

Children's Law Center of Indiana



Delinquency

04/07/2009

In **J.A. v. State**, 904 N.E.2d 250 (Ind. Ct. App. 2009), the Court affirmed the juvenile court's denial of the juvenile's motion for relief from the juvenile court's adjudication of the juvenile to be a delinquent for committing two acts of child molesting which, if committed by an adult, would be Class B and Class C felonies. The juvenile was adjudicated delinquent for, at the age of thirteen, molesting his seven-year-old half brother (victim). Following a "child hearsay" hearing, the juvenile court found statements the victim made to his mother and to a CPS investigator to be reliable and admissible. The State then moved to "incorporate the hearsay statements that were made before [the juvenile court], as well as the testimony of the individuals who testified during the child hearsay portion of this hearing, into the State's case in chief at this time." The juvenile's attorney did not object to this motion and made a separate motion to incorporate the testimony already heard. The juvenile court ultimately found that the State had met its burden of proof with regard to both counts, entered true findings thereon, and place the juvenile on probation. No direct appeal was filed, but the juvenile filed a verified motion for relief from judgment, claiming ineffective assistance of counsel. The juvenile court denied the motion for relief from judgment and the juvenile appealed.

The juvenile was not denied the effective assistance of trial counsel. *Id.* at 259. The juvenile claimed that his trial counsel was ineffective because (1) he did not file a direct appeal; (2) had his trial counsel filed a direct appeal, the juvenile would have prevailed on his claim that the juvenile court abused its discretion when it determined that the victim's out-of-court statements were reliable; and (3) his trial counsel not only failed to object to the State's request that evidence from the child hearsay hearing be incorporated into the factfinding hearing, he affirmatively requested that this evidence be incorporated; and (4) the incorporation of the evidence from the child hearsay hearing deprived the juvenile of fundamental due process. *Id.* at 255, 257, 258. The Court (1) held that a juvenile may use a Trial Rule 60(B) motion for relief from judgment to challenge an adjudication of delinquency; (2) reviewed the law regarding judicial review of a claim of ineffective assistance of counsel including that, to prevail on a claim of ineffective assistance of counsel, the defendant must prove both that counsel's representation was deficient and that this deficient performance so prejudiced the defendant as to deprive him of a fair proceeding; (3) held that it could not say that the failure to timely appeal is per se deficient performance in every case; and (4) stated that it could not see how the juvenile was prejudiced by the failure to bring an ineffective assistance claim on direct appeal, inasmuch as the juvenile was able to present this claim in his motion for relief from judgment, which is the more appropriate method of presenting claims of ineffective assistance of counsel. *Id.* at 254-55 (citations omitted).

The Court narrowed the juvenile's second claim to the assertion that the trial court abused its discretion by concluding that the time, content, and circumstances of the victim's out-of-court

statements provided sufficient indications of reliability, in that, according to the juvenile, the victim's claims of sexual molestation were made only after an "ongoing inquiry" by his mother lasting three to four weeks in which there was an opportunity for "fabrication and coaching." The Court observed that, (1) as the trial court had found, the testimony cited by the juvenile in support of this argument did not support his characterization of what occurred; (2) the victim's use of different terminology in his initial statements and in his testimony could have been caused by the victim's normally increased vocabulary over the intervening period; (3) the victim's language was always age appropriate; (4) as explained by the trial court, the fact that a young child did not fully recount every detail of his abuse to both his mother and the CPS investigator was not an indication that he was lying; and (5) the term soft when used to refer to the condition of the penis could well mean something different to a child from what it would mean to an adult. The Court held that, (1) given the broad discretion afforded to trial courts in questions of the admission of evidence, and given the facts and circumstances of this case, it could not say that the trial court erred in concluding that the victim's out-of-court statements bore sufficient indications of reliability; (2) thus, if these statements had been timely appealed, they would not have been successful; and (3) therefore, the juvenile's claim of ineffective assistance of trial counsel based upon this failure to appeal fails. Id. at 255-57.

In support of his third basis for the claim of ineffective assistance of counsel, that the juvenile was prejudiced by his attorney's failing to object and independently moving for the incorporation of evidence from the child hearsay hearing into the factfinding hearing, the juvenile relies on the majority holding in L.H. v. State, 878 N.E.2d 425, 430 (Ind. Ct. App. 2007), to the effect that the juvenile was entitled to a separate factfinding hearing at which all the safeguards and evidentiary rules were followed, and that the trial court erred in incorporating the evidence from the preliminary child hearsay hearing. Here, the Court disagreed that the trial counsel's actions in this regard constituted deficient performance, noting that (1) L.H. issued almost two years after the juvenile's factfinding hearing, and at that time the practice of incorporating evidence from a child hearsay hearing into the factfinding hearing was not uncommon; and (2) since the child hearsay hearing had concluded only minutes earlier, the juvenile's trial counsel could have made a strategic decision not to re-call the same witnesses who had just testified and have the trial court hear yet again the testimony that the juvenile molested his half brother. Thus, the Court found that the juvenile had failed to establish that his trial counsel's performance fell below an objective standard of reasonableness. J.A. at 257-58.

As to the juvenile's fourth basis for his ineffective assistance of counsel claim, that the incorporation of the evidence from the child hearsay hearing deprived him of fundamental due process, the Court found the argument waived inasmuch as the juvenile had not raised it before the trial court. However, waiver notwithstanding, the Court found that the record did not support the claim that he was denied due process. The Court noted that, (1) the juvenile was given notice of the child hearsay hearing and appeared both in person and by counsel at the hearing; (2) the juvenile's trial counsel cross-examined the witnesses who testified at the hearing and made relevant objections; and (3) all parties appeared to proceed with the understanding that the relevant rules of evidence applied to the hearing. Id. at 258-59.