Juvenile Law Case Summaries

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No self-incrimination violation in admissions during modification hearing by respondent to judge [In re G.B.] (01-1-17).

On February 7, 2001, the San Antonio Court of Appeals held that the juveniles right against compelled self-incrimination was not violated by admissions he made to the juvenile court judge at the modification of disposition hearing.

01-1-17. In the Matter of G.B., UNPUBLISHED, No. 04-00-00495-CV, 2001 WL 99880, 2001 Tex.App.Lexis ___ (Tex.App.--San Antonio 2/7/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: G.B. was found to have violated his probation and the court determined his best interests would be served by committing him to the custody of the Texas Youth Commission. G.B. appeals the modification of his disposition.

The trial court found that G.B. engaged in the delinquent conduct of Burglary of a Habitation with force. Pursuant to a plea bargain in connection with this case and two additional charges, G.B. was placed on probation that included court-ordered placement for a minimum of twelve months in a secure facility for emotionally disturbed youth, to be followed by consideration for placement in a therapeutic foster home or other transitional facility. These placements were to address G.B.'s substance abuse and psychological needs.

G.B. was placed in the Waymaker Treatment Center in Houston. After six months, G.B.'s therapist found he should be released to his home environment. Nonetheless, in an Agreed Motion to Modify, the parties stipulated that G.B. needed further rehabilitation. In accordance with the parties' request, the court issued the following orders: (1) a decrease in the twelve month minimum at a secure facility to six months (already completed at Waymaker Treatment Center); (2) attendance at the day treatment program at Campbell-Griffin; (3) attendance at family and individual counseling; and (4) compliance with all other terms of probation from the original order. These terms included attending school at Campbell Griffin faithfully and not leaving placement without permission.

Shortly after being released under the newly-modified conditions of probation, G.B. failed to attend the day treatment program at Campbell Griffin. G.B. was counseled about his nonattendance by his probation officer, his counselor, and the program coordinator at Campbell. Despite his renewed pledge to attend the day treatment program, G.B. was absent without excuse, four out of the first eight days, resulting in his discharge from the program. He was also not staying at his home in violation of his curfew and other conditions of supervision.

There was testimony of other problems as well. G.B. was placed on an electronic monitor, which he later cut off. He ran away from home on the date he was summoned to appear in court. During the time he avoided being picked up by the police, another burglary of a habitation was committed, with which he was later charged. Then, during the course of G.B.'s apprehension, he jumped out of a moving car and ran from the police.

Following a hearing on the modification of the disposition, the court found that G.B. violated three conditions of probation: (1) he failed to attend school faithfully; (2) he left placement without permission; and (3) he was discharged from the day treatment program for failure to attend. The court found it was in the best interest of G.B. to commit him to the Texas Youth Commission pursuant to sections 54.04 and 54.05 of the Texas Family Code.

G.B. appeals the trial court's modification of his disposition. We liberally construe G.B.'s brief to contain the following

issues: the trial court (1) sentenced him to the Texas Youth Commission based on factually insufficient evidence; (2) failed to admonish him under section 54.03(b) of the Texas Family Code; and (3) violated his Fifth Amendment right by forcing him to incriminate himself.

Held: Affirmed.

Opinion Text: FACTUAL SUFFICIENCY OF THE EVIDENCE

Standard of Review

In addressing G.B.'s factual sufficiency point we consider all of the evidence while being "appropriately deferential" to the judgment of the trier of fact, and we will set aside the verdict only if the evidence is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." In re A.C., 949 S.W.2d 388, 390 (Tex.App.--San Antonio 1997, no writ) (acknowledging disagreement among courts of appeal regarding standard in reviewing factual sufficiency challenges in juvenile delinquency cases). In order to prevail on a modification of disposition, the State must prove "beyond a reasonable doubt that the child violated a reasonable and lawful order of the court." Tex.Fam.Code Ann. § 54.05(f) (Vernon 1996); Matter of S.J., 940 S.W.2d 332, 336 (Tex.App.--San Antonio 1997, no writ).

The relevant conditions of G.B.'s probation required him to: (1) attend school faithfully; (2) attend the day treatment program of Campbell Griffin; and (3) not leave his placement without permission of his custodian. The judge heard evidence from G.B.'s probation officer as well as from the Program Director Coordinator of the Campbell Griffin treatment center, that he did not attend the day treatment center or school on three out of the first seven days he was to attend. The judge heard that G.B. was counseled about this and given a chance to recommit himself to attending the program and subsequently failed to do so on the very next day. These were all unexcused absences. G.B. was discharged from the program for failure to attend and failure to meet or follow the rules within the program. When the probation officer went to G.B.'s house, he was not home. G.B.'s mother said he did not want to stay home and was at his aunt's home. However, when the officer arrived at the home of the aunt, G.B. was not there either.

In light of this, we cannot say the evidence supporting the trial court's finding that G.B. violated his probation was deficient, or the evidence to the contrary was overwhelming. In juvenile cases, the trier of fact is the sole judge of the credibility of witnesses and the weight to be given their testimony. See Matter of S.J., 940 S.W.2d at 336. The trial judge determined that G.B. violated his probation, thereby failing to obey a lawful order of the trial court. We will not disturb this ruling. G.B.'s first issue is overruled.

FAILURE TO ADMONISH

G.B. next complains that he was not admonished at the May 15, 2000 hearing on the motion to modify disposition in accordance with Texas Family Code section 54.03(b). However, section 54.03(b) requires admonishments only at the adjudication proceeding. See Tex.Fam.Code Ann. § 54.03(b) (Vernon 1996). The admonitions from the original adjudication carry over to the hearing on the disposition, therefore there is no requirement that admonishments be given at a hearing on a motion to modify. See Matter of S.J., 940 S.W.2d at 334. Issue two is overruled.

FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION

G.B. asserts that because portions of his probation officer's report were admitted into evidence, he was forced to incriminate himself. G.B. specifically refers to his statement to the judge, "I was on drugs, that is the reason I was stealing. I was hanging with prostitutes and that is the reason for the burglaries. After that they sent me to placement, that helped me a lot, helped me with my drug abuse, helped me with my counseling and its helped me with everything."

In support of his claim that these statements were obtained in violation of the Fifth Amendment, G.B. relies on In Re J.S.S., 20 S.W.3d 837, 843-44 (Tex.App.--El Paso 2000, pet. denied). In that case the statements of the juvenile accused were contained in the report and it was found that the trial court considered the incriminating statements in making the decision to place J.S.S. in the Texas Youth Commission. The court found a violation of the Fifth Amendment and reversed the judgment. Id. at 846.

In the instant case, however, G.B.'s statements were not contained in the probation officer's report; rather, they were made directly by G.B. to the trial judge. G.B. admits that the statements were made in an effort to refute the probation officer's report. There is nothing in the record to suggest that G.B.'s statements were anything other than a strategic decision to testify. There is no indication that he was forced to incriminate himself in violation of his Fifth

Amendment rights. G.B.'s third issue is overruled.

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