Evidence was legally and factually sufficient to support the trial court’s finding that reasonable efforts were made to prevent the child’s removal from the home. [In the Matter of K.A.](16-2-9)

On March 22, 2016, the Dallas Court of Appeals found that in this case the juvenile had previously been given an opportunity to remain in the home while he was on probation, and he nevertheless continued to engage in delinquent behavior, including physical abuse of persons in the home and that his own actions foreclosed the option of remaining in the home.

¶ 16-2-6. **In the Matter of K.A.**, Memorandum, No. 05-15-00982-CV, 2016 WL 1104839 (Tex.App.—Dallas, 3/22/16).

**Facts:** On July 23, 2015, appellant entered a plea of true to the State’s petition alleging he engaged in delinquent conduct on March 7, 2015 by committing the felony offense of aggravated robbery with a deadly weapon in violation of section 29.03 of the Texas Penal Code. See TEX. PENAL CODE ANN. § 29.03 (West 2011). The trial court accepted the plea and found appellant to be a child engaged in delinquent conduct. The trial court then proceeded to disposition.

At the disposition hearing, the State presented several investigative reports and assessments of appellant. Among other things, the reports detailed appellant’s prior referrals to the juvenile department for delinquent conduct. In particular, the reports stated appellant had been arrested four times, had been placed on probation for the commission of misdemeanor criminal trespass and misdemeanor theft of property, had two pending referrals for the misdemeanor assaults of his sister and his aunt, with whom he lived, and had a referral for a separate aggravated robbery offense that occurred in Tarrant County. The risk and needs assessment considered appellant to be high risk and high needs, and the psychological assessment recommended a highly structured and highly supervised environment for appellant.

In addition to this evidence, the State called Stephen McGee, a Dallas County probation officer, to testify. He recommended that appellant be assigned to progressive sanction Level 6 or 7, and be committed to the care and custody of the TJJD, as he needs rehabilitation and for the protection of the public. He explained that the juvenile department made that recommendation based on the very serious nature of the offense during which appellant fired a firearm several times. In addition, he testified that it appeared appellant had not been in school since October 2013, was a gang member, and had a history of marijuana use.

Appellant also testified at the disposition hearing. He apologized for “everything” he had done and expressed gratitude for the time to “get [his] life on the right track.” He said, “I’m willing to take however long I can get on probation, be home with my mama.” He explained he would do community service, go back to school, and do “whatever it takes just to be back home.”

At the conclusion of the hearing, the trial court found appellant was a child in need of rehabilitation and that the protection of the public and the child required a disposition. The trial court determined that “the child in the child’s home cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation,” that it was “in the best interest of the child to be placed outside the home,” and that “reasonable efforts were made to prevent the child’s removal from home.” The trial court assigned appellant to progressive sanction Level 7 and ordered placement in TJJD for a period of five years. This appeal followed.

**Held:** Affirmed

**Memorandum Opinion:** At the disposition hearing, the trial court or jury decides whether the child is in need of rehabilitation or whether the protection of the public or the child requires that disposition be made. TEX. FAM.CODE ANN. § 54.04(c) (West Supp.2015). When a juvenile is adjudicated delinquent for conduct that constitutes a felony, the trial court or jury may commit the juvenile to TJJD for a proscribed term of years as set out by the code with a possible transfer to Texas Department of Criminal Justice. Id. § 54.04(d)(3). The trial court may commit a juvenile to TJJD if it determines that: (1) it is in the child’s best interests to be placed outside the child’s home; (2) reasonable efforts were made to prevent or eliminate the need for the child’s removal from the home and to make it possible for the child to return to the child’s home; and (3) the child, in the child’s home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation. Id. § 54.04(i).

On appeal, appellant argues that nothing in the record supports the trial court’s finding regarding efforts to prevent the removal of appellant from the home. We disagree. This was not the first referral of appellant to the juvenile department. The State presented evidence of appellant’s prior in-home probation, and continued delinquent conduct including physical assaults of family members and conduct involving deadly weapons. It is appropriate for the court to consider the juvenile’s prior referral history. See In re K.T., 107 S.W.3d 65, 74–75 (Tex.App.—San Antonio 2003, no pet.). In fact, a trial court is permitted to decline third and fourth chances to a juvenile who has abused a second chance. In re J.P., 136 S.W.3d 629, 632 (Tex.2004). Moreover, the State presented evidence of appellant’s gang membership, drug use, and failure to attend school, and offered appellant’s probation officer’s updated predisposition report dated July 13, 2015, in which he states, inter alia, that:

[T]he subject[’]s needs can no longer be addressed within the community due to the seriousness of the offenses poor school performance poor behavior in the home curfew violations association with negative peers drug use and gang involvement. Alternative options have been considered and rehabilitative efforts have been made to maintain the subject in the home. It is believed that the least restrictive environment at present is commitment to the care and custody of the Texas Juvenile Justice Department.

**Conclusion:** While the alternative options considered and the rehabilitative efforts made are not set forth in the report, we find no contrary evidence in the record. In addition, the record shows appellant had previously been given an opportunity to remain in the home while he was on probation, and he nevertheless continued to engage in delinquent behavior, including physical abuse of persons in the home. Thus, appellant’s own actions foreclosed the option of remaining in the home. Accordingly, we conclude the evidence is legally and factually sufficient to support the trial court’s finding that reasonable efforts were made to prevent the child’s removal from the home. See, e.g., In re C.G., 162 S.W.3d 448, 453–54 (Tex.App.—Dallas 2005, no pet.). We overrule appellant’s sole issue. We affirm the trial court’s judgment.