

RECORD IMPOUNDED

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THE APPROVAL OF THE COMMITTEE ON OPINIONS**

**SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NOS. FJ-15-0476-18
FJ-15-0569-18**

**STATE OF NEW JERSEY
IN THE INTEREST OF T.D.,**

a Juvenile.

APPROVED FOR PUBLICATION

August 12, 2019

COMMITTEE ON OPINIONS

Decided: April 1, 2019

Madeline Buczynski, Assistant Prosecutor, and Iva Krasteva, Assistant Prosecutor, for State of New Jersey, (Bradley D. Billhimer, Ocean County Prosecutor, attorney).

Leigh Kelsey O'Donnell, Assistant Deputy Public Defender, for T.D. (Joseph E. Krakora, Public Defender, attorney).

GRAMICCIONI, J.S.C.

This matter comes before the court as a case review post-disposition, following the recommendation of the Ocean County Probation Division that the matter be returned to court for Juvenile T.D.'s failure to complete thirty (30) hours of community service previously ordered by the court. For the reasons set forth below, this court hereby vacates all previously ordered community service hours.

Original Disposition

On April 26, 2018, T.D., then a seventeen-year-old juvenile, entered an admission before this court to one count of shoplifting, pursuant to N.J.S.A. 2C:20-11(b)(1), a disorderly persons offense if committed by an adult, and one count of obstructing the administration of law, pursuant to N.J.S.A. 2C:29-1(a), a fourth degree offense if committed by an adult. In exchange for T.D.'s admission, the State agreed to dismiss the remaining charges of aggravated assault, disorderly conduct and rioting under FJ-15-0569-18. The parties further agreed that T.D.'s disposition be deferred for twelve months, consistent with N.J.S.A. 2A:4A-43(b)(1) (hereinafter referred to as the "deferred disposition").

The parties also jointly agreed that the deferred disposition be conditioned upon T.D.'s successful completion of thirty hours of community service during the pendency of the deferred disposition. Importantly, at the outset of the hearing, when outlining the proposed plea agreement, the assistant prosecutor specifically indicated that "mandatory community service [was] required" under the shoplifting statute, and counsel for T.D. agreed.

Following the plea colloquy with T.D., this court entered an order which placed T.D. on the twelve-month deferred disposition to run concurrent on both charges, and indicated that compliance with conditions of the order would result in the matter being dismissed on April 25, 2019, assuming the

conditions were met. The court specifically ordered T.D. to complete thirty hours of community service as a condition of her deferred disposition.

Return for Disposition

The Ocean County Probation Division filed a “Return for Disposition” form on November 15, 2018. The Return for Disposition revealed that probation had attempted to connect T.D. with multiple sites where T.D. would be able to complete the required community service hours. In particular, on May 1, 2018, probation first placed T.D. at a church in Manahawkin, New Jersey, to perform the required community service hours. T.D., however, failed to complete any community service hours at that site, whereupon she was removed from that site on May 21, 2018, and then placed at another site in Toms River, New Jersey. T.D. failed to complete any community service hours at that second site, and to date has not completed any community service hours.

Upon receiving the Return for Disposition, this court scheduled a Continuance Review for December 12, 2018, at which time T.D. failed to appear. The court relisted the matter and attempted to provide the juvenile notice of the new court date of January 9, 2019. On that date, however, the juvenile failed to appear and the assistant prosecutor was ordered to investigate a proper address for T.D. The matter was relisted for February 6, 2019. On

February 6, 2019, T.D. again failed to appear. The assistant prosecutor represented that the Ocean County Prosecutor's Office had reached out to T.D.'s school, post office and Division of Child Protection and Permanency, and was advised that T.D. and her mother had moved and had not provided any forwarding address. The court declined the State's request for a bench warrant at that time, and ordered both the State and probation to continue to investigate a proper address for T.D. The matter again was relisted.

T.D. finally appeared in court with her mother on March 7, 2019, when the following exchange took place:

PROSECUTOR: [T.D.] has not completed any of the required mandatory community service Therefore, what Ms. O'Donnell and I have discussed is an adjournment to give the juvenile a compliance period where essentially she would need to do her community service as it wouldn't just be an adjudication, it would have to be some probationary period to resolve this matter because of the mandatory outstanding hours.

