

JUVENILE LAW BULLETIN

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DELINQUENT JUVENILES: NORTH CAROLINA APPELLATE COURT DECISIONS

■ Janet Mason

This bulletin discusses cases decided by the North Carolina Supreme Court and North Carolina Court of Appeals involving delinquent juveniles. It includes most of the published delinquency cases the courts decided in 2006 and through June 5 in 2007.

Jurisdiction

When a petition alleging delinquency is filed after the maximum 30-day period allowed by statute, the trial court does not have subject matter jurisdiction.

In re M.C., ___ N.C. App. ___, ___ S.E.2d ___ (5/1/07).

Facts: On 11/1/05 a detective signed and verified a juvenile petition alleging that the juvenile was delinquent for committing misdemeanor larceny. The petition was filed on 12/2/05. After a hearing, the trial court adjudicated the juvenile delinquent and entered a disposition order. The juvenile appealed.

Held: Vacated and remanded for entry of an order dismissing the action.

The court of appeals held that the trial court lacked subject matter jurisdiction because the petition was not filed within the maximum time allowed by G.S. 7B-1703(b) – thirty days after the complaint was received.

Comment: This is the first published opinion saying what the court of appeals has said twice before in unpublished opinions. None of the cases address whether a new complaint about the same conduct would create a new 15- or 30-day period during which a petition could be filed properly.

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The court properly exercised personal jurisdiction when the juvenile waived any defect in service of process by making a general appearance.

The Rules of Civil Procedure apply in delinquency cases.

In re D.S.B., ___ N.C. App. ___, 634 S.E.2d 633 (9/19/06).

Facts: On 4/10/05 a petition was filed alleging that the juvenile was delinquent for committing second-degree forcible rape, and a secure custody order was issued. The juvenile and his mother and step-father were served with the petition, order, and notice of hearing on 4/15/05, the day of the juvenile’s first appearance and hearing on the need for continued secure custody. The juvenile and his parent and attorney participated in that hearing and subsequent proceedings relating to discovery, probable cause, adjudication, and disposition without objecting to the sufficiency of service of process.

On appeal, the juvenile argued that the trial court lacked personal jurisdiction when it conducted the initial hearing on the same day he was served with the petition and summons.

Held: Affirmed.

The court of appeals rejected that argument, holding that the juvenile made a general appearance by participating in the proceedings without contesting service of process or personal jurisdiction. The court reiterated its earlier holding that the Rules of Civil Procedure apply in delinquency proceedings.

The trial court did not have jurisdiction to grant a motion to amend the petition after an appeal was perfected.

In re B.D.W., 175 N.C. App. 760, 625 S.E.2d 558 (2/7/06).

Facts: The juvenile was adjudicated delinquent for two counts of second-degree kidnapping, a count of common law robbery, and two counts of simple assault. After the juvenile perfected an appeal, the trial court granted the state’s motion to amend the kidnapping petitions to allege the purpose for which the juvenile unlawfully restrained the victims.

Held: Vacated and remanded.

The trial court did not have jurisdiction to consider or grant the state’s motion to amend the petition after the juvenile had perfected his appeal. Jurisdiction of the trial court during appeal is limited to orders affecting the custody or placement of the juvenile.

Petitions

A petition alleging a delinquent act must satisfy the same criteria as an indictment.

In re B.D.W., 175 N.C. App. 760, 625 S.E.2d 558 (2/7/06).

Facts: The juvenile was adjudicated delinquent for two counts of second-degree kidnapping, a count of common law robbery, and two counts of simple assault. On appeal, the juvenile argued that the petitions alleging the offenses were defective.

Held: Vacated and remanded.

1. Because the petitions did not allege one of the essential elements of the offense of kidnapping, *i.e.*, purpose, the court of appeals vacated the adjudications for those offenses.
2. Because the two adjudications contained all of the elements of the lesser included offense of false imprisonment, the court of appeals remanded for entry of adjudications for two counts of false imprisonment and a consistent disposition.

In re S.R.S., ___ N.C. App. ___, 636 S.E.2d 277 (11/7/06).

Facts: The juvenile petition alleged that the juvenile was delinquent for communicating threats, based on his telling a teacher that he was going to harm her daughter. On appeal from adjudication and disposition orders, the juvenile argued that the petition did not allege the essential elements of the offense and should have been dismissed. Specifically, he argued that the petition was defective because it alleged that he threatened to injure “the person and property” of the teacher, when he actually was being charged only for threatening to harm the teacher’s child.

