

Juvenile Law Case Summaries

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Juvenile court did not abuse its discretion in transferring respondent from TYC to TDCJ under the determinate sentence act [In re D.V.] (01-4-42).

On October 24, 2001, the San Antonio Court of Appeals held that the juvenile court did not abuse its discretion in transferring a respondent from TYC to TDCJ in view of the numerous disciplinary violations committed by respondent and his refusal to participate in programs offered to him.

01-4-42. In the Matter of D.V., UNPUBLISHED, No. 04-00-00729-CV, 2001 WL 1265685, 2001 Tex.App.Lexis ____ (Tex.App.-San Antonio 10/24/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: D.V., a minor, appeals the order transferring him from the custody of the Texas Youth Commission (TYC) to the Institutional Division of the Texas Department of Criminal Justice (TDCJ). In one point of error, appellant contends that the trial court abused its discretion in transferring him to TDCJ.

In February 1999, appellant waived his right to a jury trial and pleaded true to the charge of aggravated sexual assault in violation of section 22.021 of the Texas Penal Code. Tex. Penal Code Ann. § 22.021(Vernon Supp.2001). Aggravated sexual assault is one of the first-degree felony offenses for which a juvenile may receive a determinate sentence. Tex. Fam.Code Ann. §§ 53.045(a)(5) & 54.04(d)(3) (Vernon 2001). The trial court entered its order of adjudication and sentenced appellant to a six-year determinate sentence at TYC with the possibility of transfer to TDCJ. Pursuant to section 54.11(i)(2) of the Family Code, TYC petitioned the trial court for the transfer of appellant to TDCJ for the remainder of his sentence. On July 27, 2000, when appellant was 16 years old, the trial court granted TYC's transfer request. This appeal ensued.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

This court applies an abuse of discretion standard of review to a trial court's decision to transfer a juvenile from TYC to TDCJ. In re J.M.O., 980 S.W.2d 811, 812-13 (Tex.App.--San Antonio 1998, pet. denied). This court must review the entire record in deciding whether the trial court acted in an arbitrary manner. Id. at 13. The trial court acts within its discretion if some evidence exists to support the trial court's decision. In re R.G., 994 S.W.2d 309, 312 (Tex.App.--Houston [1st Dist.] 1999, pet. denied).

DETERMINATE SENTENCE

Under section 54.11(1)(2) Family Code, after a transfer hearing, a juvenile may be transferred to the Institutional Division of the TDCJ for the completion of the sentence. Tex. Fam.Code Ann. § 54.11(i)(2) (Vernon 1996). In deciding whether to transfer the juvenile to TDCJ, the court may consider:

the experiences and character of the person before and after commitment to the youth commission, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the youth commission and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

Tex. Fam.Code Ann. § 54.11(k) (Vernon 1996).

The trial court does not have to consider all of the factors enumerated in the Family Code, and is expressly permitted to consider other relevant factors. In *Re R.G.*, 994 S.W.2d at 312. The Court has discretion to assign different weights to the factors presented, and evidence of every enumerated factor is not required. *Id.* The reviewing court may not reverse unless the trial court's decision exceeded its discretionary authority. *Id.*

Under section 61.079 of the Human Resources Code, TYC may request transfer of a juvenile to the TDCJ Institutional Division after the juvenile turns 16 years of age but before the juvenile turns 21 years of age if the juvenile has not yet completed the sentence and the child's conduct indicates that the welfare of the community requires the transfer. Tex. Hum. Res.Code Ann. § 61.079 (Vernon 2001). The Texas Legislature has recognized that "TYC's ability to transfer juvenile offenders to the adult criminal justice system as soon as legally possible, when a transfer was appropriate, was thus a critical element of the determinate sentencing scheme." In *re H.V.R.*, 974 S.W.2d 213, 216 (Tex.App.--San Antonio 1998, no pet.) (referencing Robert O. Dawson, *The Third Justice System: The New Juvenile-Criminal System of Determinate Sentencing for the Youthful Violent Offender in Texas*, 19 St. Mary's L.J. 943 (1988)).

Although the appellant was only 16 at the time his transfer to TDCJ was ordered, the Legislature has decided that 16 is the age at which juveniles may be removed from TYC if required by the welfare of the community. Therefore, even though TYC could have waited longer before requesting appellant's transfer, TYC's request to transfer appellant was within the parameters set by our Legislature.

SUFFICIENCY OF THE EVIDENCE

In his sole point of error, appellant claims the evidence is insufficient to support the trial court's transfer order. However, the record clearly shows that evidence was presented at the transfer hearing to support the trial court's decision.

At the transfer hearing, TYC called Court Liaison Leonard Cucolo, who recommended that appellant be transferred to TDCJ. Cucolo based that recommendation on a review of appellant's case file and a clinical interview conducted by a TYC psychologist. Although appellant would not reach the age of 18 until November 2001, TYC decided to request his transfer to TDCJ at the age of 16. Cucolo testified that appellant was at a high risk to reoffend, he was not amenable to further treatment, and he was not motivated to change. Finally, Cucolo testified that during the 15 months appellant was in TYC custody, appellant was involved in 77 incidents of misconduct. Those incidents included four assaults on TYC staff and 14 assaults on students or youth within the facility. Based on those facts, and the impediment appellant's disruptions caused to the progress of other youth, TYC recommended that appellant be transferred.

Appellant also testified at the transfer hearing. His testimony included a statement that he had not participated in some of the therapies offered at TYC because he did not feel he needed them. Appellant admitted to causing 40 incidents of misconduct, and agreed that his attitude was a problem. Additionally, appellant's father testified that his son should not be transferred because at TDCJ he would likely not receive the treatment he would at TYC. Appellant's father also testified that his son probably did not understand the importance of participating in therapy at TYC.

The trial court has not abused its discretion if some evidence supports its decision. In *re T.D.H.*, 971 S.W.2d 606, 610 (Tex.App.--Dallas 1998, no pet.). The record shows that the trial court considered the relevant factors that were presented to it. This evidence is sufficient to support the trial court's decision to transfer appellant to TDCJ.

CONCLUSION

After a complete review the record, it is clear the trial court did not abuse its discretion in transferring appellant from TYC to TDCJ. The record shows that appellant committed aggravated sexual assault, and he has not shown remorse for this crime. Appellant has assaulted TYC staff as well as other students at TYC. Appellant's disruptions have impeded those students' progress. Both TYC and the prosecutor recommended appellant's transfer to TDCJ. Therefore, the record supports the trial court's decision to transfer appellant to TDCJ. We overrule appellant's sole point of error.

