
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Trial Court did not abuse its discretion in placing juvenile on probation outside his home even though both he and his parents wanted him to be placed in his home. [In the Matter of T.G.](05-2-17)

On November 10, 2004, the San Antonio Court of Appeals denied defendant's request for rehearing holding appellant has not demonstrated the trial court abused its discretion in placing juvenile on probation outside his home.

05-2-17. In the Matter of T.G., No. 04-04-00307-CV, 2004 Tex.App.Lexis 9923 (Tex.App.— San Antonio 11/10/04).

Facts: Defendant juvenile pled true in the 289th Judicial District Court, Bexar County, Texas, to the felony offense of graffiti and the trial court found that he had engaged in delinquent conduct. The trial court assessed a punishment of probation under the supervision for a period of 18 months. Defendant appealed.

In an opinion and judgment dated October 13, 2004, the appellate court affirmed the trial court's judgment. Appellant filed a motion for rehearing.

Held: Motion for rehearing denied, opinion and judgment of October 13, 2004 withdrawn, this opinion and judgment in its place.

Memorandum Opinion: In his sole issue on appeal, appellant asserts the trial court erred in placing him on probation outside his home because both he and his parents wanted him to be placed in his home. We review appellant's complaint under the standard set forth in *In re K.T.*, 107 S.W.3d 65, 74-75 (Tex. App.— San Antonio 2003, no pet.); see also TEX. FAM. CODE ANN. § 54.04(c), (d) (Vernon Supp. 2004).

When the trial court asked the State why it recommended placement in residential care at the Southton facility, the prosecutor responded that appellant had a number of problems at home, he leaves his parents' home without their permission, he has tested for marijuana, he admits to being the leader of a gang, and associates with gangs when he leaves home. The prosecutor stated that appellant ignores his parents when they try to stop his gang association, and as a result, a younger sibling is now following appellant's example and becoming disruptive. In response, appellant's attorney did not dispute these contentions. Instead, appellant's attorney argued a monitor would be more appropriate than placing appellant at Southton because his parents were willing "to take him back one more [*3] time on the monitor." Counsel said his understanding was that appellant "is good for awhile and starts to revert back to the juvenile behavior." Appellant's parents did not dispute the State's contentions. Appellant's father and mother admitted they had to occasionally restrain appellant and that "sometimes it is just hard to

work with him." The court noted appellant was currently on probation for assault. No other evidence was offered on appellant's behalf.

Based on this record, appellant has not demonstrated the trial court abused its discretion in placing him on probation outside his home, rather than placing him with his parents.

Conclusion: trial court did not abuse its discretion in requiring defendant to be placed in residential care as it was apparent that his parents had had little success at curbing his delinquent tendencies.

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