
YEAR 2005 CASE SUMMARIES

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Juvenile court did not abuse its discretion in transferring a juvenile from TYC to TDCJ under the determinate sentence act [In re R.H.] (05-1-07).

On December 15, 2004, the San Antonio Court of Appeals held that the juvenile court did not abuse its discretion in transferring a juvenile from TYC to TDCJ following multiple disciplinary violations, including assaults.

05-1-07. In the Matter of R.H., UNPUBLISHED, No. 04-04-00201-CV, 2004 WL 2877349, 2004 Tex.App.Lexis ____ (Tex.App.—San Antonio 12/15/04) Texas Juvenile Law (6th Ed. 2004).

Facts: R.H. appeals the order transferring him from the custody of the Texas Youth Commission ("TYC") to the Institutional Division of the Texas Department of Criminal Justice ("TDCJ"). In his sole issue on appeal, R.H. contends that the record does not support an order of transfer and, therefore, the trial court abused its discretion.

In May 2000, R.H. waived his right to a jury trial, stipulated to the State's evidence, and pled true to having engaged in delinquent conduct by committing the offense of 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 R.H. to a twelve year determinate sentence at TYC with the possibility of transfer to TDCJ. In December 2003, after conducting a release and transfer hearing, the trial court ordered that R.H. be transferred to the TDCJ to complete his twelve year sentence. R.H. filed a motion for new trial alleging that the evidence in support of transfer was insufficient. After this motion was denied, R.H. timely filed notice of appeal of the transfer order.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

A trial court's decision to transfer a juvenile from TYC to TDCJ is reviewed under an abuse of discretion standard. In the Matter of J.M.O., 980 S.W.2d 811, 812-13 (Tex.App.—San Antonio 1998, pet. denied). The appellate court must consider the entire record to determine if the trial court acted without reference to guiding rules and principles. *Id.* at 813. If some evidence exists in support of the trial court's decision, no abuse of discretion exists. *Id.*

ANALYSIS

In making the determination regarding transfer of a juvenile offender to TDCJ, a trial court may consider: (1) the experiences and character of the person both 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 the youth commission 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.2004 05). The trial court is not required to consider all of the factors, may consider other unlisted but relevant factors, and may assign different weights to the factors as the court sees fit. In the Matter of R.G., 994 S.W.2d 309, 312 (Tex.App. Houston [1st Dist.] 1999, pet. denied).

At the transfer hearing, Leonard Cucolo, a TYC official, testified that based on R.H.'s master and security file and R.H.'s progress while at TYC, the recommendation of the youth commission was that R.H. be transferred to TDCJ for the remainder of his sentence. He testified that while at TYC, R.H.'s behavior had been poor and that he had only marginally benefited from participation in the general resocialization program. Cucolo indicated R.H.'s behavior had a negative impact on other youth in the facility and he represented an ongoing threat to staff and other students. In the three and one half years he had spent at TYC as of the date of the transfer hearing, R.H. had engaged in approximately 153 documented incidents of misconduct, including some aggressive and assaultive behavior, been placed in security on approximately 40 occasions, had only recently taken minimal responsibility for the assault upon his victim, and had vacillated in his willingness to participate in the sexual offender treatment program. While there was some evidence that R.H. had made significant academic progress during his commitment, his overall progress in the rehabilitative program had not been strong. In addition, the stipulated evidence included information establishing that R.H. had committed a very serious offense one which was incident to a larger pattern of abusive behavior toward his brother and which R.H. had committed in a violent and threatening manner toward a minor.

After reviewing the record in light of the factors set forth in section 54.11(k) of the Texas Family Code, we cannot say that the trial court abused its discretion in ordering R.H. transferred from TYC to TDCJ to serve the remainder of his determinate sentence. See J.M.O., 980 S.W.2d at 813. Accordingly, R.H.'s sole issue on appeal is overruled and the trial court's order is affirmed.