THE COURT: [To T.D.] So I'm so happy to see you here, because the last thing the court wanted to do was issue a bench warrant for you to come back here. We had a tough time finding you, but we finally found you. I am so happy that you are here today. I don't know if there is going to be a need for another court appearance, if there is, it is really important, it is your obligation to inform Ms. O'Donnell where you are. And if you don't appear again, based on your history of nonappearance, I will have to issue a bench warrant. . . . I don't want to do that, but when there is a history of nonappearance, it is up to the juvenile,

especially when you have been placed on a deferred disposition, to keep everyone up to date as to where you are. I say that not only for your benefit, but for the benefit of your mother It is really important that you keep in touch with Ms. O'Donnell.

MS. O'DONNELL (T.D.'s ATTORNEY): There is still time for her to complete those hours, given the fact that this deferred disposition does not currently terminate until the end of April . . . so there is time and she has expressed a willingness to work with probation to get those community service hours completed. . . . I do want to place on the record, Your Honor, and I don't know the exact nature and circumstances of when this all occurred, but there is some explanation, I believe, to [T.D.'s] lack of appearance as the family is experiencing homelessness at this time. I think that's important to note because I myself will represent that I will keep in contact with [T.D.] and [her mother]. I do have good working phone numbers for them, I do not have a permanent address though, at this time. . . . Despite the fact the family is experiencing difficulties, [T.D.] has expressed a willingness to complete those community service hours. . . . I don't have any other obviously viable alternative at this point to offer to the court because they are mandatory hours of community service . . . so, at least we are working toward some sort of solution to make sure that it can be addressed in the meanwhile.

THE COURT: [To T.D.] We want to work with you, but the problem with the shoplifting statute is it's mandatory. It's in the statute that I have to impose them. If this were something, based on what you're going through, if I could basically ignore that, I would do it, because I don't think it's consistent with the rehabilitative goals [of the Juvenile Code]. . . . I don't think anybody here wants you to . . . but the problem is with the shoplifting statute, that's what it says. . . .

I understand that you are going through some hardships . . . but you still have to make sure you are communicating with Ms. O'Donnell. I wish we had someone from probation here. I am going to direct the parties to reach out to probation to discuss viable alternatives to traditional community service. You can tell [Probation] Officer Davis, that I am asking on the record, if there is a way that we can work with this juvenile that can satisfy the community service hours because that's the big issue, which is I don't want you to be in violation of the statute, and I don't want to be in violation of the statute. . . . We just have to work with probation to find a way where you would be able to do those, consistent with the rehabilitative goals. We can waive [T.D.'s] appearance, if need be, if there is a mechanism that would work and I can certainly tweak my order.

On that date, absent any indication of viable alternatives to what appeared to be mandatory community service hours, the court entered an order adjourning the matter until April 10, 2019, to allow T.D. to come into compliance with the previously ordered community service hours (the "compliance period").

The court re-listed the matter to March 25, 2019, after advising the parties that it wished to revisit the applicability of the community service hours to T.D.'s deferred disposition. T.D. failed to appear for that court date, so the court again re-listed the matter for April 1, 2019, and waived T.D.'s

appearance in court.¹

Reached via telephone during the April 1, 2019, hearing, T.D. reiterated to the court under oath that she was indeed homeless. T.D. stated, in substance and in part:

I've been homeless since April 30, of 2018. . . . It's hard considering it's just me and my mom. We don't get any help. We have to pay for a hotel room every night and that's not cheap. We have to save money every day to survive.

T.D. added that she also was attending community college and working overnights to make ends meet.

Following these representations, the court, having exercised its authority pursuant to N.J.S.A. 2A:4A-45 to recall this matter before the expiration of the compliance period, vacated all remaining community service hours.

Governing Authority

The N.J. Code of Juvenile Justice, N.J.S.A. 2A:4A-20 to -48, authorizes a Family Part judge “to enter dispositions that comport with the Code's rehabilitative goals.” State in the Interest of C.V., 201 N.J. 281, 295 (2010); State in the Interest of J.L.A., 136 N.J. 370, 376-77 (1994). The Juvenile Code

¹ Probation provided an updated memorandum to the court dated March 28, 2019, confirming that T.D. had not completed any community service hours. Probation's memorandum did not offer for the court's consideration any alternatives to the community service hours.

articulates certain foundational purposes in N.J.S.A 2A:4A-21, to include the following:

Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public[.]

