

Children's Law Center of Indiana



Delinquency

06/05/2009

In **C.C. v. State**, 907 N.E.2d 556 (Ind. Ct. App. 2009), the Court affirmed the juvenile court's adjudication of the juvenile as a delinquent child for dangerous possession of a firearm, a Class A misdemeanor if committed by an adult. On the evening of July 13, 2008, the juvenile, age seventeen, brought with him a shotgun when he joined three other teenage boys in a van. They drove to an alley where one of the other boys discharged the shotgun accidentally. Police, responding to a call regarding the discharge, stopped the boys' van which matched the description of the vehicle in the report. When the shotgun was discovered, the juvenile admitted it was his. He was originally charged with operating a vehicle without a license, a class C misdemeanor if committed by an adult, as well as with the dangerous possession of a firearm, but it was later dismissed by the State. The juvenile challenged the juvenile court's jurisdiction related to the firearm charge. Following a hearing on the jurisdiction issue and a denial hearing, the juvenile court made a true finding against the juvenile on the firearm charge. The juvenile appealed.

Contrary to the juvenile's contention, the juvenile court has jurisdiction with regard to this violation of IC 35-47-10-5 (the statute upon which the firearm charge is based), in that this statute fits within the category of "[o]ther proceedings specified by law," described in IC 31-30-1-1, the statute which lists the type of proceedings over which the juvenile court has exclusive original jurisdiction. *Id.* at 558. The juvenile contends that (1) the juvenile court committed fundamental error by exercising jurisdiction over the State's charge of dangerous possession of a firearm, *See Truax v. State*, 856 N.E.2d 116, 122 (Ind. Ct. App. 2006) (holding that where IC 31-30-1-4 divests juvenile court of jurisdiction, it was fundamental error for juvenile court not to transfer the case to criminal court); (2) the relevant statutes did not authorize the juvenile court to have jurisdiction in this case and that it should have transferred the case to criminal court; (3) neither a misdemeanor nor a felony violation of IC 35-47-10-5 qualifies as a "delinquent act" in that they would not be considered crimes if committed by an adult because the word "child" limits the statute's application to persons under the age of eighteen; and (4) if the violation is charged as a felony, it is automatically removed from the juvenile courts jurisdiction pursuant to IC 31-30-1-4. The Court, however, agreed with the State's contention that the statutes, as well as relevant legislative history reveal the legislature's intent to include a misdemeanor firearm charge within the jurisdiction of the juvenile court. The Court opined: (1) the juvenile court is a court of limited jurisdiction and may exercise its authority only in instances specifically designated by the legislature; (2) IC 35-47-10-5 states in relevant part that "[a] child who knowingly, intentionally, or recklessly ... possesses a firearm for any purpose other than a purpose described in section 1 of this chapter ... commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Class C felony if the child has a prior conviction under this section;" (3) IC 31-37-1-2 states, "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act that would be an offense

if committed by an adult, except an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-30-1;” (4) IC 31-30-1-4 specifies that the juvenile court does not have jurisdiction over individuals at least sixteen years old who are charged with certain crimes, including dangerous possession of a firearm by a child, “if charged as a felony;” (5) IC 31-30-1-11 states in pertinent part that “[I]f a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age, the court shall immediately transfer the case ... to the juvenile court;” (6) this rule in IC 31-30-1-11 would appear to include a violation of IC 35-47-10-5; (7) IC 31-30-1-1, which lists the types of proceedings over which the juvenile court has exclusive original jurisdiction, includes the category of “[o]ther proceedings specified by law;” (8) thus, it is clear that the legislature recognized that the list was not exhaustive and intended that juvenile jurisdiction extend to other laws applicable to children; (9) moreover, prior to 2008, when IC 35-47-10-5 said that the juvenile court does not have jurisdiction over a child’s alleged violation of “IC 35-47-10 (children and firearms),” the legislature did not make a distinction between the possible felony and misdemeanor charges under that statute, although its title was and remains “Juvenile court lacks jurisdiction over individuals at least 16 years old committing certain *felonies*: retention of jurisdiction by court having adult criminal jurisdiction,” and the other crimes listed in the statute are chargeable *only* as felonies if committed by an adult; (10) in 2008, this statute was amended to say that the juvenile court does not have jurisdiction over a child’s alleged violation of dangerous possession of a firearm “if charged as a felony;” and (11) therefore, by specifically excluding the felony portion of IC 35-47-10-5 from juvenile jurisdiction, it follows that the misdemeanor portion is not excluded and thus is subject to juvenile jurisdiction. C.C. at 557-58. The Court observed that, (1) from a common sense standpoint, if one were to follow the juvenile’s reasoning to its illogical conclusion, the juvenile’s misdemeanor violation of the firearm statute would not fall within the jurisdiction of either the juvenile or the adult criminal court and thus would go unpunished; (2) that this was likely not the legislature’s intent; and (3) that it is a rule of statutory interpretation that courts will not presume the legislature intended to do a useless thing or to enact a statute that is a nullity. Id. at 559 (citation omitted).