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Juveniles

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JUVENILES

State ex rel. R.S. v. Trent, 289 S.E.2d 166 (W. Va. 1982)
State ex rel. H.K. v. Taylor, 289 S.E.2d 673 (W. Va. 1982)
State ex rel. B.S. v. Hill, 294 S.E.2d 126 (W. Va. 1982)

During the survey period, the supreme court continued to delineate the rights of juvenile offenders, particularly in relation to incarceration for rehabilitative purposes. The court stressed the responsibility of all relevant community service agencies, including the courts, to participate actively in individual treatment plans in the least restrictive alternative placement. The court also stressed the need for strict compliance with the guidelines set forth in previous cases for treatment of the juvenile offender.

In *State ex rel. R.S. v. Trent*,[1] the court reiterated that the West Virginia Code requires the juvenile court to give precedence to the least restrictive of the named dispositional alternatives that is consistent with the best interest of the public and the child.[2] Before ordering the incarceration of a child adjudicated delinquent, the court must, at the dispositional hearing, set forth upon the record the facts and inquiry that lead to the conclusion that no less restrictive alternative is appropriate. The proper test is not in terms of what reasonable alternatives are *available* in the state but "rather what reasonable alternatives could be afforded by a humane and enlightened state, solicitous of the welfare of its children."[3] The record, according to *Trent*, must show affirmatively that the child's behavior is not a result of social conditions beyond his or her control, that the child will be dangerous if any other alternative is used, or that the child will not cooperate with a treatment program absent physical restraint.[4]

Trent further held that a child who is mentally incapable of conforming to legal norms and cannot restrain himself from antisocial acts (being a danger to himself or others) thereby comes within the definition of "mental illness" and shall be so treated.[5]

Additionally, the court stated specifically in *Trent* that the circuit court of origin is required by the Code[6] to defer to the discretion of the director of a correctional institution when that director determines that the incarcerated child will not be rehabilitated by further incarceration. When the director thus recommends that the child be returned to custody of the court for alternative placement, the court is required to take steps to implement an appropriate

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[1] 289 S.E.2d 166 (W. Va. 1982).

[2] W. VA. CODE § 49-5-13(b) (1982).

[3] State *ex rel.* H.K. v. Taylor, 289 S.E.2d 673, 677 (W. Va. 1982) (quoting State *ex rel.* Harris v. Calendine, 283 S.E.2d 318, 321 (W. Va. 1973)).

[4] *Trent*, 289 S.E.2d at 168.

[5] *Id.*

[6] W. VA. CODE § 49-5-13(b)(5) (1982) reads in part: "Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense, with discretion as to discharge to rest with the director of the institution, who may release the child and return him to the court for further disposition. . . ."

alternative disposition. "The court must act affirmatively and in good faith to secure proper custody of a juvenile whom the director of a correctional institution has determined to be unamenable to treatment by further incarceration."[7]

The court in *Trent* concluded that a delinquent child has both a statutory and constitutional right to treatment and that all officers and employees of the state charged with implementing juvenile law are required to act in the best interests of the child and public, by establishing an individualized treatment plan for every adjudicated delinquent child.[8]

The petitioner in *Trent* filed for a writ of habeas corpus and a writ of mandamus to the circuit court requiring release from the West Virginia Industrial School for Boys and placement in an appropriate residential treatment facility. Petitioner had a history of delinquency since the age of eight, having been expelled from school in third grade and having a history of drug and alcohol abuse since the age of eleven. He was charged with several counts of breaking and entering, shoplifting, auto theft, and destruction of property. Test results indicate that he suffers from organic brain syndrome, antisocial personality disturbance, borderline mental retardation and possible learning disabilities, prognosis from below average to poor.

The last time petitioner was committed to the Industrial School, the Superintendent wrote a letter to the committing judge recommending an immediate alternative placement, since further incarceration was not in petitioner's best interest. The circuit judge wrote to the Department of Welfare requesting such a placement. Three months later, the Superintendent again requested a placement, having received no response. One month later, the Superintendent wrote again, this time suggesting two alternative out-of-state placements. The petitioner then filed his writs.

The supreme court found that upon the record of the dispositional hearing there was no clear factual showing of the necessity for this most restrictive placement. While the facts were before the circuit court at the time of the hearing, they are not mentioned in the dispositional order. *Trent* makes clear that the final court must delineate the facts and alternatives clearly on the record to withstand review.[9]

The court also emphasized that § 28-1-2(c) provides that "no youth who is mentally ill or significantly mentally retarded shall be committed to, or retained by, the commissioner of corrections, but shall be returned to the committing court for further disposition."[10] The court held that where a question is raised as to the mental capacity of the child, as in this case, the court is obligated to inquire and state its findings on the record. The inquiry should include multi-professional evaluations by such agencies as Health, Welfare, Education and Corrections. If the child comes within the aforementioned definition of mental illness, he shall be treated accordingly.

