

Children's Law Center of Indiana



NOTE: Transfer Granted, Opinion Vacated, 898 N.E.2d 1222 (Ind. 2008)

Delinquency

05/29/2008

In **R.J.G. v. State**, 888 N.E.2d 213 (Ind. Ct. App. 2008), the Court affirmed in part, reversed in part and remanded the judgment of the trial court adjudicating the juvenile a delinquent for felony criminal recklessness and misdemeanor possession of marijuana, which would be a Class C felony and a Class A misdemeanor, respectively, if committed by an adult. When the juvenile aimed a handgun at a friend, the handgun accidentally discharged shooting the friend in the mouth. A search of the juvenile's residence uncovered thirty-four grams of marijuana inside a safe to which only he knew the combination. The juvenile admitted to the charges for which he was adjudicated a delinquent and the trial court ordered him remanded to the custody of the DOC until the age of eighteen, followed by supervised probation until the age of twenty-one.

The Court held that, based on the plain language of IC 31-37-19-5 and -6, the trial court did not err in ordering probation following a term of commitment to the DOC. *Id.* at 216.

On appeal, the juvenile challenged the trial court's order that he be subject to probation following his DOC commitment, in that under IC 31-30-2-1(a)(2) (2007) the trial court lost jurisdiction over him when guardianship was awarded to the DOC and, thus, the trial court had no power to also order probation. The Court noted IC 31-30-2-1 provides, in relevant part, that "the juvenile court's jurisdiction over a delinquent child...and over the child's parent, guardian, or custodian continues until...guardianship of the child is awarded to the department of correction." The Court stated its disagreement with, and declined to follow the holding in **J.J.M. v. State**, 779 N.E.2d 602, 207 (Ind. Ct. App. 2002) to the effect that IC 31-30-2-1 means a juvenile court cannot order probation if it has also ordered any term of commitment to the DOC. The Court opined that the **J.J.M.** panel had not taken into account other statutory provisions that expressly allow a juvenile court to do just that. Thus, according to the Court, (1) "[IC] 31-37-19-5 provides, in part, that '[t]he juvenile court may, in addition to an order under section 6 of this chapter, enter at least one [] of the following dispositional decrees: [] order supervision of the child by...the probation department[.]'...(emphasis added);" (2) IC 31-37-19-5 "provides, in part, that a juvenile court may 'enter any dispositional decree specified in section 5 of this chapter; and... take any of the following actions: ... Award wardship to ... the department of correction for housing in a correctional facility for children[.]'...(emphasis added);" and, (3) therefore, section 5 allows a juvenile court to impose probation, and section 6 allows it to order DOC commitment in addition to any disposition ordered in section 5. *Id.* at 215-16

The Court reversed and remanded the portion of the trial court's judgment ordering a determinate DOC commitment inasmuch as the juvenile had not accumulated the two prior delinquency adjudications for what would be felonies if committed by an adult, which IC 31-37-19-10 (2007) requires before the trial court has the authority to order, rather than recommend, a determinate sentence for the juvenile. *Id.* at 217. The Court remanded for entry of a recommended DOC commitment, as opposed to a determinate one. *Id.*