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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-315

No. COA 21-626

Filed 3 May 2022

Forsyth County, No. 18 JB 173

IN THE MATTER OF: M.M.G.

Appeal by Respondent from order entered 31 March 2021 by Judge Theodore Kazakos in Forsyth County District Court. Heard in the Court of Appeals 8 March 2022.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Stephanie A. Brennan, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for Respondent-Appellant Juvenile.*

GRIFFIN, Judge.

¶ 1 Respondent-Juvenile M.M.G. (“Mark”)<sup>1</sup> appeals from a disposition order committing him to a youth development center (“YDC”) of the North Carolina Division of Juvenile Justice. We affirm the order of the trial court.

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<sup>1</sup> We use this pseudonym to protect the juvenile’s privacy and for ease of reading. See N.C. R. App. P. 42(b).

## **I. Factual and Procedural Background**

¶ 2

On 9 October 2018, Mark was adjudicated delinquent for the felony of larceny after breaking and entering. The trial court imposed a Level 2 disposition and placed Mark on twelve months of probation. On 13 November 2018, Mark was adjudicated delinquent for the felony of larceny of a motor vehicle. The trial court entered a Level 2 disposition on 11 January 2019, and extended Mark's existing term of probation by six months.

¶ 3

Between December 2019 and April 2020, five new petitions were filed against Mark. These petitions included six felony offenses. On 14 February 2020, a Motion for Review was filed as a result of a probation violation. The court extended Mark's probation until 7 October 2020. Additional petitions were also filed against Mark in June and September 2020. These petitions included misdemeanor offenses of disorderly conduct, resisting a public officer, and possession of a handgun by a minor, and included two felonies: breaking and entering and larceny after breaking and entering.

¶ 4

On 26 March 2021, Mark waived a finding of probable cause and admitted to the following six charges: (1) first degree burglary; (2) breaking and entering of a motor vehicle; (3) possession of stolen goods; (4) attempted breaking and entering; (5) felony larceny; and (6) breaking and entering. Mark was adjudicated delinquent by the trial court.

¶ 5

Mark's counsel requested that the trial court enter a Level 2 disposition. The trial court explained that without "some special findings" it was required to enter a Level 3 disposition because Mark's delinquency history points totaled six. The trial court asked Mark's counsel if he was prepared to "offer some sort of special needs of [his] client." Mark's counsel responded, "[n]ot necessarily." However, counsel expressed that Mark's participation in the Echelon group home was going well, and "based on the circumstances of him participating and, or complete[ing] the Echelon program," requested that the trial court enter a Level 2 disposition. In response to the State's confusion as to why Mark's counsel had requested a Level 2 disposition when a Level 3 was required, the trial court acknowledged that it "may impose a Level [2] disposition rather than a Level [3] if the [c]ourt submits written findings on the record that substantiate extraordinary needs on the part of the offending juvenile."

¶ 6

The State requested that Mark receive a Level 3 disposition, which included a YDC commitment. Though "very encouraged" by Mark's progress at Echelon, the State was concerned that his residence could "only last until April 23rd," and, after "speaking to victims and [] understanding the merits of the cases, [the State] believe[d] that a YDC commitment would be the only appropriate disposition." Mark's future living arrangements after discharge from Echelon were unclear and "no alternative placement [had] been found."

¶ 7

At the probable cause and adjudication hearing, the trial court heard testimony on Mark's behalf from Mark's father, a counselor from the group home, and a victim of the breaking and entering. Mark's father testified that "[s]ince [Mark had] been in [his] . . . supervision and [his] care, [he had] seen a different side of [Mark]." Next, a counselor from Echelon testified that "since [Mark had] been in [the Echelon] program," he had seen "a tremendous turnaround" regarding Mark's behavior. However, that same counselor also stated that "[b]y no means is [Mark] at the point where he needs to be, but he is at the point where he has completed [the] program[, and Mark] is no longer at the level where he can remain in a Level III<sup>2</sup> group home" beyond another thirty days. The victim of the breaking and entering testified and thanked Mark for an apology letter he had written to her.

