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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-805

No. COA22-266

Filed 6 December 2022

Davidson County, No. 21 JB 97

IN THE MATTER OF: A.M.S.

Appeal by A. M. S. from Orders entered 26 October 2021 by Judge Carlos Jane in Davidson County District Court. Heard in the Court of Appeals 21 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Melissa K. Walker, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for juvenile-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 A.M.S. appeals from the trial court's Adjudication Order based on A.M.S.'s admission of responsibility for First-Degree Trespassing and Possession of a Weapon on School Property and Disposition Order imposing a Level 1 disposition both entered 26 October 2021. On appeal, A.M.S. contends the trial court erred in accepting his

admission of responsibility without advising A.M.S. of his right to remain silent as required by N.C. Gen. Stat. § 7B-2407(a). A.M.S. further contends the trial court erred at disposition by failing to refer A.M.S. for a mental health evaluation. The State agrees there is merit to both contentions and requests this Court vacate both the Adjudication and Disposition Orders and remand this matter for further proceedings. We agree with the parties. The Record before us tends to reflect the following:

¶ 2 On 6 October 2021, the State filed a Juvenile Petition alleging A.M.S. committed the delinquent act of Misdemeanor Possession of a Weapon on School Property following an incident in which A.M.S. allegedly retrieved a BB gun from a vehicle and attempted to enter a school after he was assaulted by another student. On 22 October 2021, the State filed two additional Juvenile Petitions alleging A.M.S. committed First-Degree Trespass and Disorderly Conduct following a subsequent incident in which A.M.S., while still on suspension following the first incident, allegedly attempted to enter the school after his brother was reportedly threatened.

¶ 3 On 26 October 2021, A.M.S. underwent a Court Counselor Assessment (Assessment). The Assessment noted "[t]here are some mental health concerns in [A.M.S]'s case. Of considerable concern is the fact that [A.M.S.] has exhibited some indications of homicidal ideation." The Assessment further listed these homicidal ideations under a section entitled "Mental Health."

¶ 4 The case came on for hearing on 26 October 2021. At the beginning of the hearing, the trial court was informed A.M.S. and the State had reached an agreement wherein A.M.S. entered an *Alford*[1] admission to Possession of a Weapon on School Property and First-Degree Trespass and, in exchange, the State agreed to dismiss the Petition alleging Disorderly Conduct. Prior to accepting the admissions by A.M.S., the trial court engaged in a colloquy with A.M.S. including the following series of questions:

> [Trial Court]: Do you understand at this hearing you have the right to say anything about your charge, and any statement that you make can be used as evidence against you?
>
> [A.M.S.]: Yes, sir.
>
> . . . .
>
> [Trial Court]: Have the charges been explained to you by your lawyer?
>
> [A.M.S.]: Yes, sir.
>
> [Trial Court]: Do you understand what the charges are?
>
> [A.M.S.]: Yes, sir.

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[1] *See N.C. v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). *See also In re K.N.H.*, 278 N.C. App. 27, 2021-NCCOA-267, ¶4 ("the State filed three additional petitions against K.N.H. alleging attempted robbery with a dangerous weapon, minor in possession of a handgun, and assault by pointing a gun. . . . At the hearing, the offense of robbery with a dangerous weapon was amended to the offense of attempted common law robbery pursuant to K.N.H.'s *Alford* plea[.] K.N.H. admitted to the offense of possessing a handgun, and the State dismissed the remaining charge.")

[Trial Court]: And every part of each charge?

[A.M.S.]: Yes, sir.

. . . .

[Trial Court]: All right. Are you satisfied with your lawyer's help on the case?

. . . .

[A.M.S.]: Yes, sir.

[Trial Court]: You understand you have the right to deny the charges?

[A.M.S.]: Yes, sir.

. . . .

[Trial Court]: You understand that if your case is [heard] by a judge you would have the right to ask [the] witness questions during the hearing?

[A.M.S.]: Yes, sir.

[Trial Court]: Do you understand if you sign this admission, you give up those rights and other important Constitutional Rights related to a hearing in this court?

[A.M.S.]: Yes, sir.

. . . .

[Trial Court]: You understand the most serious disposition, given your delinquency history as far as the penal portion, level one detention for up to five 24-hour periods, placement in a wilderness program, or placement in the custody of the County of Department of Social Services. Do you understand that?

