UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1278

September Term, 2014

IN RE: JAMES W.

Krauser, C.J.
Woodward,
Wright,

JJ.

Opinion by Woodward, J.

Filed: March 10, 2017

Appellant, James W., was found involved as to one count of robbery, one count of second degree assault, and one count of theft of property valued at less than $1,000 in the Circuit Court for Prince George's County, sitting as a juvenile court. At appellant's disposition hearing, the court followed the recommendation of the State and committed appellant to the Maryland Department of Juvenile Services ("DJS"), with placement at a level B non-community residential facility.[1]

On appeal, appellant presents one question for our review, which we have slightly rephrased:

> Did the juvenile court err by considering dismissed charges previously made against the respondent, without any additional evidence relating to the facts and circumstances of those charges, when determining the appropriate disposition?

For the reasons stated herein, appellant's claim of error fails for lack of a factual predicate. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

On April 11, 2014, the State filed a delinquency petition against appellant in the juvenile court, charging appellant with robbery, second degree assault, and theft of property

[1] The disposition order described a level B non-community residential facility as "Youth Centers, Mountain Manor, Schaeffer House, O'Farrel Residential Treatment Centers, or **other Private Staff Secure Facilities**, Vision Quest, Glen Mills, Wood Burn RICA-Edit . . . ." (Emphasis in original). As we read this disposition order, a level B non-community residential facility is also a level II staff secure residential facility as defined by DJS. Secretary Sam Abed, *Data Resource Guide Fiscal Year 2014*, Maryland Department of Juvenile Services, 123 (January 2015), http://djs.maryland.gov/Documents/Full_2014_DRG.pdf. A level II staff secure residential facility "includes programs where educational programming is provided on-grounds and youth movement and freedom is restricted primarily by staff monitoring and supervision." *Id.*

valued at less than $1,000. The court held an adjudicatory hearing on June 3, 2014, and found appellant involved as to all counts.

On July 2, 2014, the juvenile court held a disposition hearing and committed appellant to DJS, with placement at a Level B facility. The next day, appellant filed his notice of appeal.

On July 25, 2014, appellant was placed at the Savage Mountain Youth Center.[2] Thereafter, on September 2, 2014, appellant was transferred to the Backbone Mountain Youth Center in order to begin a college program there.[3]

On January 22, 2015, appellant filed a request for a release hearing. The juvenile court held a release hearing on February 6, 2015, and released appellant, placing him on probation with GPS and electronic monitoring, and ordering him to perform 100 hours of community service. The court reset the release hearing for June 5, 2015, and then again for September 10, 2015.[4]

Additional facts will be set forth as necessary to resolve the question presented.

[2] Savage Mountain Youth Center is a level II facility and thus a level B facility. Secretary Sam Abed, *Data Resource Guide Fiscal Year 2014*, Maryland Department of Juvenile Services, 123 (January 2015), http://djs.maryland.gov/Documents/Full_2014_DRG.pdf.

[3] Backbone Mountain Youth Center is a level II facility and thus a level B facility. Secretary Sam Abed, *Data Resource Guide Fiscal Year 2014*, Maryland Department of Juvenile Services, 123 (January 2015), http://djs.maryland.gov/Documents/Full_2014_DRG.pdf.

[4] The juvenile court closed appellant's case successfully at the conclusion of the review hearing on September 10, 2015, which was after the briefing and oral argument in this Court.

STANDARD OF REVIEW

"The matter of disposition in a juvenile case is committed to the sound discretion of the juvenile judge, to be disturbed on appeal only upon a finding that such discretion has been abused." *In re Hamill*, 10 Md. App. 586, 592 (1970) (holding that the juvenile judge abused his discretion in committing a juvenile to a training school where the parents seemed "able and willing to undertake the rehabilitation of the delinquent child"). A trial court abuses its discretion

> where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles. An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Cent. Truck Ctr., Inc. v. Cent. GMC, Inc., 194 Md. App. 375, 398 (2010) (internal quotation marks, citations, and alteration in original omitted).

DISCUSSION

I. Mootness

As an initial matter, the State argues that appellant's claim of error is moot, because appellant "takes issue with the juvenile court's disposition committing him to DJS for a level B placement[,]" and appellant has since been released from that placement.

