

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-723
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

IN THE MATTER OF

Mecklenburg County

No. 07 JB 281

W.L.M.

Appeal by juvenile from an amended juvenile disposition and commitment entered 20 January 2011 by Judge Kimberly Best-Staton in Mecklenburg County District Court. Heard in the Court of Appeals 29 November 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Gayl M. Manthei, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Mary Cook, for the juvenile.

STEELMAN, Judge.

Where the trial court's entry of a Level 3 disposition and commitment order failed to comply with the mandates of N.C. Gen. Stat. § 7B-2512, the disposition portion of the order must be vacated, and this matter remanded for a new disposition hearing.

I. Factual and Procedural Summary

On 12 April 2010, W.L.M. admitted to the charges of felonious breaking and entering, two counts of misdemeanor larceny, and one count of possession of stolen goods. Judge Best-Staton entered a juvenile Level 2 disposition order the next day. Based upon subsequent conduct of W.L.M., a motion for review alleging probation violations was filed on 14 October 2010. A hearing was held on 18 January 2011. Judge Best-Staton entered a disposition and commitment order on 20 January 2011 that found that a Level 3 adjudication was authorized and ordered that W.L.M. be committed to the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center for a minimum period of six months, and thereafter until his eighteenth birthday.

W.L.M. appeals.

II. Failure to Comply with N.C. Gen. Stat. § 7B-2512

In his first argument, W.L.M. contends that the trial court erred by failing to state the length of his commitment in open court and then amending the order to add a maximum term in violation of N.C. Gen. Stat. § 7B-2512. The State concedes error, and we agree. N.C. Gen. Stat. § 7B-2512 provides, in relevant part:

The court shall state with particularity,
both orally and in the written order of

disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

N.C. Gen. Stat. § 7B-2512 (2011).

In open court, the trial court stated:

I'm going to adopt the recommendations of DJJ. I'm going to sentence him as a Level 3. Going [sic] to go ahead and send [W.L.M.] to training school. So you can go ahead and take him, Deputy. And when [W.L.M.] comes out, then [W.L.M.] you will no longer be under our jurisdiction, okay.

The written orders entered by the trial court are, at best, confusing. In the initial order of 18 January 2011, it appears that the trial court initially marked the box for "indefinite commitment." It then appears that this was crossed out, and the box for a "definite period" was marked, without designating a duration for that period. On 20 January 2011, the trial court marked, dated, and initialed a third box, setting the duration of the commitment to be "the juvenile's eighteenth (18th) birthday."

In light of the specific statutory mandate contained in N.C. Gen. Stat. § 7B-2512 requiring that the duration of the ordered disposition be stated "with particularity, both orally and in the written order of disposition," we vacate the

disposition portion of the order and remand for a new hearing. It is clear from the record that the trial court did not comply with the provisions of the statute in its oral pronouncement. The manner in which the written order was entered and modified does not state the duration of confinement with certainty or particularity.

III. Conclusion

The disposition portions of the orders entered on 18 and 20 January 2011 are vacated, and this matter is remanded for a new disposition hearing. W.L.M. does not challenge the portion of the order revoking his probation, and that portion of the order is affirmed. Because we are remanding this matter for a new disposition hearing, it is not necessary to reach W.L.M.'s other argument.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).