

Children's Law Center of Indiana



Delinquency

10/29/2009

In **A.K. v. State**, 915 N.E.2d 554 (Ind. Ct. App. 2009), the Court affirmed the trial court's denial of the juvenile's motion to dismiss based on IC 31-37-11-2(b), which provides that when a child is not in detention and a petition has been filed, "the hearing must be commenced not later than sixty (60) days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed." On February 1, 2008, the State filed a juvenile delinquent allegation asserting that the juvenile committed two acts constituting child molesting if committed by an adult. The hearing was initially set for May 12, 2008, at which time the juvenile's counsel did not object and specifically indicated that the date would "work" for the juvenile. On May 5, 2008, the juvenile moved for a continuance of the May 12, 2008 date, and the hearing was reset for July 31, 2008. The juvenile presented four witnesses at the July 31, 2008 fact-finding hearing. At the second day of hearing on August 14, 2008, the juvenile presented another five witnesses and also objected to the May 12, 2008 hearing date on the basis that it violated the hearing deadline established in the juvenile code. The juvenile made a dismissal motion for discharge because the juvenile code states "that a child not in custody must be brought to denial hearing within sixty days of the date of filing." The trial court denied the motion and entered true findings on both counts. The juvenile appealed, raising only the issue of whether the trial court erred in denying the juvenile's motion to dismiss.

The juvenile code does not mandate dismissal of the charges when the 60-day deadline is not met; a trial court's accommodation for an accused should not be the basis for a dismissal; and at the time of the setting of the May 12, 2008 hearing date, the juvenile agreed to it and did not object to setting it outside the 60-day period set forth in IC 31-37-11-2(b). *Id.* at 556. The Court noted that in Brown v. State, 448 N.E.2d 10, 16 (Ind. 1983) the Brown Court had noted that failure to meet the twenty-day deadline for a juvenile in detention results in neither dismissal of the charges nor in loss of jurisdiction by the juvenile court, as there is nothing in the statute that can be interpreted to mandate such results. The Court here concluded that the application of the statute in the current case does not mandate a different result. The Court opined that the objective of IC 31-37-11-2(b) is to facilitate an orderly and timely process; the section's deadline is not a mechanism for dismissal when the court has accommodated the juvenile and a timely objection has not been made. A.K. at 556.