[N.J.S.A. 2A:4A-21(b).]

“A judge’s discretion in fashioning an appropriate disposition is, of course, informed by the express purposes of the Juvenile Code.” State in the Interest of D.A., 385 N.J. Super. 411, 416 (App. Div. 2006).

The Juvenile Code also requires the court to weigh several enumerated factors in determining the appropriate disposition in juvenile cases, including but not limited to:

(4) Whether the disposition supports family strength, responsibility and unity and the well-being and physical safety of the juvenile;

. . . .

(6) Whether the disposition recognizes and treats the unique physical, psychological, and social characteristics and needs of the child;

. . . .

(8) Any other circumstances related to the offense and the juvenile’s social history as deemed appropriate by

the court.

[N.J.S.A 2A:4A-43(a).]

N.J.S.A. 2A:4A-45 confers upon the court the authority to retain jurisdiction over any case in which it has entered a disposition, and to substitute any other disposition which it might have made originally. Consistent with this authority, the court may recall any matter previously before the court to change or modify a disposition at any time. See State in the Interest of R.M., 141 N.J. 434, 453 (1995); R. 5:24-5; R. 5:24-6. Mindful of the purposes of the Juvenile Code, this court exercised its authority to recall this matter.

Mandatory Criminal Penalties

In this matter, T.D. was charged in FJ-15-0476-18 with one count of shoplifting, pursuant to N.J.S.A. 2C:20-11. Under the shoplifting statute, an offender shall be sentenced to perform mandatory community service, see N.J.S.A. 2C:20-11(c), and a first-time offender shall be sentenced to perform at least 10 days² of community service. Ibid.

² Administrative Directive 1-01, entitled “Standards for Community Service Programs in New Jersey,” revised January 24, 2001, suggests guidelines for the imposition of community service hours for both adults and juveniles. Based on guidelines indicating that juveniles should be performing at least three community service hours one day each week, ten days of community service translates into a minimum of thirty hours.

In juvenile cases, however, a twelve-month deferred disposition does not automatically require the imposition of fines or penalties mandated by any criminal statute, other than those penalties expressly required under N.J.S.A. 2C:35. See State in the Interest of V.M., 279 N.J. Super. 535 (App. Div. 1995).

In State in the Interest of V.M., the juvenile defendant was charged with conduct, which if committed by an adult, constituted receiving stolen property, in violation of N.J.S.A. 2C:20-7. Ibid. In exchange for his guilty plea, the State agreed to recommend a twelve-month deferred disposition. The trial court accepted the joint recommendation and adjourned the formal entry of the disposition for a twelve-month period, but refused to assess the mandatory penalties under N.J.S.A. 2C:20-2.1, which statute sets forth additional penalties for individuals found guilty of automobile theft. The State appealed the trial court's order, contending that a deferred disposition was, in fact, a disposition under the Juvenile Code, and that, therefore, the mandatory fines and penalties were required. Id. at 613.

The Appellate Division affirmed the lower court's ruling and observed that the statutory section of the Juvenile Code governing the disposition of the juvenile cases, N.J.S.A. 2A:4A-43, "does not require the imposition of penalties mandated by statutes applicable to criminal proceedings." Id. at 537-

38. Interpreting the statutory language, the Appellate Division held that “the Legislature did not intend the theft penalties in N.J.S.A. 2C:20-2.1 to apply to a disposition in the form of a review period under N.J.S.A. 2A:4A-43(b)(1).”

Id. at 539. The court reasoned:

[I]t is incompatible with dismissal of the complaint to require imposition of mandatory penalties, unless specifically required by N.J.S.A. 2A:4A-43. . . . Surely, if the Legislature intended the penalties of N.J.S.A. 2C:20-2.1 to apply to a disposition under N.J.S.A. 2A:4A-43(b)(1), it would have expressly included N.J.S.A. 2C:20-2.1 in this section of the statute.

[Ibid.]

See also State in the Interest of N.S., 272 N.J. Super. 492, 497 (Ch. Div. 1993) (holding that the mandatory penalties outlined in N.J.S.A. 2C:20-2.1 did not apply to juveniles in the absence of specific language in the Juvenile Code attaching a specific penalty to a given offense).

