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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-1005

Filed: 7 April 2020

Surry County, No. 17 JB 6

IN THE MATTER OF:

M.J.D.

Appeal by respondent from order entered 7 May 2019 by Judge Marion M. Boone in Surry County District Court. Heard in the Court of Appeals 18 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Kindelle McCullen, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for respondent-appellant.

YOUNG, Judge.

This appeal arises out of a juvenile adjudication order. Because the trial court failed to state that the allegations in the petition were proven beyond a reasonable doubt, we remand for further findings.

I. Factual and Procedural History

On 30 April 2018, C.B.¹ was in the seventh grade at Mt. Airy Middle School. C.B. was walking down the school hallway when gum was thrown in her hair, and M.J.D. was the only person behind her. C.B. could not get the gum out of her hair so she went to the office. School staff eventually had to cut C.B.'s hair to remove the gum. Officer Garrett Chamberlain ("Officer Chamberlain"), the School Resource Officer, investigated the incident by watching surveillance video footage.

On 8 June 2018, a juvenile court counselor filed a juvenile petition accusing M.J.D. of simple assault. The petition was dismissed on 16 October 2018 citing "paperwork issues" as the reason for dismissal and indicating that the offense would be recharged. On 8 March 2019, the juvenile court counselor filed a new petition accusing M.J.D. of simple assault. An adjudicatory hearing was held on 7 May 2019. At the close of the State's evidence, M.J.D. made a Motion to Dismiss the charge. The trial court denied M.J.D.'s motion and adjudicated M.J.D. delinquent. M.J.D. gave oral notice of appeal in open court. Following adjudication, the trial court entered a Level 1 Disposition placing M.J.D. on probation for twelve months.

II. Standard of Review

The appellate court reviews a lower court's alleged statutory errors *de novo*. *In re K.C.*, 226 N.C. App. 452, 462, 742 S.E.2d 239, 246 (2013). "Under the *de novo* standard, the Court considers the matter anew and freely substitutes its own

¹ Pseudonyms are used to protect the juveniles.

judgment for that of the lower court.” *In re A.M.*, 220 N.C. App. 136, 137, 724 S.E.2d 651, 653 (2012).

III. Analysis

M.J.D. contends that the trial court erred by failing to find that the State had proven the allegation of delinquency beyond a reasonable doubt as required by N.C. Gen. Stat. § 7B-2411 (2019). We agree.

The allegations of a petition alleging that a juvenile is delinquent shall be proven beyond a reasonable doubt. N.C. Gen. Stat. § 7B-2409 (2019). “If the court finds that the allegations in the petition have been proved [beyond a reasonable doubt], the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the classification of the offense, and the date of adjudication.” N.C. Gen. Stat. § 7B-2411.

Here, the State concedes that the court used Form AOC-J-460 to memorialize its adjudication order, and the Finding of Fact Number 3, “the following facts have been proven beyond a reasonable doubt” was left blank. This Court found in *In re: J.V.J.* that “at minimum, section 7B-2411 requires a court to state in a written order that the allegations in the petition have been proved [beyond a reasonable doubt].’” 209 N.C. App. 737, 740, 707 S.E.2d 636, 638 (2011). Accordingly, this Court remanded that matter to the trial court to make the “statutorily-mandated findings.” *Id.* at 741, 707 S.E.2d at 638.

IN RE: M.J.D.

Opinion of the Court

Here, like in *J.V.J.*, the trial court failed to state in the written order that the allegations in the petition were proven beyond a reasonable doubt. Accordingly, this Court remands the adjudication order to the trial court for the appropriate findings or to dismiss the petition if the trial court finds that the facts were not proven beyond a reasonable doubt.

M.J.D. further contends that the trial court erred by failing to make findings in entering its Level 1 Disposition order to demonstrate that it considered the factors listed in N.C. Gen. Stat. § 7B-2501(c). However, because we remand the adjudication order on other grounds, we do not reach the merits of these arguments.

REMANDED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).