
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

[2005 Summaries](#) [2004 Summaries](#) [2003 Summaries](#) [2002 Summaries](#) [2001 Summaries](#) [2000 Summaries](#) [1999 Summaries](#)

In Determinate Sentence transfer hearing, trial court did not abuse its discretion in ordering child transferred to TDCJ to complete sentence. [In the Matter of C.F.](05-4-17)

On October 28, 2005, the Dallas Court of Appeals (5th Cir.) held that evidence about appellant's incidents of misconduct and TYC's recommendation for transfer constituted enough evidence to supportive trial court's decision to transfer child to TDCJ.

¶ 05-4-17. **In The Matter of C.F.**, MEMORANDUM, No. 05-05-00554, 2005 Tex.App.Lexis 8895 (Tex.App.— Dallas [5th Dist.] 10/28/05).

Facts: The trial court had adjudicated appellant, who was 16 years old, a child engaged in delinquent conduct for committing aggravated robbery. The trial court committed him to TYC for a determinate sentence of 49 months. Subsequently, TYC requested that appellant be transferred to TDCJ to complete his sentence and, after a hearing, the trial court ordered the transfer. Appellant argued that the trial court abused its discretion by ordering him transferred because he achieved his academic goals, participated in vocational training, successfully completed the chemical dependency program, and had a decent conduct record.

Held: Affirmed as Modified.

Memorandum Opinion: We review the trial court's decision under an abuse of discretion standard. *In re T.D.H.*, 971 S.W.2d 606, 610 (Tex. App.-Dallas 1998, no pet.). In deciding this issue, we review the entire record to determine if the trial court acted without reference to any guiding rules or principles. *Id.* If some evidence supports the trial court's decision, there is no abuse of discretion. *Id.* We do not substitute our discretion, and reverse only if the trial court acted in an unreasonable or arbitrary manner. *Id.*

In making its decision, the court may consider: (1) the experiences and character of the person before and after commitment to TYC; (2) the nature of the penal offense and the manner in which the offense was committed; (3) the abilities of the person 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 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 court need not consider every factor. *In re R.G.*, 994 S.W.2d at 312. The trial court may assign different weights to the factors it considers, and it may consider unlisted but relevant factors. *Id.*

Leonard Cucolo, a representative of TYC, testified that TYC recommended transfer for several reasons. Cucolo characterized appellant's behavior during the three years of his commitment as poor. Cucolo stated appellant stayed two months in the Marlin Orientation and Assessment Unit where he accumulated seven documented incidents of misconduct. While at the Giddings State School, a TYC facility, appellant accumulated over 183 incidents of misconduct and was confined in the security unit on twenty-three occasions. The majority of the incidents were for disruptive behavior, and on some occasions he was involved in assaultive conduct and suspected gang-related activity, such as orchestrating assaults on other youths. The testimony also established that appellant's history included adjudications for an assault in 2000 and possession of marijuana in 2001. Appellant had reported that he started carrying a knife at age ten and a firearm at age fourteen, and that he had engaged in drug selling.

Appellant denied he assaulted another youth or witnessed any assault. Appellant stated he had problems adjusting when he first arrived at TYC. Appellant admitted he made the decision to act out, but claimed his behavior had improved from those early episodes. Appellant admitted he pointed a semi-automatic handgun at a man's face, then he and his accomplice took the man's money and jewelry. Appellant stated the robbery was revenge for the man stepping on his accomplice's shoes.

After reviewing the record, we conclude the trial court did not abuse its discretion. The evidence about appellant's incidents of misconduct and TYC's recommendation for transfer constitute evidence supportive of the trial court's decision. Accordingly, we overrule appellant's first issue.

Appellant next asserts that the order to transfer to TDCJ should be modified to correct the date he was adjudicated to be a child engaged in delinquent conduct. The State concedes this issue. Thus, we sustain appellant's second issue.

The order to transfer incorrectly recites that appellant was found to be a child engaged in delinquent conduct and assessed a determinate sentence on *January 24, 2002*. We modify the trial court's order to show that appellant was adjudicated and assessed a determinate sentence on March 12, 2002. *See TEX. R. APP. P. 43.2(b); Bigley v. State, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); Asberry v. State, 813 S.W.2d 526, 529-30 (Tex. App.-Dallas 1991, pet. ref'd).*

Conclusion: As modified, we affirm the trial court's order.