

Children's Law Center of Indiana



Delinquency

02/18/2008

In **J.S. v. State**, 881 N.E.2d 26 (Ind. Ct. App. 2008) the Court affirmed the juvenile court's judgment placing the fifteen-year-old juvenile, who was in the United States (U.S.) illegally, with the Department of Correction (DOC) rather than returning him to his native country. The juvenile did not appeal the true finding that he was a delinquent child for committing the offense of dealing in a schedule I controlled substance within 1,000 feet of a school, a Class A felony if committed by an adult. Additional facts are included in the issue discussion, below.

Given the serious nature of the juvenile's drug-related offense, the likelihood that he would reoffend, and the juvenile court's determination regarding his best interests, the Court found that the juvenile court did not abuse its discretion by placing the juvenile with the DOC, rather than returning him to his native country. *Id.* at 29. In so holding as a matter of first impression, the Court stressed that the juvenile had previously received the lenient penalty of returning him to Mexico and, instead of leading a law abiding life in his own country, he chose to illegally reenter the U.S. within one month. *Id.* On Appeal, the juvenile contended that placing him with the DOC rather than returning him to Mexico did not comply with IC 31-37-18-6, the statute setting forth factors that a juvenile court must consider when entering a dispositional decree. *Id.* at 28. In this regard, the juvenile argued that placing him with DOC was not the least restrictive option, his family wanted him to be brought back to Mexico, and he was "set up by a confidential informant." *Id.* In making its finding, the Court noted that (1) the statutory requirement that the juvenile court select the least restrictive placement is subject to the language "[i]f [the least restrictive placement is] consistent with the safety of the community and the best interest of the child;" (2) "there are times when commitment to a suitable public institution is in the best interest of the juvenile and society;" (3) the juvenile had previously been returned to Mexico without further punishment after committing a crime; (4) about one month later, the juvenile chose to leave his family in Mexico and illegally return to the U.S. with a counterfeit Mexican driver's license; (5) during the week following his illegal reentry into the U.S., he sexually involved himself with an exotic dancer who was the confidential informant, he purchased heroin three times, he injected heroin at least twice, and he ultimately was arrested for selling heroin within 1,000 feet of a school, an offense that would have exposed him to between twenty and fifty years of incarceration had it been committed by an adult; (6) the juvenile had unsuccessfully argued an entrapment defense at his hearing; (7) the juvenile court found that placement with DOC was in the juvenile's best interests, "due to his rehabilitation needs and the lack of concern by said child's family about his location and welfare;" and (8) the juvenile court found that, given the serious nature of the crime and the likelihood that the juvenile would again illegally reenter the U.S. if returned to Mexico, the "risk to the community [is] extremely high." *Id.* at 28-29 (citations omitted).