Held: Affirmed with respect to this issue. (Also see the discussion below under “Dispositions.”)

1. Although the juvenile did not make this argument in the trial court, fatal defects in a juvenile petition are jurisdictional and may be raised at any time.
2. Juvenile petitions generally are held to the same standards as criminal indictments. Like an indictment, a petition
 - must give the juvenile notice of every element of the offense alleged.
 - does not have to include exact language from the statute.
 - is not required to state every element of a charge, if it alleges facts that support every element of the offense.
 - “should not be subjected to hyper technical scrutiny with respect to form.”

3. The petition was sufficient because it referred to the proper statute, specifically described the conduct for which the juvenile was being charged, correctly named the victim, and gave the juvenile sufficient notice to prepare a defense.

Juvenile's Admission

Before accepting a juvenile's admission, the trial court must personally address the juvenile regarding all six of the questions set out in G.S. 7B-2407(a).

This duty exists even if the juvenile has signed a transcript of admission.

In re A.W., ___ N.C. App. ___, 641 S.E.2d 354 (3/6/07).

Facts: The juvenile appealed from an order that adjudicated him delinquent, based on his admission to possessing marijuana with intent to sell and deliver, and imposed a disposition. The juvenile's attorney filed an *Anders* brief, asking the court of appeals to review the record for plain error.

Held: Reversed and remanded.

The trial court committed reversible error by accepting the juvenile's admission without satisfying all of the requirements of G.S. 7B-2407(a). The court of appeals found no indication in the transcript that the court had informed the juvenile of his right to remain silent, the risk that any statement he made might be used against him, or his right to deny the allegations. The fact that the juvenile signed a transcript of admission did not relieve the trial court of the duty to orally address the juvenile about all of the questions in G.S. 7B-2407(a).

The juvenile should have been allowed to withdraw his admission when the court stated, and the transcript of admission showed, a maximum possible period of commitment shorter than the maximum stated in the commitment order.

In re D.A.F., ___ N.C. App. ___, 635 S.E.2d 509 (10/17/06).

Facts: The juvenile was alleged in four petitions to be delinquent for first-degree sex offenses. He waived probable cause and admitted to one count of first-degree sex offense. The other petitions were dismissed. In addressing the juvenile the court said, as did the transcript of admission, that the most restrictive

disposition the juvenile could receive was commitment to the Department of Juvenile Justice and Delinquency Prevention (DJJDP) for placement in a youth development center for a minimum of six months and a maximum of his 19th birthday. The court committed the juvenile to DJJDP, and the order stated that the commitment was for a minimum period of six months and a maximum of the juvenile's 21st birthday.

Held: Reversed and remanded, with all four charges reinstated. Acceptance of the juvenile's admission was error where the court's inquiry pursuant to G.S. 7B-2407 and the transcript of admission referred to a shorter absolute maximum period of commitment than was stated in the commitment order.

The statute requiring the court to make specific inquiries before accepting a juvenile's admission does not apply when a juvenile admits the allegations in a motion to revoke probation.

In re D.J.M., ___ N.C. App. ___, 638 S.E.2d 610 (1/2/07).

Facts: The juvenile was on probation after being adjudicated delinquent for larceny of a motor vehicle and assault inflicting serious injury. At a probation violation hearing, the juvenile through his attorney admitted the alleged violations of probation – being aggressive toward another juvenile at his placement and being discharged from the placement as a result.

Held: Affirmed. The court of appeals rejected the juvenile's argument that the trial court should not have considered his admission of the probation violations because the court did not comply with the inquiry requirements of G.S. 7B-2407. That statute, the court said, is not applicable to a juvenile's admission in a probation revocation hearing.

Adjudication

Supreme Court holds that crime against nature statute properly formed the basis for a delinquency adjudication when the juvenile had consensual sexual contact with a minor less than three years younger than he.

In re R.L.C., ___ N.C. ___, 643 S.E.2d 920 (5/4/07).

Facts: The juvenile, when he was 14, was dating a 12-year-old girl. The two had sexual intercourse and engaged in two separate incidents of fellatio in the

back of the girl’s mother’s vehicle in a parking lot while her parents were bowling. More than a year later, the girl told an officer, who was investigating a fight between her and another girl, about her sexual conduct with the juvenile. The officer questioned the juvenile, who admitted that the girl had performed fellatio on him two or three times. Three juvenile petitions were filed alleging that the juvenile was delinquent for committing a crime against nature with the girl in violation of G.S. 14-177. The trial court dismissed one of the petitions for insufficient evidence and adjudicated the juvenile delinquent based on the other two. At disposition, the court placed the juvenile on six months of unsupervised probation and ordered that he have no contact with the girl. The juvenile appealed and the court of appeals affirmed in a divided opinion.

