
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 it's discretion in transferring juvenile from TYC to the TDCJ to complete the remainder of determinate sentence. [In The Matter of J.L.C.] (05-2-27)

On April 14, 2005, the Dallas Court of Appeals (5th Dist.) held that the trial court did not abuse it's discretion by entered an order transferring juvenile from TYC to TDCJ to complete the remainder of his 7-year determinate sentence for the offense of Aggravated Assault and Theft.

05-2-27. In The Matter of J.L.C., MEMORANDUM, No. 05-04-01070-CV, 2005 Tex. App. Lexis 2873 [Tex. App-Dallas (5th Dist.) 4/14/05].SP

Facts: The 304th Judicial District Court, Dallas County, Texas, entered an order transferring juvenile from a youth facility to the Texas Department of Criminal Justice (TDCJ) to complete the remainder of his 7-year determinate sentence for the offense of Aggravated Assault and Theft. Juvenile appealed.

Held: Affirmed

Memorandum Opinion: In his sole issue, appellant contends the trial court abused its discretion in ordering him transferred to the TDCJ. We review the trial judge's decision to transfer a juvenile from the TYC to the TDCJ under an abuse of discretion standard. *In re T.D.H.*, 971 S.W.2d 606, 610 (Tex. App.-Dallas 1998, no pet.); *J.R.W. v. State*, 879 S.W.2d 254, 257 (Tex. App.-Dallas, no writ). In deciding whether the trial judge abused his discretion, we review the entire record to determine if the judge acted without reference to any guiding rules or principles. *Id.* If some evidence supports the trial judge's decision, there is no abuse of discretion. *Id.* We do not substitute our decision for that of the trial judge and reverse only if the judge acted in an unreasonable or arbitrary manner. *Id.*

At the hearing on a request to transfer a juvenile to the TDCJ, the judge may consider: (1) the experiences and character of the juvenile before and after commitment to the TYC; (2) the nature of the penal offense and the manner in which the offense was committed; (3) the abilities of the juvenile to contribute to society; (4) the protection of the victim of the offense or any member of the victim's family; (5) the recommendations of the TYC and the prosecuting attorney; and (6) the best interests of the juvenile and any other relevant factors. *See* TEX. FAM. CODE ANN. § 54.11(k) (Vernon Supp. 2004-05); *In re R.G.*, 994 S.W.2d 309, 312 (Tex. App.-Houston [1st Dist.] 1999, pet. denied). Evidence of each factor is not required, and the trial judge need not consider every factor in making his decision. *Id.* at 312. The trial judge may assign different weights to the factors he considers, and he may consider unlisted but relevant factors. *Id.* (citing *In the matter of C.L., Jr.*, 874 S.W.2d 880, 886 (Tex. App.-

Austin 1994, no writ)).

At the transfer hearing, Leonard Cucolo, a TYC representative, testified that the TYC recommended J.L.C.'s transfer to the TDCJ for several reasons. During the three and one-half years since Appellant's commitment to San Saba State School, a TYC facility, Cucolo characterized appellant's progress in the socialization and rehabilitation treatment as poor. Cucolo stated appellant had 347 documented incidents of misconduct and had been placed in the security unit at San Saba on 75 occasions. The misconduct included general disruption, failure to follow staff instructions, aggressive behavior to staff and students, assault of students, and five "gang-related" incidents. Cucolo also noted that, in an psychological evaluation performed in January 2004 and admitted into evidence, that appellant admitted to "criminal conduct" that he had engaged in before his commitment to the TYC, including abusing drugs and alcohol, committing various acts of burglary, participating in drive-by shootings, possessing fire arms, and using knives and baseball bats in fights. Appellant also indicated in the psychological that he started drinking alcohol on a daily basis at age thirteen, smoked marijuana daily since the age of ten or eleven, had used cocaine, and sold marijuana, cocaine, and methamphetamine on the street. Cucolo classified appellant's risk to reoffend as "significant" and "high." He rated appellant's amenability for treatment as poor, citing two separate evaluations by two psychologists. Cucolo further stated that appellant's caseworker reported appellant lacked "motivation in completing his individual case plan assignments," tended "to blame others for his lack of progress," and failed to "take responsibility for his lack of progress."

In his testimony, appellant testified and challenged the accuracy of Cucolo's testimony. According to appellant, he was not given "the proper treatment that was supposed to be provided" to him, nor did he receive counseling for anything other than his chemical dependency. Appellant testified the staff made fun of him and attributed many of the instances of "disruption" to his attempts to run away from the staff. He also testified that his caseworker laughed about the possibility of his being transferred to prison. Appellant further stated he only assaulted one person and claimed it was self-defense when he was stabbed with a pencil. He denied assaulting others, calling Cuolo's testimony "inaccurate."

After reviewing the record, we cannot conclude the trial judge abused his discretion in transferring Appellant to the TDCJ. Cucolo's testimony about the numerous incidents of misconduct and Appellant's high risk of reoffending, along with TYC's recommendation for transfer, constitute evidence supportive of the trial judge's decision. Although Appellant challenged the evidence, the trial judge was free to accept or reject Appellant's testimony. We resolve Appellant's sole issue against him.

Conclusion: We affirm the trial court's order.