¶ 8

Regarding what dispositional level to enter, the trial court referred back to the statute several times, acknowledging that the statute said the court "[s]hall[ enter a Level 3 disposition] unless [the court] make[s] some findings." The trial court noted that, in order to enter a Level 2 disposition, it needed "to submit written findings on the record that substantiate[d] extraordinary needs on the part of the offending juvenile." Ultimately, the trial court felt as though there had not been enough to submit written findings on the record; however, it was "open to hearing anybody" on

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<sup>2</sup> A Level III group home placement differs from a Level 3 disposition.

the matter. The trial court then considered delaying the date to enter a disposition until Mark completed his final thirty days at Echelon. Ultimately, the trial court went back to the statute, explaining that, in the present case, a “Level [3] disposition, minimum of six months, maximum of up to [Mark’s] 18th birthday” was required.

¶ 9 On 26 March 2021, the court reconvened to finish the hearing and enter the disposition order. The State again requested that a Level 3 disposition be entered. Mark’s counsel requested the trial court to “enter a level two disposition pursuant to the extraordinary circumstances meeting the needs of [Mark] that [are] outlined in the psychiatric evaluation . . . with a recommendation by [Mark’s] psychiatrist . . . that [Mark:]” (1) “continue weekly trauma-focused therapy sessions”; and (2) “continue level three residential treatment until [Mark] is able to return to family or [a] lower level of care[.]” However, the trial court “ordered a level three disposition” where Mark would be committed to YDC “for a minimum of six months” and “maximum . . . of up to his 18th birthday.”

¶ 10 The trial court then filed amended disposition orders. The trial court made the following findings of fact: (1) Mark was on probation at the time the offense was committed; (2) Mark had prior adjudications for larceny after breaking and entering, and for larceny of a motor vehicle; (3) Mark’s delinquency history points were at six; (4) the trial court received and considered the predisposition report, a risk assessment, and needs assessment; and (5) Mark had been adjudicated for a violent

or serious offense and Level 3 was authorized. The trial court’s “other findings” pointed out that “the Class D Burglary [was] a very serious offense,” and stated that Mark “needs to be held accountable for the several adjudications from different dates of offense,” and “[t]he public must be protected, including the juvenile.” The trial court found that the Level 3 disposition was “mandatory . . . due to the Class D Felony and 6 prior delinquency points.”

¶ 11 Although “[c]ounsel for [Mark] attempted to provide extraordinary needs of the juvenile,” the trial court “found the arguments did not meet the statutory requirement of extraordinary need[s] in order to consider [a] Level 2 Disposition.” Mark timely appeals.

## II. Analysis

¶ 12 “The decision to impose a statutorily permissible disposition is vested in the discretion of the juvenile court and will not be disturbed absent clear evidence the decision was manifestly unsupported by reason.” *In re K.L.D.*, 210 N.C. App. 747, 749, 709 S.E.2d 409, 411 (2011) (citing *In re N.B.*, 167 N.C. App. 305, 311, 605 S.E.2d 488, 492 (2004)). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *In re Robinson*, 151 N.C. App. 733, 737, 567 S.E.2d 227, 229 (2002) (citations and internal quotation marks omitted).

¶ 13 “Based upon the delinquency history level determined pursuant to G.S. § 7B-

2507, and the offense classification for the current offense, N.C. Gen. Stat. § 7B-2508 then dictates the dispositional limits available.” *In re Allison*, 143 N.C. App. 586, 597, 547 S.E.2d 169, 176 (2001). Notably, “[a] court exercising jurisdiction over a juvenile who has been adjudicated delinquent and for whom the dispositional chart . . . prescribes a Level 3 disposition shall commit the juvenile to the Division for placement in a youth development center[.]” N.C. Gen. Stat. § 7B-2508(e) (2021). “However, a court *may* impose a Level 2 disposition rather than a Level 3 disposition if the court submits written findings on the record that substantiate *extraordinary needs* on the part of the offending juvenile.” *Id.* (emphasis added).

Furthermore, “[a]lthough the trial court has discretion under N.C. Gen. Stat. § 7B-2506 . . . in determining the proper disposition for a delinquent juvenile, the trial court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile[.]” *In re Ferrell*, 162 N.C. App. 175, 176–77, 589 S.E.2d 894, 895 (2005) (citation and quotation marks omitted). In doing so, and “[w]ithin the guidelines set forth in G.S. 7B-2508, the court shall select a disposition that is . . . based upon” five factors. N.C. Gen. Stat. § 7B-2501(c) (2021). Those factors include the (1) “seriousness of the offense”; (2) “need to hold the juvenile accountable”; (3) “importance of protecting the public safety”; (4) “degree of culpability indicated by the circumstances of the particular case”; and (5) “rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.” *Id.*