Held: Affirmed.

1. The Supreme Court refused to consider arguments that the adjudication violated equal protection or that the crime against nature statute was facially invalid based on *Lawrence v. Texas*, 539 U.S. 558 (2003), because these arguments were not made to the trial court or the court of appeals, were not set out in the dissenting opinion in the court of appeals, and were not set out in the notice of appeal, the assignments of error, or the juvenile’s brief. The court limited its analysis to questions of statutory construction and whether the statute as applied to the juvenile was unconstitutional.
2. The General Assembly included age differential elements in several statutes setting out criminal sex offenses. The fact that it did not do so in the crime against nature statute indicates that no age differential element was intended, and the court refused to read one into the statute.
3. Applying the “rational basis” test to the statute as applied to the juvenile, the court concluded that the state could have a legitimate interest in preventing sexual conduct between minors, promoting proper notions of morality among youth, and promoting a healthy young citizenry. The court held that application of the statute in cases such as this one is a reasonable means of promoting a legitimate state interest and did not violate the juvenile’s due process rights.

Concurrence: Justice Martin concurred in the result, emphasizing that the statute was unambiguous and that its plain meaning made the application of canons of statutory construction unnecessary.

Dissent: Justice Timmons-Goodson, joined by Justice Hudson, dissented on the basis that she did not think the General Assembly intended that the juvenile’s conduct be subject to criminal prosecution.

Admission of juvenile’s confession resulting from interrogation at school was “plain error.”

In re W.R. ___ N.C. App. ___, 634 S.E.2d 923 (10/3/06), temporary stay allowed, 360 N.C. 647, 637 S.E.2d 544 (10/26/06).

Facts: The school principal and assistant principal took the 14-year-old juvenile from his class to the principal’s office after receiving a phone call from a parent. Both questioned the juvenile about whether he had anything in his possession that he should not have, and he responded that he did not. At some point the school resource officer arrived, also questioned the juvenile, and, after the juvenile emptied his pockets, conducted a “basic search.” The questioning lasted off and on for about 30 minutes, and the resource officer was there most of the time, including any time the principal or assistant principal left to question others. When told that others claimed that he had brought a knife to school the day before, the juvenile admitted that he had done that. At adjudication, the only evidence about the knife was the juvenile’s confession, which was admitted without objection. The juvenile was adjudicated delinquent and placed on Level 1 probation for six months.

Held: Vacated. The court of appeals applied the “plain error” rule and determined that

1. the juvenile was “in custody” when the questioning took place, and his confession should not have been admitted since he was not given the required warnings; and
2. because the confession was the only evidence about the knife, the juvenile established that he would not have been adjudicated delinquent without that evidence, satisfying the requirement that the plain error resulted in miscarriage of justice or denial of a fair hearing.

Possession of closed pocketknife on school property violates G.S. 14-269.2(d).

In re B.N.S., ___ N.C. App. ___, 641 S.E.2d 411 (3/6/07).

Facts: The juvenile was adjudicated delinquent for possessing a weapon on school property, pursuant to G.S. 14-269.2(d). The weapon was a pocketknife with a 2.5 inch blade, which was closed when the knife was found in the juvenile’s jacket pocket. The juvenile argued on appeal that the pocketknife was not a weapon for purposes of the statute.

Held: Affirmed.

The court of appeals held that the evidence was sufficient to support the delinquency adjudication.

Considering both case law and legislative intent, the court concluded that the pocketknife was a weapon for purposes of the statute and that the operability of the pocketknife was irrelevant.

Evidence was sufficient to support an adjudication of delinquency for misdemeanor possession of stolen property but not felonious possession of stolen property.

In re J.H., ___ N.C. App. ___, 630 S.E.2d 457 (6/6/06), affirmed per curiam, 361 N.C. 110, 637 S.E.2d 538 (12/15/06).

Facts: Nine days after the juvenile's mother's car disappeared, she located her car and the juvenile at a home with an adult and several other teenagers. When asked in court whether the juvenile had said whether he took the car, the juvenile's mother testified that the juvenile "confessed." She then testified, however, that the juvenile had said nothing to her about taking or driving the car. The trial court adjudicated the juvenile delinquent for felonious possession of stolen property.

