

Juvenile Law Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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Error to revoke misdemeanor probation when no adjudication prior to the probation adjudication was shown [In re C.S.] (03-1-14).

On December 31, 2002, the Tyler Court of Appeals held in an argument presented for the first time on appeal that the juvenile court lacked authority to revoke misdemeanor probation when no adjudication prior to the probation adjudication was shown.

03-1-14. In the Matter of C.S., UNPUBLISHED, No. 12-02-00095-CV, 2002 WL 31898885, 2002 Tex.App.Lexis ____ (Tex.App.-Tyler 12/31/02) Texas Juvenile Law (5th Ed. 2000).

Facts: Appellant C.S., a juvenile, appeals the trial court's order committing him to the Texas Youth Commission for an indeterminate period pursuant to section 54.04 of the Texas Family Code. C.S. raises three issues on appeal.

On May 20, 2001, C.S. was arrested for the offense of unlawfully carrying a weapon. The State filed its Original Petition on May 24, alleging that C.S. violated section 46.02 of the Texas Penal Code by "intentionally, knowingly or recklessly carry[ing] on and about his person an illegal weapon, to wit: a gun; same being a Class A Misdemeanor if committed by an adult." On June 11, C.S. pleaded "true" to the State's allegations and was placed on probation until August 14, the date he turned 18 years old. As part of his probation, C.S. was required to (1) reside in the home of his parents, (2) obey their rules and regulations, (3) remain in his parents' company unless he received permission to leave, and (4) remain in his parents' home from 9:00 p.m. to 6:00 a.m. Sunday through Thursday and 10:00 p.m. and 6:00 a.m. Friday through Saturday, unless his parents were given permission by C.S.'s probation officer for him to do otherwise or unless he was with his parents during those hours.

On November 15, the trial court issued an arrest warrant for C.S. The trial court based the arrest warrant on the affidavit of his probation officer, Gala Parker, which stated that on Monday, November 12, C.S.'s mother reported to the Smith County Probation Department that although C.S. was at home at the time she was making the call, he had not been at their home at any time during the previous weekend. Parker's affidavit also states that after C.S.'s mother reported the violation, she told Parker that C.S. had left the home and that she had not seen C.S. since he left.

On January 28, 2002, the State filed its "Petition to Modify Disposition" seeking to modify the trial court's order placing C.S. on probation. The State alleged that C.S. violated the terms of his probation the weekend prior to November 12, 2001 by not (1) residing in the home of his parents, (2) remaining in the company of his parents, and (3) remaining in the home of his parents during curfew hours.

On February 25, 2002, the trial court heard the State's petition to modify the trial court's order of probation. After the hearing, the trial court signed an order modifying its previous disposition of C.S.'s case and committing C.S. to the Texas Youth Commission ("TYC") for an indeterminate period. On appeal, C.S. argues that (1) the evidence presented at the hearing was legally and factually insufficient to sustain the trial court's modification of C.S.'s disposition and (2) the trial court abused its discretion in committing him to TYC because the record is devoid of any evidence or allegations of prior offenses as required by section 54.05 of the Texas Family Code. We first note that the record indicates that C.S. raises his argument for the first time on appeal. Although juvenile matters are civil proceedings, they are quasi criminal in nature; therefore, they receive different consideration with regard to issue preservation. See *In the Matter of A.I.*, 82 S.W.3d 377, 379 (Tex.App. Austin 2002, pet. denied); *In re Q.D.M.*, 45 S.W.3d 797, 799 (Tex.App. Beaumont 2001, pet. denied). A criminal sentence unauthorized by law is void, and a defect that renders a sentence void may be raised at any time. *Id.* Accordingly, we will consider C.S.'s argument.

Held: Reversed and remanded.

Opinion Text: TRIAL COURT'S AUTHORITY TO COMMIT A JUVENILE TO THE TEXAS YOUTH COMMISSION

Juvenile courts have broad discretion when determining the suitable disposition of children who have engaged in delinquent conduct. In re M.A.L., 995 S.W.2d 322, 324 (Tex.App. Waco 1999, no pet.). We review a juvenile court's decision to see whether the court acted in an unreasonable or arbitrary manner. In re C.L., 874 S.W.2d 880, 886 (Tex.App. Austin 1994, no writ).

Section 54.04 of the Texas Family Code sets forth the parameters a trial court must follow when committing a juvenile to TYC. After a juvenile is adjudicated delinquent, a separate disposition hearing must be held after the adjudication hearing. Tex. Fam.Code Ann. § 54.04(a) (Vernon 2002). If the trial court finds that a child has engaged in misdemeanor delinquent conduct and a disposition is required, a juvenile court may commit the child to TYC without a determinate sentence if:

- (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of misdemeanor on at least two previous occasions;
- (2) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication; and
- (3) the conduct that is the basis of the current adjudication occurred after the date of at least two previous adjudications.

Tex. Fam.Code Ann. § 54.04(d)(2), (s).

A trial court may also modify a disposition based on an adjudication for misdemeanor delinquent conduct so as to commit the juvenile to TYC if:

- (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and
- (2) the conduct that is the basis of the current adjudication occurred after the date of that previous adjudication.

Tex. Fam.Code Ann. § 54.04(d)(2), (t).

Further, a juvenile court may modify a disposition based on an adjudication for misdemeanor conduct so as to commit the juvenile to TYC if the court finds that the child has violated a reasonable and lawful order of the court and:

- (1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least two previous occasions; and
- (2) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication.

Tex. Fam.Code Ann. § 54.05(f), (k).

Courts analyzing sections 54.04 and 54.05 have held that a disposition of an adjudication based upon misdemeanor delinquent conduct may not be modified to commit a juvenile to TYC unless the child has been adjudicated at least two times prior to the immediate disposition the State is seeking to modify. See In the Matter of A.I., 82 S.W.3d at 380 81; In the Matter of A.N., 54 S.W.3d 487, 493 (Tex.App. Fort Worth 2001, pet. denied). In the instant case, the record demonstrates that C.S.'s only prior adjudication was for the May 20, 2001 offense of unlawfully carrying a weapon. Based on our review of the record, C.S. did not have the requisite two prior adjudications that would authorize his commitment to TYC. Therefore, the trial court erred in modifying C.S.'s disposition to commit him to TYC. Because this issue is dispositive, we need not address the legal and factual sufficiency of the evidence to sustain the trial court's modification of C.S.'s disposition.

The judgment of the trial court is reversed and remanded for a new hearing on the State's motion to modify.

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