> [A.M.S.]: Yes, sir.
>
> [Trial Court]: Do you understand that if the Court finds that the act alleged in the petitions were committed as part of a criminal gang activity, the Court must enter the disposition one level higher than would otherwise be permitted in this case?
>
> [A.M.S.] Yes, sir.

After hearing the prosecutor's factual summary of the two incidents, the trial court accepted A.M.S.'s admissions to the charges. Based on these admissions, the trial court entered its Adjudication Order adjudicating A.M.S. a delinquent juvenile.

¶ 5 The trial court then proceeded to disposition. During the disposition phase, the trial court received the Assessment and stated, "having received a dispositional report, having read it in its entirety, read the [Assessment] that was performed on [A.M.S.] . . . the Court will adopt the recommendations as put forth by the department." The trial court entered its Disposition Order, which imposed a Level 1 disposition. The trial court ordered A.M.S. be placed on probation for 12 months and ordered A.M.S. to cooperate with a residential treatment program, including out-of-home placement if necessary. A.M.S. gave oral notice of appeal in open court.

Issues

¶ 6 The issues on appeal are whether the trial court erred: (I) during the adjudication phase, by accepting A.M.S. admissions to Possession of a Weapon on School Property and First-Degree Trespass without first correctly informing A.M.S.

of his right to remain silent as required by N.C. Gen. Stat. § 7B-2407(a)(1); and (II) during the disposition phase, by not referring A.M.S. for a mental health evaluation by the area mental health services director.

Analysis

¶ 7 "Upon motion of a proper party as defined in [N.C. Gen. §] 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals." N.C. Gen. Stat. § 7B-2602 (2021)*; see also* N.C. Gen. Stat. § 7B-2604(a) (2021) ("An appeal may be taken by the juvenile, the juvenile's parent, guardian, or custodian, a county, or the State."). This includes Disposition Orders after an adjudication that a juvenile is delinquent. N.C. Gen. Stat. § 7B-2602(3) (2021). "When a juvenile argues to this Court that the trial court failed to follow a statutory mandate, the error is preserved and is a question of law reviewed *de novo*." *In re E.M.*, 263 N.C. App. 476, 479, 823 S.E.2d 674, 676 (2019). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *In re G.C.*, 230 N.C. App. 511, 516, 750 S.E.2d 548, 551 (2013) (quoting *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008)).

I. Compliance with N.C. Gen. Stat. § 7B-2407(a).

¶ 8 A.M.S. first contends the trial court's acceptance of A.M.S.'s admissions to Possession of a Weapon on School Property and First-Degree Trespass in return for

the State's dismissal of the Disorderly Conduct charge was erroneous where the trial court failed to comply with the statutory requirements to ensure the admissions were the product of a fully informed choice by A.M.S. Specifically, A.M.S. argues the trial court erred in failing to properly advise him of his right to remain silent before accepting A.M.S.'s admissions as required by N.C. Gen. Stat. § 7B-2407(a)(1). A.M.S. asserts this error requires the Adjudication Order be vacated. The State agrees.

¶ 9 N.C. Gen. Stat. § 7B-2407(a) requires:

> (a) The court may accept an admission from a juvenile only after first addressing the juvenile personally and:
>
> (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;
>
> (2) Determining that the juvenile understands the nature of the charge;
>
> (3) Informing the juvenile that the juvenile has a right to deny the allegations;
>
> (4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;
>
> (5) Determining that the juvenile is satisfied with the juvenile's representation; and
>
> (6) Informing the juvenile of the most restrictive disposition on the charge.

N.C. Gen. Stat. § 7B-2407(a) (2021).

¶ 10 In turn, N.C. Gen. Stat. § 7B-2407(b) provides "[t]he court may accept an admission from a juvenile only after determining that the admission is a product of informed choice." N.C. Gen. Stat. § 7B-2407(b) (2021). The "purpose and function of [N.C. Gen. Stat.] § 7B-2407(a) is to ensure the trial court . . . determine[s] that the admission is a product of the juvenile's informed choice as required by [N.C. Gen. Stat.] § 7B-2407(b), meaning these two sections of [N.C. Gen. Stat.] § 7B-2407 must be read in conjunction in determining whether to accept a juvenile's admission of guilt." *In re T.E.F.*, 359 N.C. 570, 573, 614 S.E.2d 296, 298 (2005) (internal quotation marks omitted). "[A]ll of these six specific steps [contained in Section 7B-2407(a)] are paramount and necessary in accepting a juvenile's admission as to guilt during an adjudicatory hearing." *Id.* at 574, 614 S.E.2d at 298.

