

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
CONSOLIDATED CASES

September Term, 2015

No. 1433

IN RE: TAVIONE H.

No. 2286

IN RE: JULIAN B.

Kehoe,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: June 3, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Both appellants in this consolidated opinion question whether their attorneys were afforded a reasonable opportunity to argue the disposition of their cases before the juvenile court. Because the juvenile court abused its discretion by foreclosing their right to have counsel argue on their behalf, we vacate the disposition orders and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Both cases arise from hearings held in the Circuit Court for Prince George's County sitting as a juvenile court. Although the allegations of error are similar—that the court foreclosed the right to have counsel argue on the juvenile's behalf—the facts of each case are distinct, and, we will, therefore, set out each separately.

1. Tavione H.

Tavione H., then 15 years old, admitted his “involvement”¹ in wearing, carrying, or transporting a handgun in 2015. At the start of the disposition hearing, Tavione's counsel submitted a memorandum to the court prepared by a social worker for the Office of the Public Defender but the hearing was stopped and delayed for about an hour. When the hearing resumed, the court indicated it had read the memorandum and Tavione's counsel

¹ “In juvenile proceedings the more precise term to use when referring to the plea of the respondent is ‘not involved’ [or involved] as opposed to ‘not guilty’ [or guilty].” *In re Christian A.*, 219 Md. App. 56, 62 n.6 (2014) (quoting *In re Kevin Eugene C.*, 90 Md. App. 85, 87-88 n.2 (1992)) (alterations in original).

began to address the court. The court, however, did not allow counsel to make an argument on Tavione's behalf:

THE COURT: Good afternoon. Okay, Defense, I'll hear you.

[DEFENSE COUNSEL]: Thank you, Your Honor.

THE COURT: And I reviewed the memo since you passed it up.

[DEFENSE COUNSEL]: Thank you. Again, Your Honor, what we're asking for here is for the broadest and most inclusive possible way in the commitment order for a staff-secure placement. And we also want Your Honor to understand a little bit about Tavione's past. Some of this is reflected in our social worker's memorandum.

Tavione, his parents are here today, Mr. and Ms. [H.], they adopted him at age six. But before Tavione was adopted, he went through some really horrific abuse and neglect that is important to know about in understanding why he's here today.

His mother, his biological mother --

THE COURT: Let me ask you this, don't forget, I've reviewed your memo now.

[DEFENSE COUNSEL]: Yes, Your Honor. I can't -- I would like to be heard.

THE COURT: Yeah, but there was no need to submit it if you're going to -- I mean, I reviewed it. I mean, if you --

[DEFENSE COUNSEL]: I'll try not to --

THE COURT: If there's something that's not in there, I'll listen to you, but you submitted -- and I take it you submitted it today because you wanted me to read it today and not before today, so while on the break that's why I reviewed it. But don't repeat everything that you have in here.

[DEFENSE COUNSEL]: I won't repeat everything, Your Honor.

THE COURT: Thank you.

[DEFENSE COUNSEL]: But the key points in the report, Your Honor, are that ...

Tavione's counsel then proceeded to lay out some preliminary information on Tavione's background. Before counsel could make an argument based on that information, however, the court stopped counsel and would not let counsel continue:

THE COURT: Okay, Counsel, let me ask you, what are you asking that I do? I heard you say as general as I could.

[DEFENSE COUNSEL]: Right.

THE COURT: So what else? I mean, I read this, but I don't need to know all that if you're asking that I make it as general -- I'm asking what else? Because I've read all of this now.

[DEFENSE COUNSEL]: That's what I'm asking for, Your Honor.

THE COURT: Okay.

[DEFENSE COUNSEL]: And I'm asking -- especially since we will likely be working with Tavione in the future to come up with a permanency plan and to determine what the future holds, I would ask that this information be before the Court.

THE COURT: Thank you. State?

[STATE]: I --

[DEFENSE COUNSEL]: Your Honor -- I'm sorry.

THE COURT: You said the information, I have the information. What --

[DEFENSE COUNSEL]: I'm sorry. I -- I had more, Your Honor.

THE COURT: But I'm saying, I don't need you to read the report. I have the report. And I'm not going to let you read the report. I'm not going to let you do that. It's part of the record. You don't do that.

[DEFENSE COUNSEL]: Your Honor --

THE COURT: And that's -- actually --

[DEFENSE COUNSEL]: I'm sorry, Your Honor, it's just that this is a disposition hearing and that there's a lot of information about Tavione that is relevant.

THE COURT: But -- you gave it to me, but I'm not going to let you read this.

[DEFENSE COUNSEL]: I believe that several of the things -- I have a few more -- if Your Honor doesn't want me to state them, allow me to make them, I'll note my objection. That's fine.

THE COURT: Well, you can note the objection, but don't submit this and then read from it. Hell, I can read. At least a little bit.

[DEFENSE COUNSEL]: Again, Your Honor, I'm not certain exactly which points came from my separate research and which points -- I'm sure I repeated some.

THE COURT: Yeah.

[DEFENSE COUNSEL]: That's okay. I'm not -- I'm not trying to go back and forth on this particular issue.

I do have more to say about -- you know, Tavione's parents are here and that's a whole chapter of his life that I think is important to understand how he got here today. I would ask to continue.

THE COURT: Counsel, I'm not going to let -- I have the psychological report, I have all the reports, and I don't need anybody to read them to me.

[DEFENSE COUNSEL]: Okay. Please note our objection.

THE COURT: It is so noted. But, I mean, that's why I asked so we can all have them. That's why I said anything that's not in the report.

[DEFENSE COUNSEL]: And, I'm sorry, I just don't have memorized which --

THE COURT: Okay.