Appellant responds that the case is not moot, even though appellant's

> disposition may have become less onerous, [ ] it remains tainted at every stage by the juvenile court's impermissible consideration (revealed so clearly in the initial disposition hearing) of these prior charges. At a hearing where the juvenile court knows it may not consider these charges, it may opt for an even less restrictive

> disposition. If [appellant] received such a hearing now, the court may opt to reduce his 100 community service hours or make the conditions of probation less onerous or, perhaps, even opt to terminate his case.

Alternatively, appellant argues that, even if his appellate question is moot, this Court should "address the issue of the juvenile court's reliance on mere charges because (1) it will prevent further harm to the public interest, (2) it is likely to recur but evade review in [appellant's] case, and (3) it is likely to recur but evade review in other cases." Appellant asserts that it would be difficult in the instant case to obtain review of an original or modified disposition order, because the juvenile court in Prince George's County holds "relatively frequent review hearings, and often modifies its disposition" orders, which would occur before this Court can hear and rule on a case.

There is no evidence in the record to support appellant's argument that the juvenile court's original consideration of appellant's dismissed charges has "tainted" all further proceedings; appellant has not pointed to any document or transcript from appellant's subsequent hearings where these charges were discussed or even mentioned again. A juvenile court, however, is authorized to hold review hearings and may modify its disposition at any such hearing. A modification of a disposition order could render, as occurred in the instant case, a challenged disposition moot before this Court can hear and rule on the appeal. *Cf. In re Justin D.*, 357 Md. 431, 444-45 (2000) (hearing a case that had become moot, because "it is common practice for the juvenile court . . . to enter orders of this kind, so the issue presented by appellants is a recurring and important one[, and] orders of this kind that are appealed will almost always be replaced by subsequent orders

before this Court will have the opportunity to review them."). Accordingly, we shall turn to the merits of this appeal.

II. Juvenile Court's Consideration of Dismissed Charges

Pursuant to the juvenile court's order finding appellant involved in the offenses of robbery, second degree assault, and theft of property valued at less than $1,000, DJS submitted a "Social History Investigation & Recommendation" ("social history report") for the court's consideration at the disposition hearing. The social history report included the following section:

SECTION I: PRIOR OFFENSE RECORD

Formal:

Offense Date	Petition# / Police Report #	Alleged Offense	Adjudication Offense	Adjudicated Decision	Disposition	Date
09-13-2012	JA-12-1540 / 12-264-1715	Assault 2nd Degree / Battery	Assault 2nd Degree / Battery	Not Sustained	Dismissed	02-24-2014
11-19-2012	JA-13-0373 / 12-341-1506	Malicious Destruction Disturbing School Activities or Personnel	Malicious Destruction	Not Sustained	Dismissed	07-19-2013
09-06-2012	JA-12-1512 / 2012-3172	Theft Misdemeanor	Theft Misdemeanor	Not Sustained	Dismissed	02-24-2014

02-04-2014	JA-14-0350 / 3333194-001	Gang Offense - School Assault 2nd Degree / Battery Disturbing School Activities or Personnel			STET	06-03-2014

Informal:

Offense Date	Petition# / Police Report #	Alleged Offense	Intake Decision	Intake Decision Date
09-15-2011	(none) / 11-20532	Assault 2nd Degree / Battery	Resolved at Intake	11-21-2011
05-02-2012	(none) / 12-136-0701	Assault 2nd Degree/Battery	Pre Court Supervision	08-06-2012
10-04-2013	(none) / 13-277-1728	Trespassing	Resolved at Intake	11-08-2013

The following colloquy occurred at appellant's disposition hearing:

THE COURT: And how old are you?

[APPELLANT]: Seventeen.

