

Juvenile Law Case Summaries

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Juvenile court did not abuse its discretion in transferring child to TDCJ [In re B.R.] (02-3-09).

On June 12, 2002, the San Antonio Court of Appeals held that the juvenile court did not abuse its discretion in transferring under the determinate sentence act a juvenile from TYC to TDCJ.

02-3-09. In the Matter of B.R., UNPUBLISHED, No. 04-01-00750-CV, 2002 WL 1285187, 2002 Tex.App.Lexis ____ (Tex.App.-San Antonio 6/12/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: B.R. was sentenced to an eight year determinate sentence after pleading true to aggravated sexual assault of a child. B.R. appeals the trial court's order transferring him from the Texas Youth Commission ("TYC") to the Texas Department of Criminal Justice--Institutional Division ("TDCJ"). In his sole point of error, B.R. contends that the trial court erred in overruling his motion for new trial because the evidence was factually insufficient to support the transfer order.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

In deciding whether to transfer a juvenile from TYC to TDCJ, the trial court may consider: (1) the experiences and character of the juvenile before and after commitment to TYC; (2) the nature of the penal offense that the juvenile committed and the manner in which the juvenile committed the offense; (3) the abilities of the juvenile 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; (6) the best interests of the juvenile, and (7) any other relevant factor. Tex. Fam.Code Ann. § 54.11(k) (Vernon Supp.2002). We review the trial court's decision to transfer a juvenile from TYC to TDCJ under an abuse of discretion standard. In re J.M.O., 980 S.W.2d 811, 812-13 (Tex.App.-San Antonio 1998, pet. denied). We consider the entire record to determine whether the trial court acted without reference to guiding rules and in an arbitrary manner. Id. at 813. Evidence of each factor the trial court is permitted to consider is not required, and the trial court may assign different weights to the factors it considers. In re R.G., 994 S.W.2d 309, 312 (Tex.App.-Houston [1st Dist.] 1999, pet. denied). If some evidence exists to support the trial court's decision, there is no abuse of discretion. In re J.M.O., 980 S.W.2d 813.

DISCUSSION

B.R. pled true to sexually assaulting his half-brother. Before being sent to TYC, B.R. entered a sexual offender treatment program but was removed because of his behavior and his failure to progress. During the approximate one year B.R. was at TYC, seventy-eight incidents of misconduct were documented. Some of these incidents involved assaultive behavior as well as serious disruption of the program. B.R. admitted that he kicked another juvenile in the head but justified his behavior as self-defense. Despite two thirty-day intensive services interventions and psychiatric treatment, B.R. never progressed above phase zero, which is TYC's lowest phase level, and B.R. is not motivated to engage in treatment. A psychologist who evaluated B.R. indicated an extremely poor prognosis for further treatment at TYC. Based on B.R.'s failure to progress, B.R. would be likely to reoffend if returned to his home, and children reside in the home that would be unsafe. Both TYC and the prosecuting attorney recommended the transfer to TDCJ. This evidence supports the trial court's decision, and the trial court did not abuse its discretion in transferring B.R. to TDCJ.

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