Indeed, the Legislature has been explicit in its intention to apply other mandatory penalty provisions of the Criminal Code to juveniles who have been adjudicated delinquent. In point of fact, N.J.S.A. 2C:35-15 expressly subjects juveniles to the Mandatory Drug Enforcement and Demand Reduction Penalties for offenses under Chapter 35, see N.J.S.A. 2C:35-15 (applying the statute to “every person convicted of or adjudicated delinquent for a violation of any offense defined in this chapter”), and N.J.S.A. 2C:35-20 similarly

imposes mandatory laboratory fees in cases involving controlled dangerous substances to both adults and juveniles. See N.J.S.A. 2C:35-20(b) (“[A]ny juvenile adjudicated delinquent for a violation of this chapter, shall be assessed a laboratory analysis fee of \$25.00 for each adjudication.”). See also State in the Interest of N.S., 272 N.J. Super. at 497. The absence of such express language in N.J.S.A. 2C:20-11, the shoplifting statute, reveals the Legislature’s intent to exempt juveniles from these mandatory penalties.

Even where the penalty is directed specifically to juvenile offenders in unequivocal terms, the Appellate Division has held that certain mandatory penalties are “not mandated when the Family Part judge elects to defer a juvenile’s disposition pursuant to N.J.S.A. 2A:4A-43(b)(1).” State in the Interest of N.L., 345 N.J. Super. 25, 35 (App. Div. 2001). In State in the Interest of N.L., the Appellate Division concluded that the mandatory suspension or postponement of driver’s license privileges set forth in N.J.S.A. 2C:33-3.1 for individuals convicted of making a false public alarm pursuant to N.J.S.A. 2C:33-3, which specifically and unequivocally extends to juveniles, did not apply to juveniles who had been afforded a deferred disposition resulting in the dismissal of the complaint. Id. at 34. The court concluded that “it is incompatible with dismissal of the complaint to require imposition of the mandatory driver’s license privileges’ suspension or postponement in the

absence of a specific requirement to do so in N.J.S.A. 2A:4A-43(b)(1).” Id. at 33.

Accordingly, the mandatory community service hours set forth in the shoplifting statute, N.J.S.A. 2C:20-11, are not expressly or unequivocally applied to juveniles. See N.J.S.A. 2C:20-11. Nor are community service hours mandated when the court elects to impose a deferred disposition for shoplifting offenses. That the parties in this matter had assumed that the community service hours were mandatory does not automatically make them so. This is not to say that the imposition of community service hours in many juvenile dispositions are unwarranted; rather, community service is often a condition entirely consistent with the rehabilitative mandate of the Juvenile Code, especially in situations in which the community service hours are negotiated and agreed to by the parties in exchange for the benefit of a deferred disposition.

In this unique situation, however, the rehabilitative purposes of the Juvenile Code essentially would be thwarted if the court were to insist upon the successful completion of those hours. As stated, the record reveals that T.D. and her mother currently are experiencing homelessness, a fact that the State does not dispute. Forcing T.D. to complete thirty hours of community service would only impose a significant hardship upon this juvenile, who,

simply put, has enough on her plate.³

Conclusion

For the reasons set forth above, the thirty (30) hours of community service originally ordered on April 26, 2018 are hereby vacated.

³ Guidance provided from the Office of the Attorney General following the enactment of the amended shoplifting statute, P.L. 2000, Ch. 16, further cements the court's conclusions. On January 16, 2001, then Attorney General John J. Farmer, Jr., issued guidelines to all county and municipal prosecutors concerning the prosecution of shoplifting offenses. Section V. of the Attorney General Guidelines focused specifically on juveniles charged or adjudicated delinquent of shoplifting offenses. The Guidelines clearly stated, "P.L. 2000, Ch. 16 applies to juveniles only as to the grading of offenses under this Act. The mandatory terms of community service for first or second offenses, or the mandatory 90 day term of incarceration for third or subsequent offenses, imposed under N.J.S.A. 2C:20-11(c)(4), do not apply to juveniles." Attorney General Guidelines for Prosecution of Shoplifting Offenses 4 (Jan. 16, 2001) (emphasis added).