THE COURT: Well, you've had 17 years. Been suspended five times this school year, five times. **Three matters prior to this case where you had Juvenile Services and they had you on pre-court supervision trying to get you not to come to court in a year.** Then your lawyer pointed out there's another matter apparently—actually Counsel, I didn't forget your reference the matter had been stetted. **This is your fourth case here. Prior assault, prior malicious destruction of property. And a prior theft. What must we do to get you to**

	understand you have to do - - do the right thing? Madam Clerk, the Court will, in fact, commit [appellant] to Level B. Mr. Sheriff, [appellant's] in your custody.
[APPELLANT'S ATTORNEY]:	Your Honor, can he remain in his present status?
THE COURT:	No, sir.
[APPELLANT'S ATTORNEY]:	**Your Honor, for the record, we object to the consideration of the three dismissed cases.**
THE COURT:	**Say it again?**
[APPELLANT'S ATTORNEY]:	**We object to the consideration of the three dismissed cases.**
THE COURT:	**Okay, actually one of them was not dismissed. One of them was stetted.**
[APPELLANT'S ATTORNEY]:	**Thank you, Your Honor.**
THE COURT:	**But he's had other matters that he keeps bringing to court.**

(Emphasis added).

Appellant argues that "[b]y openly referring to [appellant's] previously dismissed charges and considering them in determining the appropriate disposition, the juvenile court impermissibly considered and relied on them, particularly when it did so without additional, reliable evidence relating to the facts and circumstances surrounding those charges." Appellant urges this Court to apply to juvenile dispositions the case law that

forbids a trial judge's consideration of "mere accusations" of criminal conduct in adult sentencing proceedings. According to appellant, "fundamental fairness and due process [ ] require that evidence of other charges . . . pass a minimum threshold of reliability[,]" which was not present in the instant case, because the court did not take testimony or receive evidence regarding any of the dismissed charges set forth in appellant's prior offense record. Appellant concludes that it was "improper for the juvenile court to consider those mere accusations contained in the report for determining [appellant's] disposition."

The State responds that the juvenile court did not abuse its discretion by considering appellant's previously dismissed charges, because juvenile delinquency proceedings are civil in nature and retain a "special and informal nature" to "meet the problems peculiar to the adolescent." The State argues that the court "correctly exercised its discretion in taking into account [appellant's] prior juvenile history[,]" because "the purpose of a juvenile disposition hearing is to determine whether the delinquent child is in need of supervision, treatment, or rehabilitation and, if so, the nature of the remedial efforts required." According to the State, appellant's "attempt to engraft upon delinquency cases the standards applicable in adult sentencing is inconsistent with the reasons underlying juvenile proceedings and the statutory provisions implementing such cases." Finally, the State contends that the record "is unclear [as to whether] the juvenile court [actually] considered [appellant's] prior dismissed juvenile proceedings[,]" but that even if it did, "the court did not abuse its discretion."

A. The Juvenile Court Did Not Consider Appellant's Prior Dismissed Charges

Upon our own review of the record in the instant case, we conclude that the juvenile

court did not consider appellant's prior dismissed charges in its determination of appellant's disposition. The court did mention these charges in the explanation for its disposition. Appellant's trial counsel then objected to such consideration, to which the court responded: "Okay, actually one of them was not dismissed. One of them was stetted." When it said "okay," the court in effect sustained appellant's objection and agreed not to consider such charges. This conclusion is supported by the court's subsequent statement: "But he's had other matters that he keeps bringing to court." In other words, the court agreed with appellant's trial counsel not to consider the prior dismissed charges, but determined that even without such consideration, its disposition would remain the same, because appellant's other offenses kept bringing him into contact with the juvenile court.[5] Therefore, because we conclude that the juvenile court did not consider appellant's prior dismissed charges, appellant's claim of error in the court's determination of appellant's disposition fails for a lack of a factual predicate.

In light of our conclusion that the juvenile court did not consider appellant's prior dismissed charges in fashioning its disposition for appellant's delinquent acts, [6] any

[5] The court specifically referred to charges that had been placed on the "stet" docket. For charges to be placed on the stet docket, the usual practice is for both the State and the respondent to agree on such disposition, including any terms and conditions, and for the respondent to waive his or her right to a speedy trial.

The court also referred to the criminal offenses listing as "Informal" on appellant's "Prior Offense Record," two of which were resolved at intake by DJS and one of which resulted in "Pre-Court Supervision." Appellant is not contesting the juvenile court's consideration of the stetted or informal charges.

