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ATTORNEY FOR APPELLANT:

SEAN P. HILGENDORF
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

B.H.,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-0709-JV-451
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0705-JD-392

December 31, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF FACTS

Appellant-Respondent, B.H., appeals the juvenile court's Order committing him to the Indiana Department of Correction (the DOC) for placement at the Boys School.

We affirm.

ISSUE

B.H. raises one issue on appeal, which we restate as follows: Whether the juvenile court abused its discretion by committing B.H. to the DOC.

FACTS AND PROCEDURAL HISTORY

On May 15, 2007, B.H., an eighth grade honor student at LaSalle Academy in South Bend, Indiana, was told not to take his notebook into the library by Kim Krunk (Krunk), the librarian. B.H. called Krunk "a no good, fuckin' bitch," and grabbed her by the neck. (App. p.14). Then, he began to choke her, resulting in two abrasions on her neck.

On May 23, 2007, the State filed a Petition Alleging Delinquency charging B.H. with Battery, a Class D felony if committed by an adult, Ind. Code § 35-42-2-1. On May 30, 2007, B.H. admitted to the charge alleged in the Petition at an initial hearing, and the case was set for a dispositional hearing. On July 3, 2007, the dispositional hearing was held and B.H. was committed to the DOC for placement at the Boys School and ordered to complete the Community Transition Program (CTP).

B.H. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

B.H. contends that the juvenile court abused its discretion by committing him to the Boys School. In particular, he alleges that the juvenile court's disposition did not comply with statutory considerations regarding the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition. B.H. claims that he should have been granted a commitment to a less restrictive alternative. We disagree.

The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. *C.C. v. State*, 831 N.E.2d 215, 216 (Ind. Ct. App. 2005). An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom. *Id.* The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. *Id.*

Ind. Code § 31-37-18-6 sets forth several factors a juvenile court must consider when entering a dispositional decree:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

- (1) is:
 - (A) in the least restrictive (most family like) and most appropriate setting available; and
 - (B) close to the parents' home, consistent with the best interest and special needs of the child;
- (2) least interferes with family autonomy;
- (3) is least disruptive of family life;

- (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
- (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

Although the juvenile court's disposition to commit B.H. to the DOC is not the least restrictive disposition available, it is nevertheless consistent with the safety of the community and the best interest of B.H. The statute requires imposing the least harsh disposition *only* if it is consistent with the safety of the community and the best interest of the child. As noted by our court, "[t]here are times in juvenile proceedings when the best interest of the juvenile and society require commitment to the Boys School." *M.R. v. State*, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992).

B.H. claims that he does not have a criminal history and this was his first appearance before the juvenile court. However, according to the Pre-Dispositional Report he had previously been suspended from the school for cutting another child with a pencil, and showed other inappropriate behavior. Here, he battered a librarian, an authority figure. These facts indicate his violent behavior and nature to re-offend, which is dangerous for the community. In addition, he scored a "high risk to re-offend with medium protective factors" on his Youth Assessment and Screening Instrument. (Appellant's App. p. 16). Thus, committing B.H. to a lesser restrictive disposition would have been inconsistent with the safety of the community.

Furthermore, commitment to the Boys School is in the best interest of B.H. As noted in *Jordan v. State*, 512 N.E.2d 407, 408 (Ind. 1987), *reh'g denied*, "[t]he nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will

not later become a criminal.” According to the Pre-Dispositional Report, B.H. was not remorseful for his behavior and essentially blamed the victim for his actions. Although B.H.’s parents admitted that his action was wrong, they also blamed the school system for their son’s failure. Thus, it would have been inappropriate to leave him in his parents’ custody, who would likely inhibit his fully appreciating the impropriety of his behavior. Considering the behavior and character of B.H., we conclude that the trial court did not abuse its discretion when found that it is in his best interest to place him in the Boys School for rehabilitation. In some instances, confinement may be one of the most effective rehabilitative techniques available when a juvenile is exposed to the type of placement he would encounter were he to continue with his poor behavior. *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied*. Therefore, we conclude that the juvenile court’s decision to commit B.H. to the Boys School was not against the logic and effect of the facts and circumstances, and the reasonable, probable, and actual deductions to be drawn therefrom.

CONCLUSION

Based on foregoing, we find that juvenile court did not abuse its discretion by committing B.H. to the DOC for placement to the Boys School.

Affirmed.

MAY, J., concurs.

KIRSCH, J., dissents.