Held: Reversed in part and remanded.

The court of appeals held that because there was no evidence as to the value of the car, the evidence supported only an adjudication for misdemeanor possession of stolen property.

Sufficient evidence supported an adjudication for ethnic intimidation based on the content of e-mail sent by a student to an assistant principal.

In re B.C.D., 177 N.C. App. 555, 629 S.E.2d 617 (5/16/06).

Facts: An African-American assistant principal at a high school received an e-mail later determined to have been sent by the juvenile, a student, who previously had been disciplined by the assistant principal for using racial epithets on a school bus. In the e-mail, the juvenile used a racial epithet [starting with the letter "n" and consisting of six letters] in describing her and stated that if she ever suspended somebody for using that racial epithet, the KKK would show up on her door step. It further stated that this was a promise, not a threat, and was signed "KKK." The juvenile was adjudicated delinquent for violating the ethnic intimidation statute, GS 14-401.14.

Held: Affirmed.

The court of appeals held that sufficient evidence supported the juvenile's adjudication of ethnic

intimidation, rejecting the juvenile's argument that the state had failed to prove that he had communicated a threat to assault the assistant principal or that he had acted for a racially-motivated reason.

Circumstances did not justify officer's "stop and frisk" of the juvenile.

Admissible evidence was sufficient to support an adjudication for burning a government building and obstructing or interfering with a law enforcement officer.

Findings were not sufficient for a determination of whether the juvenile was in custody when he confessed.

In re J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239 (3/21/06).

Facts: An officer stopped the juvenile, an Hispanic male wearing gang attire and baggy pants, at a service station after receiving a report of a suspicious person, an Hispanic male, at that site. He patted down the juvenile and found a can of spray paint and a box cutter with an open blade. He drove the juvenile to the site of graffiti sprayed with the same color paint as that in the juvenile's possession, and the juvenile admitted that he had sprayed the graffiti. The officer then took the juvenile to the police station, where he continued to give a false name until another officer recognized him and called him by his correct name. An officer patted down the juvenile again and found fireworks, which the juvenile was allowed to keep. While the juvenile was left in an interview room with the door partly open, an officer saw the juvenile try to light something and saw a 2- or 3-foot flame come out the door of the interviewing room and up a wall. Petitions were filed alleging that the juvenile was delinquent for (1) setting fire to or burning a government building; (2) damaging real property; (3) resisting, delaying and obstructing an officer; and (4) carrying a concealed weapon. The trial court adjudicated the juvenile delinquent for these offenses and committed him to the Department of Juvenile Justice and Delinquency Prevention for an indefinite term.

Held: Adjudication order affirmed in part, reversed in part, and remanded in part. (Also see the discussion below under "Dispositions.")

1. The trial court erred in denying the juvenile's motion to suppress evidence obtained as a result of the "stop and frisk." Information on which the officer based the stop did not support a reasonable

suspicion that the juvenile was engaged in criminal activity. Because the stop was illegal, the spray paint can and box cutter found on the juvenile were inadmissible. Facts leading the court to distinguish this case from others in which it has upheld stops, included:

- The report referred to a “suspicious person” but no particular activity.
 - The report referred only to “a Hispanic male” and included nothing about attire, physical characteristics, approximate age, etc.
 - The stop occurred at 6:00 p.m. on a summer evening in front of an open business.
 - The officer noticed the “bulge” that was the can of spray paint only after stopping the juvenile.
 - There had been no reports of criminal activity in the area that day.
2. The court of appeals could not rule on the juvenile’s argument that his admission of creating graffiti should have been excluded. The juvenile was 13 years of age at the time and no parent, guardian, or custodian was present. However, there were not sufficient findings to determine whether the juvenile was “in custody” when he made the statements.
 3. The trial court did not err in denying the juvenile’s motion to dismiss the allegation of burning a government building or the allegation of resisting, delaying, and obstructing an officer. The state presented evidence of each element of the offenses. The fact that the stop was unlawful did not give the juvenile leave to give a false name, thus delaying and obstructing the officer’s investigation.

Where there was no motion to dismiss, the appellate court will not consider the sufficiency of the evidence.

Denying motion to close the adjudication hearing was not error.

Judge did not err in finding compelling reasons to deny juvenile’s release pending appeal.

In re K.T.L., 177 N.C. App. 365, 629 S.E.2d 152 (5/2/06), review denied, ___ N.C. ___, 642 S.E.2d 442 (1/25/07).

