission (TYC), probated for ten years, with an initial placement at Glen Mills. After completing his placement with Glen Mills, and while living at home in the custody of his father, appellant tested positive for phencyclidine (PCP), a violation of the conditions of his probation. The state filed a motion to modify disposition. The trial court found that appellant violated his probation by testing positive for illegal drug use on March 27, 2003, and ordered appellant committed to TYC for ten years, with possible transfer to the Texas Department of Criminal Justice Institutional Division.

Appellant does not challenge the trial court's finding that he violated the terms of his probation by illegal drug usage. Rather, he simply asserts the trial court abused its discretion in committing him to TYC instead of the less restrictive alternative of transferring his probation to criminal district court.

Held: Affirmed.

Opinion Text: "The Legislature has vested Juvenile Courts with great discretion in determining the suitable disposition of children found to have engaged in delinquent conduct. This is especially so regarding hearings to modify disposition." In re P.L., 106 S.W.3d 334, 337 (Tex.App.-Dallas 2003, no pet.). We review the entire record to determine if a trial court abused its discretion by acting without reference to any guiding rules or principles. See J.R.W. v. State, 879 S.W.2d 254, 257 (Tex.App.-Dallas 1994, no writ). In this case, we look to see if the trial court followed the guiding rules or principles regarding the disposition of committing appellant to TYC.

Section 54.04(c) of the family code provides that no disposition may be made "unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made." Also section 54.04(i) states that if the court commits the child to TYC, the court shall include its determination in its order that:

- (A) it is in the child's best interests to be placed outside the child's home;
- (B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- (C) 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....

Additionally, section 54.05(j) of the family code provides:

If, after conducting a hearing to modify disposition without a jury, the court finds by a preponderance of the evidence that a child violated a reasonable and lawful condition of probation ordered under Section 54.04(q), the court may modify the disposition to commit the child to the Texas Youth Commission under Section 54.04(d)(3) for a term that does not exceed the original sentence assessed by the court or jury.

In its commitment order, the trial court found: (1) the child needed rehabilitation, (2) the public needed protection, (3) placement outside of the home was best for the child, (4) all reasonable efforts were made to prevent the child's removal from the home and provide for his return to the home, (5) the state's petition was approved by the Dallas County Grand Jury, and (6) the child's home was not able to provide the level of care and supervision necessary for the child to meet the conditions of the probation. Further, the trial court found R.K.: (1) was previously adjudged to be a child engaged in delinquent conduct, was placed on probation, and received a copy of the terms and conditions of probation, and (2) violated the conditions of his probation by testing positive for illegal drug use.

A review of this entire record reveals that, while on probation for the offense of aggravated assault and under the custody of his father, appellant used phencyclidine, an illegal and dangerous drug, and returned to gang activity. The record supports the findings that appellant was in need of rehabilitation, the public needed protection, appellant's home could not provide the necessary level of care or supervision, and that reasonable efforts were made to prevent his removal from the home and provide for his return. We find that the trial court acted within the rules and principles of the family code regarding commitment to TYC. Accordingly, we overrule appellant's sole issue that the trial court abused its discretion in ordering appellant committed to TYC.

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