

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State v. Kenneth Y., 217 W. Va. 167

617 S.E.2d 517 (2005) · No. No. 31742 · Decided April 7, 2005

SUMMARY

The Supreme Court of Appeals of West Virginia held that a juvenile must be afforded an opportunity to comment on alternative sentencing arrangements before being committed to the Industrial Home for Youth. The circuit court’s failure to provide that opportunity constituted plain error. The court set aside the dispositional order and remanded for resentencing, with a concurring opinion discussing statutory limits on the use of multidisciplinary treatment teams.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	April 7, 2005
DOCKET	No. 31742
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Juvenile appealed a circuit court dispositional order committing him to the Industrial Home for Youth for up to one year after he admitted a destruction-of-property charge and was adjudicated delinquent.
STANDARD OF REVIEW	A juvenile dispositional or sentencing order under W. Va. Code § 49-5-13 is reviewed for abuse of discretion, but an error involving denial of allocution that was not preserved is reviewable for plain error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kenneth Y., Juvenile v. State of West Virginia

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- juvenile law
- criminal procedure
- sentencing and disposition
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court committed plain error by sentencing the juvenile to the Industrial Home for Youth without affirmatively providing the juvenile or his counsel an opportunity to comment on alternative sentencing arrangements.
2. What remedy was appropriate for the denial of the juvenile's opportunity to comment on alternative dispositions.
3. Whether the record was sufficiently developed for appellate review of the juvenile's claim concerning the statutory use of a multidisciplinary team.

HOLDINGS

1. At the dispositional stage of a juvenile delinquency proceeding, when the court is considering commitment to a facility such as the Industrial Home for Youth, the juvenile or counsel must be afforded an opportunity to comment on alternative sentencing arrangements. Failure to provide that opportunity constitutes plain error.
2. The appropriate remedy is to set aside the dispositional order and remand for resentencing with an opportunity for the juvenile to comment on alternative sentencing arrangements.

KEY QUOTATIONS

“In imposing sentence, however, the Circuit Court did not afford the appellant or his counsel an opportunity to comment upon alternative sentencing arrangements.” (217 W. Va. at 170)

“The record demonstrates that the Circuit Court did not afford the appellant or his counsel an opportunity to comment upon alternative sentencing arrangements at the dispositional hearing prior to the imposition of sentence to the Industrial Home for Youth. That omission constitutes plain error.” (217 W. Va. at 172)

“Accordingly, the July 31, 2003, order of the Circuit Court of Jackson County is set aside, and this case is remanded to that Court for re-sentencing with an opportunity to be provided the appellant for comment upon alternative sentencing arrangements.” (217 W. Va. at 173)

FACTUAL BACKGROUND

At age sixteen, Kenneth Y. kicked and damaged Matthew D. Francis's 1995 Ford Contour during a confrontation in a Ravenswood, West Virginia, parking lot, causing more than \$700 in damage. After admitting the destruction-of-property charge, Kenneth was adjudicated delinquent and was permitted to attend the Mountaineer Challenge Academy, but left after approximately ten days without completing the program. At the dispositional hearing, his sister supported probation and residence with her, while a probation officer recommended commitment to the Industrial Home for Youth based on his delinquency history, failure to pursue education and employment, failure to pay restitution, and lack of exposure to discipline.

PROCEDURAL HISTORY

The Circuit Court of Jackson County accepted Kenneth Y.'s admission to destruction of property and adjudicated him a juvenile delinquent on January 3, 2003. After a dispositional hearing on July 31, 2003, the court

committed him to the Industrial Home for Youth for a term not to exceed one year. The circuit court stayed the sentence pending appeal. The Supreme Court of Appeals of West Virginia set aside the dispositional order and remanded for resentencing after finding plain error in the failure to provide the juvenile or his counsel an opportunity to comment on alternative sentencing arrangements.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Set aside the July 31, 2003 dispositional order and conduct resentencing or a new dispositional hearing that affords Kenneth Y. or his counsel an opportunity to comment on alternative sentencing arrangements. The record may also be further developed concerning the presence or absence of a multidisciplinary treatment team.

CASES CITED

- State v. Kirk N., 214 W. Va. 730, 591 S.E.2d 288 (2003)
- State ex rel. D.D.H. v. Dostert, 165 W. Va. 448, 269 S.E.2d 401 (1980)
- In the Interest of Thomas L., 204 W. Va. 501, 513 S.E.2d 908 (1998)
- State ex rel. Department of Health and Human Resources v. Frazier, 198 W. Va. 678, 482 S.E.2d 663 (1996)
- State v. Craig D., 205 W. Va. 269, 517 S.E.2d 746 (1998)
- In the Matter of Willis Alvin M., 198 W. Va. 210, 479 S.E.2d 871 (1996)
- State v. M.E., 170 W. Va. 367, 294 S.E.2d 171 (1982)
- State v. Brewster, 213 W. Va. 227, 579 S.E.2d 715 (2003)
- State v. Berrill, 196 W. Va. 578, 474 S.E.2d 508 (1996)
- State v. Bruffey, 207 W. Va. 267, 531 S.E.2d 332 (2000)
- State v. West, 197 W. Va. 751, 478 S.E.2d 759 (1996)
- State v. Lucas, 201 W. Va. 271, 496 S.E.2d 221 (1997)
- State v. Watkins, 214 W. Va. 477, 590 S.E.2d 670 (2003)
- State v. Richardson, 214 W. Va. 410, 589 S.E.2d 552 (2003)
- Bassett v. Commonwealth, 222 Va. 844, 284 S.E.2d 844 (1981), cert. denied, 456 U.S. 938 (1982)
- E.H. v. Matin, 201 W. Va. 463, 498 S.E.2d 35 (1997)
- West Virginia Health Care Cost Review Authority v. Boone Memorial Hospital, 196 W. Va. 326, 472 S.E.2d 411 (1996)
- State ex rel. City of Charleston v. Bosely, 165 W. Va. 332, 268 S.E.2d 590 (1980)
- In the Matter of Jonathan P., 182 W. Va. 302, 387 S.E.2d 537 (1989)

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