Facts: The petition alleged that the eight-year-old juvenile committed involuntary manslaughter by hitting or pushing a three-year-old child and then throwing him into a septic tank where the child drowned. Both the juvenile and the state moved that

the hearing be closed to the public, and the trial court denied the motion. After adjudicating the juvenile delinquent for involuntary manslaughter and hearing additional evidence for disposition, the court ordered that the juvenile be placed in the custody of the county DSS so that he could be placed in a Level III or IV residential treatment facility for up to 90 days to evaluate his emotional needs. The court also placed the juvenile on intensive probation for one year and ordered that the matter be reviewed within three months to consider the results of the evaluation and any recommendations about treatment and placement. The juvenile appealed the adjudication and disposition orders. The court entered a “temporary order affecting custody” with written findings ordering that pending appeal the juvenile be in DSS custody and in a treatment facility for up to 90 days.

Held: Affirmed.

1. Because the juvenile failed to make a motion to dismiss at the close of the evidence the court of appeals declined to consider the sufficiency of the evidence.
2. The trial court did not abuse its discretion in refusing to close the hearing after holding a hearing on the issue, considering the factors set out in G.S. 7B-2402, hearing arguments, and making detailed findings.
3. Both the dispositional order and the order affecting placement pending appeal were authorized by the Juvenile Code, and the trial court did not err in
 - a. ordering the juvenile to be placed in the custody of DSS (with a review hearing within 90 days) under the provisions of G.S. 7B-2506(1)(c) and G.S. 7B-906(a); and
 - b. finding compelling reasons to place the juvenile in the custody of DSS and placement in a residential treatment facility pending appeal.

Disposition

The trial court did not err in refusing to dismiss the petition, continuing the disposition hearing, or placing the juvenile in detention pending the disposition.

In re R.D.R., 175 N.C. App. 397, 623 S.E.2d 341 (1/3/06), review denied, 361 N.C. 219, 642 S.E.2d 447 (1/25/07).

Facts: While in court the juvenile had mouthed to another juvenile who had agreed to testify against him, “I’m going to kick your ass.” The witness answered

affirmatively when asked by a court counselor whether the juvenile had threatened him. At one hearing the juvenile was adjudicated delinquent for breaking and entering, trespass, and injury to real property. The judge reviewed another pending petition alleging intimidation of a witness, continued disposition on the misdemeanors until six days later when adjudication on the pending petition was scheduled, and ordered the juvenile to detention pending that hearing.

Held: Affirmed.

1. The state's evidence of intimidation of a witness was sufficient to withstand a motion to dismiss.
2. The trial court did not err in continuing disposition to the date of a hearing on another petition.
3. The court did not err in placing the juvenile in detention pending that hearing, since the court's order referred to two statutory bases for detention:
 - a. The juvenile was charged with a felony and had demonstrated that he was a danger to property or persons, and
 - b. The juvenile had been adjudicated delinquent and should be in secure custody pending the disposition hearing.

The trial court may not make a wholesale delegation to the court counselor of discretion to determine terms of probation.

In re S.R.S., ___ N.C. App. ___, 636 S.E.2d 277 (11/7/06).

Facts: The juvenile was adjudicated delinquent for misdemeanor communicating threats, for telling a teacher that he was going to harm her daughter. At disposition the trial court placed the juvenile on probation with terms that included (1) abide by rules set by the court counselor or the juvenile's parents, including rules about a curfew and with whom he associated; (2) cooperate with any out of home placement if deemed necessary or arranged by the court counselor, including a wilderness program; and (3) cooperate with any counseling recommended by the court counselor and comply with any assessments recommended by the court counselor.

Held: Affirmed in part; reversed in part. (Also see the discussion above under "Petitions.")

The court of appeals affirmed the first probation term (abide by rules set by the court counselor or the juvenile's parents) because it closely resembled statutory wording of permissible conditions of probation. The court reversed with respect to the other two probation conditions, relying on *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d 395 (2003), which held that the trial court may not delegate its discretion to

others, including the court counselor. The record contained no finding or evidence that the juvenile might require out-of-home placement or any specific type of counseling or assessment.

The trial court is not required to exhaust less restrictive alternatives before committing a juvenile to a youth development center.

In re D.A.F., ___ N.C. App. ___, 635 S.E.2d 509 (10/17/06).