¶ 11 "Therefore, the determination as to whether a juvenile's admission is a product of an informed choice as required by [N.C. Gen. Stat.] § 7B–2407(b), at a very minimum, is predicated upon the six mandatory requirements specifically listed in [N.C. Gen. Stat.] § 7B–2407(a)." *Id.* "If the required 'inquiries and statements [do not] . . . affirmatively appear in the record of the proceeding, . . . the adjudication of delinquency based on the admission must be set aside.' " *Id.* (citation omitted).

¶ 12 "Failure to cover even one of the six listed steps 'preclude[s] the trial court from accepting [the juvenile's] admission as being a product of [their] informed choice.' " *In re A.W.*, 182 N.C. App. 159, 161, 641 S.E.2d 354, 356 (2007) (quoting *In re T.E.F.*,

359 N.C. 570, 575, 614 S.E.2d 296, 299 (2005)). The existence and use of a pre-printed admission form signed by the juvenile—as exists in this case—is insufficient. *Id.* at 162, 641 S.E.2d at 356. Rather, the inquiries must "be made while the trial court is personally addressing the juvenile so that the trial court can assess the juvenile's understanding." *Id.*

¶ 13 Here, the Record reflects the trial court may have simply misspoken when it informed A.M.S. he had the right to "say anything about your charge[.]" Indeed, this appears to be a simple mis-recitation of the pre-printed form, which states: "you have the right to *not* say anything about your charge[s] . . ." (emphasis added).[2] Nevertheless, our case law compels a trial court's oral inquiry "strictly comply" with each requirement of N.C. Gen. Stat. § 7B-2407(a). *Id.* at 161, 641 S.E.2d. at 356.

¶ 14 Thus, in this case, the Record reflects the trial court did not strictly comply with the statutory requirement of Section 7B-2407(a)(1) to ensure A.M.S. understood his right to remain silent. Therefore, the trial court erred by failing to ensure A.M.S.'s admissions were the product of an informed choice as required by Section 7B-2407(b). Consequently, we are compelled to vacate the trial court's Adjudication Order—which included the acceptance both of A.M.S.'s admissions of responsibility to the charges of Possession of a Weapon on School Property and First-Degree Trespass and the

[2] The State represents it reviewed the audio recording of the hearing and confirms the transcript accurately reflects the trial court omitted the word "not" from its inquiry.

State's dismissal of the Disorderly Conduct charge—and remand this matter for further proceedings on all three Juvenile Petitions. *See A.W.*, 182 N.C. App. at 162, 641 S.E.2d at 356.

II. Mandatory Referral for Mental Health Evaluation.

¶ 15 A.M.S. further contends the trial court erred at the disposition phase by failing to refer A.M.S. for a mental health evaluation. Specifically, A.M.S. contends the record contains evidence A.M.S. has mental health issues—including the Assessment reflecting A.M.S. exhibited some indicia of homicidal ideations. As such, A.M.S. contends NC. Gen. Stat. § 7B-2502(c)—now repealed but applicable to the Petitions in this case—required the trial court to refer A.M.S. to the area mental health services director. The State again agrees with A.M.S. However, the State points to the more recently applicable N.C. Gen. Stat. § 7B-2502(a) as the statutory mandate requiring referral for a mental health evaluation.

¶ 16 As we vacate the trial court's Adjudication Order, we necessarily vacate the trial court's Disposition Order. Thus, on remand, the trial court—should it reach the disposition phase—may reconsider its disposition. Therefore, should the trial court determine there is evidence A.M.S. suffers from mental illness or a developmental disability, the trial court should make the appropriate referral for a mental health evaluation as required by the applicable statutes. Consequently, we vacate the trial

court's Disposition Order and remand this matter for further proceedings on the Petitions.

Conclusion

¶ 17 Accordingly, for the foregoing reasons, we vacate the 26 October 2021 Adjudication Order and Disposition Order and remand this matter to the trial court for further proceedings.

VACATED AND REMANDED.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).