

Juvenile Law Case Summaries

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Not a violation of double jeopardy for district court to revoke probation when associate judge has recommended probation continuation [In re D.G.] (02-2-03).

On March 5, 2002, the Dallas Court of Appeals held that a district court judge can without violating double jeopardy principles reject the recommendation of an associate judge that the respondent be continued on probation and instead revoke probation and commit the child to the TYC. The associate judge proposes and the district court judge disposes.

02-2-03. In the Matter of D.G., UNPUBLISHED, No. 05-01-00208-CV, 2002 WL 333875, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 3/5/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: D.G. was adjudicated delinquent and sentenced to twenty-four months probation for possession of cocaine in an amount greater than one gram but less than four grams. Subsequently, the State filed a motion to modify the disposition alleging violations of several provisions of the probation order. A hearing to modify disposition was held before an associate judge, and D.G. pled true to the alleged probation violations. The associate judge recommended D.G. be placed on probation until his eighteenth birthday. The State appealed the associate judge's recommendation to the district court.

The district judge modified the associate judge's recommendation, and ordered D.G. committed to Texas Youth Commission for an indeterminate sentence. D.G. appeals the district judge's order. The background of the case and the evidence adduced at trial are well known to the parties; thus we do not recite them here in detail. Because all dispositive issues are clearly settled in law, we issue this memorandum opinion pursuant to Tex.R.App. P. 47.1.

Held: Affirmed.

Opinion Text: In his first issue, D.G. argues the trial judge violated the double jeopardy clauses of the state and federal constitutions by conducting a hearing after the associate judge recommended probation. In his second issue, D.G. argues the Texas statutory scheme is unconstitutional under the state and federal double jeopardy clauses. In his third issue, D.G. argues the trial court erred by assessing a higher sentence than the associate judge in violation of the state and federal double jeopardy and due process of law provisions.

In Texas, judicial power is vested in the courts, and is exercised through the justices and judges who sit on these courts. See Tex. Const. art. V, § 1; In re D.L.M., 982 S.W.2d 146, 148 (Tex.App.-Hous. [1st Dist.] 1998, no pet.). "Judicial power" includes the power to render and execute a judgment or sentence. *Morrow v. Corbin*, 122 Tex. 553, 62 S.W.2d 641, 645 (1933). Masters, referees, or associate judges are not vested with the authority to act as judges. In re D.L.M., 982 S.W.2d at 148-49. A referee may only make recommendations to the juvenile court judge. Tex. Fam.Code Ann. § 54.10(d) (Vernon Supp.2002). The judge is free to adopt, modify, or reject those recommendations. *Id.*

In this case, the associate judge had no power to enter a final judgment against D.G. Until there is a final judgment, a defendant remains under the initial jeopardy. *Ex parte Queen*, 877 S.W.2d 752, 754 (Tex.Crim.App.1994). Because the hearing before the associate judge did not, and indeed could not, result in a judgment against D.G., we conclude double jeopardy did not prevent the trial court from reviewing the referee's recommendation, modifying her findings, and placing D.G. in T.Y.C. rather than on probation. See *id.*; *Swisher v. Brady*, 438 U.S. 204, 215 (1978). Likewise, only the trial judge, not the associate judge, could impose a final sentence on D.G. Therefore, D.G. received only one sentence: the trial court's sentence committing him to T.Y.C. for an indeterminate sentence. We overrule each of D.G.'s three issues.

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