Facts: The juvenile waived probable cause and admitted to one count of first-degree sex offense. At disposition, the juvenile's attorney argued that the juvenile should be sent to a specific treatment facility in Pennsylvania. The trial court instead committed the juvenile to DJJDP for a minimum period of six months and a maximum of the juvenile's 21st birthday.

Held: Reversed and remanded on issue of accepting the juvenile's admission. (Also see the discussion above under "Juvenile's Admission.")

The court of appeals rejected the juvenile's argument that the trial court erred by failing to exhaust community resources before ordering commitment. The Juvenile Code, the court pointed out, no longer requires that less restrictive alternatives be exhausted, but requires the court to order the most appropriate disposition in light of the protection of the public, the juvenile's needs, and other factors. The court of appeals found that the trial court's determination was reasoned and not arbitrary, and that the trial court had not abused its discretion in ordering commitment.

The trial court did not abuse its discretion in denying a continuance or in ordering a Level 3 disposition.

In re D.A.S., ___ N.C. App. ___, 643 S.E.2d 660 (5/1/07).

Facts: While on probation for simple assault the juvenile disrupted a class at school, threw items across the room, used profanity toward the teacher, and kicked a door the teacher was holding open, causing a sprain to the teacher's wrist. The case came to court on a petition alleging assault on a government employee and a motion for review alleging violation of probation. The trial court adjudicated the juvenile delinquent for the offense alleged, found that the juvenile had violated probation, and entered a Level 3 commitment disposition, committing the juvenile for a minimum period of six months.

Held: Affirmed.

1. The trial court did not abuse its discretion in denying the juvenile’s motion to continue the disposition hearing to obtain a copy of a psychological evaluation that had been performed several years earlier, when a risk and needs assessment and more current psychological information were available to the court.
2. Where the juvenile was adjudicated delinquent for a serious offense and had a high delinquency history level, the juvenile did not establish that the court abused its discretion in ordering a Level 3 disposition.
3. The trial court did not err in directing the prosecutor to ask the court counselor to clarify his recommended disposition.

A stayed commitment can be ordered only when commitment is an available disposition.

A juvenile’s “points” are used to determine the juvenile’s delinquency history level for purposes of disposition. Points are not relevant at probation violation hearings.

In re T.B., ___ N.C. App. ___, 631 S.E.2d 857 (7/18/06).

Facts: The juvenile was adjudicated delinquent after admitting allegations of misdemeanor possession of stolen goods and assault inflicting serious injury. The court placed him on supervised probation for one year. [Level 1 disposition]

Just under a year later the court held a review hearing at which the juvenile admitted violating various conditions of his probation. After receiving information and concluding that the juvenile had enough (delinquency history) points to qualify for commitment, the trial court extended his probation for one year with new conditions, including that (1) he was on a “stayed commitment to training school;” (2) he have twenty-eight 24-hour periods of secure custody, to be used at the court counselor’s discretion; (3) he remain on intensive probation until released by the court counselor; and (4) he have no unexcused absences, tardies, or suspensions. [Level 2 disposition]

The court scheduled another hearing to be held several weeks later for a report on the juvenile’s conduct. At that hearing the court counselor reported and testified that the juvenile was out of control, violating probation conditions, using alcohol and drugs, and affiliating with gang members. Without making additional findings of fact, the trial court ordered an indefinite period of commitment based on the stayed commitment that was ordered at the previous hearing. [Level 3 disposition] The juvenile appealed.

Held: Reversed and remanded.

Because commitment is not an authorized Level 2 disposition, the trial court did not have authority at the probation violation hearing to order the stayed commitment. At Level 2, the court may suspend imposition of a more severe “statutorily permissible” disposition. Because commitment was not available as a disposition at that point, the court lacked authority to order a stayed commitment or later impose commitment based on the earlier probation violation order.

The juvenile’s points, or delinquency history level, were not relevant at the probation violation hearing.

In re J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239 (3/21/06).

Facts: The juvenile was adjudicated delinquent for (1) setting fire to or burning a government building; (2) damaging real property; (3) resisting, delaying and obstructing an officer; and (4) carrying a concealed weapon. At disposition, the court committed him to the Department of Juvenile Justice and Delinquency Prevention for an indefinite term.

Held: Both the commitment order and the order denying the juvenile’s release pending the appeal were vacated and remanded. (Also see the discussion above under “Petitions.”)

On appeal, the state conceded error with respect to

1. the trial court’s failure to specify in the commitment order the maximum time the juvenile could remain committed, and
2. the trial court’s failure to make findings about compelling reasons for denying the juvenile’s release pending the appeal.

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