[6] Under Md. Code (1974, 2013 Repl. Vol., 2016 Supp.), § 3-8A-01(l) of the Courts and Judicial Proceedings Article, a "delinquent act" is defined as "an act which would be a crime if committed by an adult."

discussion and resolution of appellant's question on appeal would be dicta. Were we called upon to answer that question, however, we would conclude that the juvenile court's consideration of appellant's prior dismissed charges in its disposition was not an abuse of discretion. We shall explain briefly.

The Court of Appeals has stated that "the overriding goal of Maryland's juvenile statutory scheme is to rehabilitate and treat delinquent juveniles so that they become useful and productive members of society." *In re Keith W.*, 310 Md. 99, 106 (1987). To achieve such goal, the Juvenile Causes Act and the Rules promulgated thereunder provide for (1) an adjudicatory hearing where the juvenile court determines whether the allegations of a delinquent act in the petition have been proven beyond a reasonable doubt, Md. Code (1974, 2013 Repl. Vol., 2016 Supp.), §§ 3-8A-01(b), -18(c) of the Courts and Judicial Proceedings Article ("CJP"); Md. Rule 11-114(a), (c); and (2) if the allegations in the petition are sustained, a separate disposition hearing where the court determines "[w]hether a child needs or requires guidance, treatment, or rehabilitation; and, if so [] [t]he nature of the guidance, treatment, or rehabilitation." CJP § 3-8A-01(p), -19(b); *See also* Md. Rule 11-115.

Regarding disposition, the statute provides that "[t]he priorities in making a disposition [must be] consistent with the purposes specified in [CJS] § 3-8A-02." CJS § 3-8A-19(c). Section 3-8A-02, in turn, specifies the purposes of the Juvenile Causes Act, including:

> (4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and **to provide for a program of treatment, training,**

> **and rehabilitation consistent with the child's best interests and the protection of the public interest**[.]

(Emphasis added).

At a disposition hearing, DJS typically presents to the juvenile court and to the parties a social history of the juvenile, which often includes the following information:

> (1) the juvenile's prior offense record (including both formal and informal charges);
>
> (2) a summary of the circumstances of the current offense, including the juvenile's perception of his or her involvement, the parent's perception of the juvenile's involvement, any victim impact statement, and restitution;
>
> (3) a list of the people that provided information to the Department and their relationship to the juvenile;
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> (4) a biographical profile;
>
> (5) a medical profile, including any physical and behavioral health conditions, medications, evaluations or assessments, history of neglect or abuse, and substance abuse history;
>
> (6) the juvenile's employment and education history, including grades, attendance, and disciplinary actions;
>
> (7) the juvenile's home and community environment, including peer relationships and use of free time;
>
> (8) the juvenile's household and family, including the juvenile's and his or her family's strengths and weaknesses; and
>
> (9) the juvenile's placement history.

See COMAR 16.16.01.03A(1)("A social history investigation ordered by the court consists of a complete documentation of the child's and family's background and current situation.").

The clear purpose of the social history is to give the juvenile court an overall view of the juvenile, and thereby to assist the court in determining whether the juvenile "needs or requires guidance, treatment, or rehabilitation[,]" and if so, the nature thereof. *See* CJP § 3-8A-01(p). The prior offense record, including prior dismissed charges at issue in the instant appeal, informs the court of the juvenile's prior contacts with the juvenile system. Such contacts are relevant to the court's determination of the juvenile's need for services and the nature of those services. Although a prior dismissed charge does not result in an adjudication of involvement, the juvenile's conduct does rise to the level of probable cause that he or she committed a delinquent act. Moreover, without information regarding all of the juvenile's prior contacts with the juvenile system, a court may not be aware of what services had been provided to the juvenile previously and the effectiveness of those services.

To be sure, the juvenile court should not consider prior dismissed charges for the purpose of assuming guilt, without additional reliable evidence of the facts and circumstances surrounding those charges. *See Henry v. State*, 273 Md. 131, 147-48 (1974) ("bald accusations of criminal conduct for which a person either has not been tried or has been tried and acquitted may not be considered by the sentencing judge."). Nevertheless, we believe that in the context of making a disposition for a juvenile's delinquent act, a juvenile court can consider prior dismissed charges for the purpose of determining the need for and nature of services that will "rehabilitate and treat delinquent juveniles so that they become useful and productive members of society." *In re Keith W.*, 310 Md. at 106.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; APPELLANT TO PAY COSTS.