[DEFENSE COUNSEL]: Because I read several -- six, seven, different reports.

THE COURT: Yeah. And I have them all. Okay, now --

[DEFENSE COUNSEL]: Not all of them, Your Honor. Because some of them were things that we obtained separately from the -- from his --

THE COURT: Thank you. State.

After a brief argument by the State, the court gave Tavione an opportunity to speak. Tavione declined. The court committed Tavione to the Department of Juvenile Services, Level B (Non Community Residential Facility) and recommended against a group home.²

² Tavione also argues that the juvenile court failed to exercise its discretion by choosing to not allow Tavione to be placed in a group home solely on the basis of the nature of the charges, specifically, possession of a firearm. Because we (continued...)

Tavione’s counsel then attempted to argue that Tavione should be placed in a group home, but the court refused to hear further argument:

THE COURT: Madam Clerk, the Court will, in fact, follow the recommendations of the Department. Court will, in fact, commit the Respondent, Level B.

[THE STATE]: Your Honor, I’m sorry, the only thing the State would ask for is that it not be in group homes.

THE COURT: Yes.

[DEFENSE COUNSEL]: And, Your Honor, that’s exactly what we were attempting to advocate for.

THE COURT: Okay. No group homes.

* * *

[DEFENSE COUNSEL]: Your Honor, I understand that, but Tavione has had a very specific and different life history here, which is why I believe he should be eligible for group homes.

Tavione’s counsel objected again, to both the commitment order and to not being allowed to complete his argument.

2. *Julian B.*

In 2013, Julian pled involved to trespass and a disposition order was issued committing him to a group home. Julian was initially scheduled for a discharge hearing in 2014, but, because he had no family resources, his commitment was continued. In 2015,

remand for further proceedings, we do not reach this question. On remand, the juvenile court is free to reconsider Tavione’s disposition.

the Department of Juvenile Services requested a release hearing, recommending that Julian's commitment be rescinded and his case closed. At the hearing, Julian's counsel presented some initial remarks to the court, the State presented its opposition to Julian's release, and the court allowed Julian, then 19 years and 4 months old, to make a brief statement. The court, however, refused to allow Julian's counsel to argue in response to the State's arguments:

[DEFENSE COUNSEL]: Your Honor, may I respond to some of --

THE COURT: No, sir.

[DEFENSE COUNSEL]: --the State's--

THE COURT: No, sir.

[DEFENSE COUNSEL]: Your Honor, we object not having the chance to respond to the State.

THE COURT: Now the Court will rescind the commitment in this matter. I will place Mr. B on probation for E[lectronic] M[anagement] placement on GPS.

[DEFENSE COUNSEL]: Your Honor, I would ask your Honor to consider not putting a GPS order in this case. There's been no -- there's multiple levels --

THE COURT: Excuse me, sir. Sir, I'm still speaking.

[DEFENSE COUNSEL]: I didn't have the chance to respond --

THE COURT: Wait, wait. Do you want me to do this today or do you want to do it some time other? I listened and I listened. I said I am still speaking and you continue to talk. Why do you interrupt me while I'm talking?

[DEFENSE COUNSEL]: I'm sorry, Your Honor. I'm not planning to interrupt, I was responding.

THE COURT: Well, you did. You're not responding, you're interrupting me.

Madam Clerk, the Respondent is to complete 75 hours of community service in the County's Community Service Program.

The court vacated Julian's disposition and entered a new disposition order, which contained the previously undiscussed requirements of 75 hours of community service, random urinalysis, and GPS monitoring.³

Both Tavione and Julian argue that the juvenile court improperly foreclosed their right to be heard through counsel at their hearings.

DISCUSSION

"The fundamental right to counsel unquestionably extends to juveniles in delinquency cases." *In re: Christopher T.*, 129 Md. App. 28, 34 (1999). The right to counsel includes the right for counsel to argue on behalf of the juvenile at a disposition or release hearing. Md. Rule 11-106(a) (stating that a juvenile is entitled to be represented in all proceedings held under Title 11). Although "[t]he court may limit [the] right as to content so as to prevent improper argument, and to impose reasonable time limits, [the court] may not deny the right altogether." *In re: Emileigh F.*, 353 Md. 30, 41 (1999).

³ Because we remand for further proceedings, we do not reach Julian's question of whether the court abused its discretion by *sua sponte* ordering new conditions over the Department's recommendation and without support from the discharge plan.

While, of course, a juvenile court has wide discretion to control its docket, to limit the presentation of evidence and argument, and to avoid repetitive presentations, there are limits to this discretion. Thus, while the juvenile court may limit argument by the juvenile offender or the juvenile offender's counsel, the court may not preclude it. In these cases, from our review of the transcripts, we think the juvenile court simply went too far. In an effort to move its docket along, the court completely prevented counsel from arguing.

Juvenile offenders are often alienated from and may feel ignored by society. Reintegrating and helping them to “becom[e] responsible and productive members of society,” CJ §3-8A-02(a)(1)(iii), is a key objective of the juvenile system. Society wants juvenile offenders to learn appropriate methods of interacting with the world, including appropriate interaction with and toward authority. Juvenile offenders must be counselled to be respectful toward the court. But the court must also be respectful toward the juvenile offenders. Silencing, or even appearing to silence juveniles, is inconsistent with our vision of the appropriate social interaction that the juvenile system should be modeling.

We, therefore, hold that, under these circumstances, the court abused its discretion. We vacate the disposition orders for both Tavione and Julian and remand for further proceedings.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
VACATED AND REMANDED FOR
FURTHER PROCEEDINGS. COSTS TO BE
PAID BY PRINCE GEORGE'S COUNTY.**