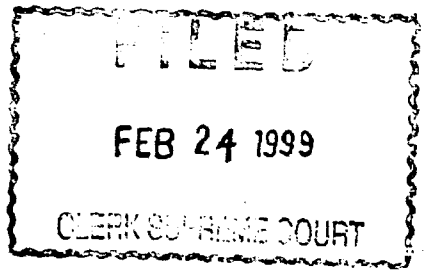
IN THE COURT OF APPEALS OF IOWA

No. 1999-2 (9-042) / 98-1119



IN THE INTEREST OF J.W.R., Minor Child,

J.W.R., Minor Child,
Appellant.

Appeal from the Iowa District Court for Linn County, Jane F. Spande, Juvenile Court Judge.

Minor child appeals juvenile court dispositional order placing him at the State Training School for Boys at Eldora following his adjudication as delinquent for first-degree burglary. **AFFIRMED AND REMANDED WITH DIRECTIONS.**

Mark C. Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Susan Conn, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Jonathon appeals a juvenile court dispositional order placing him at the State Training School for Boys at Eldora following his adjudication as delinquent for first-degree burglary. Jonathon contends the juvenile court erred in placing him at the state training school instead of in a less restrictive placement and in not specifying the duration of his placement in the dispositional order. We affirm and remand with directions.

Jonathon, who will turn eighteen in August of this year, is small in size and stature. He has been diagnosed with a learning disability and has participated in a special education program. Jonathon has apparently been diagnosed with "school phobia" and depression. Jonathon's school attendance has been sporadic at best.

Jonathon has been described as quiet, thoughtful, polite, and respectful by his art teacher of several years. Jonathon's advisor commented upon Jonathon as follows:

> [O]ff-task, withdrawn, poor attender, needs much supervision or motivation, gets along well with peers and teachers, responsive to patient approach, polite, artistically inclined, non-disruptive, possesses a good sense of humor, poor participator, non-violent, doesn't impose himself on others, non-confrontational, [does] not use obscene language, preoccupied, in a world of his own, passive, lacks energy and motivation . . . .
>
> . . . Jonathon has the innate intelligence to know right from wrong, but he has not [got] the inner strength to be his own person. He allowed others to control his actions and did not have the inner strength not to go along.

Jonathon admitted he had entered Max Morgan's residence on April 7, 1998 "intending to do a theft." Morgan, a seventy-one-year-old retired mail carrier, was

at home when Jonathon entered the residence. Jonathon admitted he was carrying a knife with a blade at least five inches long at the time. Morgan testified at the "reverse waiver hearing" Jonathon ordered him to sit down on his davenport and then requested identification. Morgan got his billfold and handed it to Jonathon, at which point he saw Jonathon's knife. Morgan acted like he was going to sit back down and escaped through the back door.

Jonathon was adjudicated to have committed the delinquent act of burglary in the first degree in May 1998. He had originally been charged in adult court but had successfully moved to have jurisdiction transferred to juvenile court. After a hearing, this dispositional order was entered in June 1998.

I. STANDARD OF REVIEW. Juvenile matters are reviewed de novo. *In re N.W.E.*, 564 N.W.2d 451, 453 (Iowa App. 1997). We give weight to the fact findings of the district court but we are not bound by them. Iowa R. App. P. 14(f)(7); *id.*

II. LEAST RESTRICTIVE DISPOSITION. The issue in the case at bar is whether placing Jonathon in the state training school is the least restrictive disposition appropriate under the circumstances. We agree that it is.

A child may be placed in the state training school only if the statutory conditions are met. Iowa Code § 232.52(2)(e). Jonathon meets these criteria: (1) he is at least twelve years of age; (2) the district court found the placement to be in Jonathon's best interests and necessary for the protection of the public; and (3)

Jonathon had been adjudicated to have committed the delinquent act of burglary in the first degree, which is defined as a forcible felony under Iowa Code section 702.11.

A dispositional order must also comply with Iowa Code section 232.52, which requires in part:

> [T]he court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child and the child's prior record.

Jonathon admitted he committed the delinquent act of burglary in the first degree, a forcible felony for which he would have faced a maximum sentence of twenty-five years if he had been tried as an adult. Iowa Code §§ 702.11, 713.3, and 902.9(1). Jonathon was almost seventeen years old at the time he committed the delinquent act and he admitted he acted alone. Finally, Jonathon's record discloses a history of similar charges, including a fifth-degree theft disposed of by his attendance in the "Hands Off" program and a third-degree burglary disposed of by informal adjustment.[1] We conclude commitment to the state training school is the least restrictive disposition appropriate under the circumstances.[2]

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[1] We note from the record there were three other third-degree burglary charges which were pending at the time the dispositional order in question was entered. However, we have not considered those charges in our conclusion.

[2] The dispositional order did not address the issue of "reasonable efforts" under Iowa Code section 232.52(6). Our review of the record leads us to conclude reasonable efforts to prevent removal from the child's home were made in this case. *See In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa App. 1997).

III. DURATION OF PLACEMENT. Dispositional orders "shall specify the duration and the nature of the disposition." Iowa Code § 232.52(1). The State concedes the order in question fails to specify the duration of Jonathon's confinement at the state training school.

Therefore, we affirm the district court's disposition and remand for the entry of a dispositional order specifying the duration of Jonathon's placement at the State Training School for Boys at Eldora.

AFFIRMED AND REMANDED WITH DIRECTIONS.