SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1491-15T3

STATE OF NEW JERSEY IN THE
INTEREST OF I.T., a minor.

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Submitted February 14, 2017 — Decided March 7, 2017

Before Judges Koblitz and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FJ-02-88-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alison Perrone, Designated
Counsel, on the brief).

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent (Catherine A. Foddai,
Senior Assistant Prosecutor, of counsel and
on the brief; Matthew Fitzpatrick, Assistant
Prosecutor, on the brief).

PER CURIAM

In this appeal from an order adjudicating a juvenile
delinquent and requiring restitution, the juvenile argues that the
court deprived him of his right to counsel. We disagree and
affirm.

In June 2014, then thirteen-year-old I.T. was charged with conduct that, if he were adjudicated as an adult, would constitute fourth-degree theft, N.J.S.A. 2C:20-3.[1] I.T. appeared without counsel before a hearing officer who determined that the State's evidence proved beyond a reasonable doubt that I.T. committed the charged act. The hearing officer recommended that I.T.'s sentence be postponed so he could complete a six-month period of adjustment (POA) and make restitution. I.T.'s mother, who attended the hearing, disagreed with the recommendation and asked for review by the judge assigned to the matter.

In accordance with I.T.'s mother's request, the matter was referred to a Family Part judge and scheduled for an informal hearing to be held on November 18, 2014. I.T. was not represented by counsel nor did a prosecutor appear on behalf of the State. A sergeant for the local police department involved with the matter began his presentation by stating that it was "made clear to the juvenile and his family that no punitive measures were being sought." After the judge considered the testimony presented at the hearing, he found that the State proved beyond a reasonable doubt that I.T. committed the charged act, but postponed disposition to allow for a one-year POA. The order of disposition

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[1]   The facts surrounding the theft are not germane to our consideration of I.T.'s appeal.

entered by the judge required I.T. to make restitution in the amount of $675, find and maintain employment, and have no contact with his victim. The order further stated that "compliance with the conditions of the [o]rder will result in the matter being dismissed on November 18, 2015 . . . ."

By October 2015, I.T. had yet to make restitution. The trial court re-listed the matter for November 10, 2015, before the same judge for a hearing. The order scheduling the hearing advised that the matter was now listed on the court's "formal" calendar and that I.T. "must be represented by an attorney."

I.T. appeared at the hearing with counsel. His attorney made an application for a new trial at which I.T. could be represented by counsel. After considering the parties' arguments, the judge denied I.T.'s motion, converted the POA to an adjudication without committing I.T. or imposing any period of supervisory probation. The judge entered an order of disposition that stated, "adjudication of delinquency based on [I.T.'s] failure to pay court ordered restitution" and required restitution be paid within thirty days or the restitution amount would be reduced to a civil judgment.

This appeal followed.

On appeal, I.T. contends that his "adjudication of delinquency must be reversed and the matter remanded for a new

hearing at which [he] is represented by counsel." The State disagrees and contends that I.T. did not have a "right to the assistance of counsel at an informal hearing where [he did] not face commitment or a consequence of magnitude as a potential disposition."

We conclude that the juvenile's argument in this case is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.
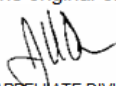
A child charged with conduct, which if committed by an adult would be a crime, is entitled to counsel "at every critical stage in the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile." N.J.S.A. 2A:4A-39(a). See also State ex rel. P.M.P., 200 N.J. 166, 175-76 (2009) (citing In re Gault, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451, 18 L. Ed. 2d 527, 554 (1967)); Pressler & Verniero, Current N.J. Court Rules, comment 2.2 to R. 5:3-4 (2017) (a juvenile is entitled to counsel when he is facing "the potential for institutional commitment or other consequence of magnitude").

Here, I.T. appeared before the hearing officer and the judge initially in informal proceedings where he was not facing the possibility of commitment or any other consequence of magnitude. A hearing officer cannot recommend incarceration or other

consequence of magnitude, see N.J.S.A. 2A:4A-74(d)(4); State ex rel. L.R., 382 N.J. Super. 605, 620 (App. Div. 2006), certif. denied, 189 N.J. 642 (2007), and "[u]nder our rules the juvenile may not be committed if his case is on the informal calendar" before a judge. State v. W., 115 N.J. Super. 286, 300 (App. Div. 1971) (citing State v. Interest of G.J., 108 N.J. Super. 186 (App. Div. 1969), certif. denied, 55 N.J. 447 (1970)), aff'd o.b., State v. R.W., 61 N.J. 118 (1972). "[A]bsence of counsel at the previous [informal] hearings [was] harmless beyond a reasonable doubt," G.J., supra, 108 N.J. Super. at 188, because I.T. was required to pay restitution only. He did not suffer a consequence of magnitude based on a finding following an uncounseled informal hearing.

Affirmed.

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