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[7] *Trent*, 289 S.E.2d at 168.

[8] *Id.*

[9] *Id.* at 172-73.

[10] W. VA. CODE § 28-1-2(c) (Supp. 1982); *see supra* note 2 and accompanying text.

Notwithstanding the juvenile's mental capacity, if the director of the correctional facility recommends alternative placement, then the court is obligated to take such steps. "It is irrelevant for purposes of W.Va. Code § 49-5-13(b)(5) whether the director's recommendation that custody be transferred is based on the success or failure of the institution's program to accomplish the rehabilitation of the child."[11] Under the facts of this case, the court found clear evidence of the need for the issuance of the writ of habeas corpus.

The court concluded with a strong statement of the need for cooperation among all agencies charged with the enforcement of juvenile law. The court listed specific duties required of the Departments of Welfare, Health, and Corrections. The court then went further and stressed that the courts and the Department of Welfare are not limited to their own resources and strongly encouraged the involvement of valuable community resources to further effect the rehabilitative purpose of juvenile law.

In *State ex rel. H.K. v. Taylor*,[12] the court stressed that under *no* circumstances may a status offender be "incarcerated in a secure, prison-like facility with children adjudged delinquent because of criminal activity."[13] Therefore, the court ruled that a status offender cannot be sent to a secure, prison-like facility for diagnosis or evaluation.[14] However, such a status offender may be housed with criminal offenders in half-way houses or other modern facilities when it can be shown that the welfare of both kinds of offenders will be improved and no threat exists to the well-being of the status offender.

In *Taylor*, a status offender was found delinquent, on the petition of his mother and step-father, when he was ten years old. He was sent to the Industrial School for Boys with his hands and feet in shackles, handcuffed to another juvenile (a seventeen year old criminal offender). H.K. was sent to the Industrial School for thirty days of evaluation. The court found that these circumstances were precisely the type of mixing of criminal and status offenders the court sought to prevent.

In *State ex rel. B.S. v. Hill*,[15] however, the Daugherty Status Offense Facility was found to be a non-secure facility and, thus, housing status offenders there does not violate current West Virginia law.[16] The court additionally held

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[11] *Trent*, 289 S.E.2d at 174.

[12] 289 S.E.2d 673 (W. Va. 1982).

[13] *Taylor*, 289 S.E.2d at 677 (quoting *Calendine*, 233 S.E.2d at 321).

[14] *Taylor*, 289 S.E.2d at 679.

[15] 294 S.E.2d 126 (W. Va. 1982).

[16] W. VA. CODE § 49-5B-3(7) and (8) (1980) distinguishes secure and nonsecure facilities as follows:

> (7) "Secure facility" means a facility which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.
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> (8) "Nonsecure facility" means a facility not characterized by use of physically restricting construction, hardware and procedures and which provides its residents access to the surrounding community with minimal supervision.

that an out-of-control offender may be restrained in a non-injurious, passive physical restraint, as applied in this case, when done so carefully by two trained child care workers.[17]

Daugherty Center was opened in 1981, licensed by the Department of Welfare for housing status offenders in compliance with previous supreme court decisions. B.S. was incarcerated there for incorrigibility and truancy. The court recognized that status offenders may lose control upon occasion even in a well supervised and attentive environment. Under circumstances when physical restraint and isolation are absolutely necessary to help the juvenile regain personal control, restraint is acceptable. However, in this case (although passive restraint was found to be in order) the procedures followed in the dispositional hearing did not conform with *Trent* and the statutes. Therefore, B.S. was held to be entitled to another dispositional hearing. The court again stressed the importance of the requirements of § 49-5-13(b)[18] and the necessity of an individualized treatment plan.

In conclusion, the court recognized the "commendable" personal rapport and concern of trial judges for the children in their charge, "that they *care* about them."[19] The court noted that making a record may seem to "jeopardize the very trust, confidence, and reliance that a good judge seeks to gain from a youngster." However, the court continued, "we must have those findings and conclusions."[20]

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[17] The court defined out-of-control and passive restraints, respectively, as follows:
Out-of-control refers to instances when physical restraint is absolutely necessary to enable the juvenile to gain personal control of himself. *Hill*, 294 S.E.2d at 129. Passive physical restraint involves: "two child care workers gaining control of the child's legs not the child's arm. The child is then placed on the floor on his stomach. . . . Once the child is on the floor, his hands are to be placed in the small of his back at belt level. No pressure is to be applied on the child either by bending arms in a 90 degree angle or . . . putting pressure behind the individual's knees." *Id.*

[18] W. VA. CODE § 49-5-13(b) (1980) as construed by *Trent, supra* note 1 and accompanying text.

[19] *Hill*, 294 S.E.2d at 130.

[20] *Id.* at 130.