

Review of Recent Juvenile Cases (2008)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

The three-year minimum time requirement for a TYC stay is not a statutory minimum to stay at TYC.[In the Matter of J.B.C.](08-4-6)

On October 9, 2008, the Fort Worth Court of Appeals in a per curium decision held that the three-year minimum time requirement for a first degree felony concerns a limitation on TYC's power to release, not a statutory minimum time requirement to stay at TYC.

¶ 08-4-6. **In the Matter of J.B.C.**, MEMORANDUM, No. 2-07-431-CV, 2008 WL 4531701 (Tex.App.-Fort Worth, 10/9/08).

Facts: A jury found that J.B.C. engaged in delinquent conduct by committing murder. *See In re J.B.C.*, 233 S.W.3d 88, 94 (Tex.App.-Fort Worth 2007, pet. denied) (providing details concerning J.B.C.'s fatally shooting his maternal grandmother in the back of the head with a .32 caliber handgun and affirming trial court's judgment). The trial court sentenced J.B.C. to forty years' confinement with TYC with a possible transfer to TDCJ. *Id.* After J.B.C. turned eighteen years old and had spent approximately eighteen months in the custody of TYC, upon TYC's request, the trial court held a hearing pursuant to section 54.11 of the family code and section 61.079(a) of the human resources code concerning the transfer of J.B.C. to TDCJ. *See* Tex. Fam.Code Ann. § 54.11 (Vernon Supp.2008); Tex. Hum. Res. Code Ann. § 61.079(a) (Vernon Supp.2008).

At the November 20, 2007 transfer hearing, the State presented the testimony of TYC court liaison Leonard Cucolo as well as TYC's general file, master file, and security file on J.B.C. Cucolo testified that there are three categories by which J.B.C. was evaluated while at TYC--academics, behavior, and conduct. Cucolo said that although J.B.C. had progressed well in the area of academics, he had progressed poorly both behaviorally and in his conduct. Cucolo testified that J.B.C. had demonstrated "pretty serious behavior problems in the form of an assault or aggressive behavior towards staff and students." Cucolo said that J.B.C. had been confined to the security unit multiple times for being a danger to others. He also said that J.B.C. had a pattern of being disrespectful and verbally aggressive toward staff and students and failed to follow instructions from TYC staff. In all, Cucolo testified that J.B.C. had roughly seventy documented incidents of misconduct or referrals to TYC's security unit. Eighteen of these referrals resulted in his removal from TYC's dorm.

Cucolo also detailed a few of the incidents that led to J.B.C.'s removal to TYC's security unit. One such incident involved J.B.C. "hitting his peer with a closed fist continuously" while yelling out, "White Power." Cucolo stated that J.B.C.'s reference to "White Power" was "gang-related." Cucolo also said that J.B.C. had received a variety of services at TYC, including pharmacological intervention, psychiatric counseling, medication for anxiety, individual counseling, group counseling, and staff counseling. Cucolo said that despite these services, J.B.C. was generally disruptive and tended to blame others for his behavioral problems. In sum, Cucolo said that J.B.C. demonstrated an inability to progress in his re-socialization program.

Jeannette Saha, a case manager for TYC who knew and had worked with J.B.C., also testified. She too stated that J.B.C. had progressed well academically. Saha also stated that she believed J.B.C. had progressed both behaviorally and in his conduct. Saha said that she believed J.B.C. benefited from being at TYC and that she believed specialized treatment would be of significant benefit to him.

Following closing arguments, the court took the case under advisement to review the documentary evidence. After reviewing the written evidence, the trial court advised J.B.C. of his appellate rights and ordered that J.B.C. be transferred to TDCJ to complete his forty-year sentence. This appeal followed.

Held: Affirmed

Memorandum Opinion: In part of his sole issue, J.B.C. complains that the trial court abused its discretion by ordering him transferred to TDCJ when he had only served roughly half of his three-year minimum time requirement at TYC. We disagree.

The three-year minimum time requirement discussed at the transfer hearing concerns a limitation on TYC's power to release J.B.C. on parole, rather than a statutory minimum time requirement that J.B.C. was to stay at TYC. *See* Tex. Hum. Res. Code Ann. § 61.081 (Vernon Supp.2008) (providing TYC "may not release the child under supervision without approval of the juvenile court ... unless ... the child has served at least ... 3 years, if the child was sentenced to commitment for conduct constituting ... a felony of the first degree."). In this case, the minimum time before recommending a transfer from TYC to TDCJ was six months. *See* 37 Tex. Admin. Code § 85.65(e)(2)(B) (2006) (providing that TYC may request a juvenile court hearing for transfer to TDCJ for sentenced offenders who have been convicted of a felony offense and have spent at least six months in a high restriction facility).

Conclusion: Here, it is uncontested that J.B.C. spent more than six months in a high-restriction facility prior to TYC's request that he be transferred to TDCJ. We overrule this part of J.B.C.'s sole issue.