¶ 14 Here, Mark’s delinquency history points totaled six and he had a high delinquency history level. Additionally, Mark had “been adjudicated for a violent or serious offense.” Consequently, the trial court was required to enter a Level 3 disposition, absent a finding of extraordinary needs on the part of Mark. *See* N.C. Gen. Stat. § 7B-2508(f) (2021) (showing that the dispositional chart authorizes a Level 3 disposition for a juvenile with a violent offense and high delinquency level); *see also* N.C. Gen. Stat. § 7B-2508(e) (providing a trial court with *discretion* to impose a Level 2, rather than Level 3, disposition if written findings are submitted on the record that “substantiate extraordinary needs on part of the offending juvenile”). Thus, the question presented is whether the trial court abused its discretion in failing to find extraordinary needs in order to justify a Level 2 disposition for the juvenile.

¶ 15 In *In re P.Q.M.*, this Court upheld a trial court’s Level 3 disposition for a juvenile with a violent offense and medium delinquency level. *In re P.Q.M.*, 232 N.C. App. 419, 426, 754 S.E.2d 431, 436 (2014). The trial court in *P.Q.M.* “heard evidence from several witnesses involved in [the juvenile’s] case” and “considered . . . a predisposition report, a risk assessment, and a needs assessment” to determine the level of disposition to impose. *Id.* at 424–25, 754 S.E.2d at 435–36. At the disposition hearing, a juvenile court counselor “recommended a Level 3 disposition and commitment to a YDC” for the juvenile, and she also “indicated that placement with a YDC would provide [the juvenile] with his treatment needs, be rehabilitative, and



also provide some measure of protection to public safety.” *Id.* at 425, 754 S.E.2d at 436.

¶ 16 Additionally, a psychologist who performed a psychological evaluation on the juvenile in *P.Q.M.* recommended that the juvenile have “a highly structured supervised residential placement, because it did not appear that [the juvenile] could receive the level of structure he needed at home.” *Id.* (internal quotation marks omitted). A family therapist of the juvenile and a mental health professional both testified on the juvenile’s behalf, indicating that the juvenile had been making positive progress. *Id.* However, “the risk and needs assessments in the record indicated that [the juvenile] presented a medium risk and had medium needs.” *Id.* Being that “[t]he court heard and considered the evidence of all the witnesses, as well as the needs and risk assessments[,]” this Court found “there [was] nothing in the record to indicate that the court’s failure to find that [the juvenile] had extraordinary needs was so arbitrary that it could not have been the result of a reasoned decision.” *Id.* at 426, 754 S.E.2d at 436. This Court held that the trial court’s decision to impose a Level 3 disposition did not amount to an abuse of discretion. *Id.*

¶ 17 Similar to the juvenile in *P.Q.M.*, the trial court here heard and considered testimony from Mark’s father, a counselor from Mark’s group home, and a victim of one of Mark’s crimes, who all testified on Mark’s behalf. The counselor testified that Mark, while being at the group home, had made tremendous progress. However, that

same counselor also testified that Mark was by no means at the point he needed to be, yet was at the point where he had completed the group home's program. It was also unclear where Mark would be living once he completed his time at the group home.

¶ 18 At the disposition hearing, the trial court acknowledged that in order for it to enter a Level 2 disposition, it would "have to submit written findings on the record that substantiate extraordinary needs on the part of the offending juvenile." Although the trial court was "open to hearing anybody" on the matter, it found there had not been enough for it to submit written findings on the record.

¶ 19 Additionally, the trial court's findings regarding its Level 3 disposition show that the trial court considered Mark's delinquency history, risk and needs assessments, as well as the public's and Mark's safety interests. There is nothing in the record to indicate that the trial court declining to find that Mark had extraordinary needs was "so arbitrary that it could not have been the result of a reasoned decision." *P.Q.M.*, 232 N.C. App. at 426, 754 S.E.2d at 436. Mark has failed to show that the trial court's decision to impose a Level 3 disposition amounted to an abuse of discretion. We hold that the trial court did not abuse its discretion in entering a Level 3 disposition.

### **III. Conclusion**

¶ 20 For the reasons stated above, we affirm the order of the trial court.

IN THE MATTER OF: M.M.G.

2022-NCCOA-315

*Opinion of the Court*

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).