

Children's Law Center of Indiana



Delinquency

6/3010

In A.S. v. State, 929 N.E.2d 881 (Ind. Ct. App. 2010), the Court affirmed in part and reversed in part, finding that the child should not have been subjected to detention without counsel or a valid waiver of counsel, but her ultimate adjudication as a delinquent may not be reversed. The fourteen-year-old child was taken into custody on October 6, 2008, after she hit a fellow student. Before the detention hearing the next day, the child and Mother were presented with, and they signed, a document the trial court appeared to have treated as a waiver of rights including the child's right to counsel. In a companion case involving the child in the same court and before the same magistrate as the current case, A.S. v. State, 923 N.E.2d 486 (Ind. Ct. App. 2010), the trial court made no inquiry into the ostensible decision of the child and Mother to proceed pro se. In A.S. v. State, 923 N.E.2d 486, the Court found the child's delinquency adjudications were void and that she was entitled to relief from judgment. The record in the instant case did not show that the child and Mother affirmatively stated that they intended and wished to proceed without representation and there is no evidence that the child and Mother understood the dangers and disadvantages of self-representation. At the detention hearing, no witnesses were sworn and no evidence was heard. The court found probable cause that the child was a delinquent and in need of further detention, but gave no reason for her continued detention. On October 10, 2008, the State filed a delinquency petition, counsel appeared for the child, and the child asked the court to set a hearing to review its detention order. An admission hearing was scheduled for October 29, and continued to November 5, but on November 3, the child moved to vacate the admission hearing, and a factfinding hearing was set for November 19. After a number of continuances, the factfinding was held on January 7, 2009. On February 20, the court found the child to be a delinquent, and on May 19, extended for six months the probation she was already serving for a prior adjudication.

The Court found that, because the trial court did not obtain a constitutionally sufficient waiver of counsel from the child and did not allow the child to present evidence or confront witnesses, her initial detention was improper. *Id.* at 889. Quoting extensively from the companion case, A.S. v. State, 923 N.E.2d 486 (Ind. Ct. App. 2010), the Court said that the child was subjected to exactly the same procedures and constitutional violation in the instant case, and concluded that the child's waiver of her right to counsel did not comport with constitutional requirements. A.S., 929 N.E.2d at 886. The State did not dispute that the child was subjected to the constitutional violation, but urged the Court not to address the merits of the violation

because: (1) the child waived the claim by not addressing it at the trial; and (2) the claim is moot because the child is no longer detained. The Court, citing Clark v. State, 915 N.E.2d 126 (Ind. 2009), said that generally a claim of error must be raised during trial in order to be available as an issue on appeal. Clark at 131. A.S., 929 N.E.2d at 886. The Court sometimes entertains such unraised claims under the rubric of “fundamental error,” an error that makes a fair trial impossible or amounts to a blatant violation of basic and elementary principles of due process representing an undeniable and substantial potential for harm. Clark at 131. A.S., 929 N.E.2d at 886-87. The Court, citing In Re Jennings, 375 N.E.2d 258 (Ind. Ct. App. 1978), agreed with the child that failing to adequately inform a delinquent of her right to counsel is a fundamental error. A.S., 929 N.E.2d at 887. The Court noted that “application of the fundamental error doctrine is particularly appropriate when the error asserted is a deprivation of the constitutional right to counsel.” Id. The Court concluded that the claim is not waived, as the constitutional violation was fundamental error. Id. The Court acknowledged that relief could not be provided to the child in this case because she is no longer being detained, but chose to address the child’s claim because it reflects a question of great public importance and involves issues likely to recur. Id. at 888. Citing W.R.S. v. State, 759 N.E.2d 1121, 1123 (Ind. Ct. App. 2001), the Court said that issues involving the propriety of juvenile commitment are likely to recur, but relief often cannot be rendered to the parties because the short-term commitment of a juvenile at a correctional facility will frequently be concluded by the time an appeal is heard. A.S., 929 N.E.2d at 888. The Court declined to adopt the State’s characterization of the trial court’s violations of the child’s rights as those that would not “insure to the detriment of other juveniles.” Id. The Court also said that “the State did not follow the law governing a juvenile’s rights to confront and cross-examine witnesses and to present evidence.” Id. The Court said the record suggests that the trial court routinely uses a standard form that it treats as the juvenile’s waiver of certain constitutional rights; thus, it appears waivers might frequently be improperly obtained from other juveniles who appear in the same court. Id. The Court noted that, although the trial court’s Chronological Case Summary (CCS) for the detention hearing said “Witnesses sworn, testimony heard,” the transcript reveals no witnesses were sworn and no testimony was heard. Id. n.7. The Court agreed with the child that she was deprived of the rights provided by IC 31-32-2-1. Id. The Court quoted N.J.R. v. State, 439 N.E.2d 725, 726 (Ind. Ct. App. 1982), which states that “to permit juveniles’ detention under unlawful procedures is repugnant to any concept of justice.” A.S., 929 N.E.2d at 889. The Court opined that, as in N.J.R., the child’s detention was “under unlawful procedures.” A.S., 929 N.E.2d at 889.

The Court affirmed the final delinquency adjudication because the hearing was timely and the child had no right to a jury trial. Id. at 892. IC 31-37-11-2(b) states that if a delinquency petition has been filed but the child is not in detention, the hearing must be commenced not later than sixty days, excluding Saturdays, Sundays, and legal holidays, after the petition is filed. Id. at 889. The child’s delinquency petition was filed on October 10, 2008, but the hearing was not held until January 7, 2009. Id. Although the child was detained during part of this proceeding, neither she nor the State argued that the statutory provision for juveniles in detention applied, so the Court determined whether her hearing occurred within the required sixty days. Id. n.8. The child contended that her hearing was held thirty days late because ninety days passed between

the date the delinquency petition was filed and the date of the hearing. The Court held that every Saturday, Sunday, and holiday during that period should be excluded from the calculation. Id. at 889. Of the ninety calendar days that passed in the interim, only fifty-eight counted toward the sixty-day deadline; thus, the child's hearing was held timely. Id. at 890.

The Court opined that the child does not have a statutory right to a trial by jury for her delinquency adjudication. Id. at 892. The Court noted IC 31-32-6-7, which provides that all matters in juvenile court are to be tried to the court except for "[a] trial of an adult charged with a crime." Id. at 890. In response to the child's claim that she had a constitutional right to trial by jury, the Court stated the following: (1) the Indiana constitutional right to trial by jury in all civil cases has been construed to apply only to actions triable by jury at common law; (2) when a cause of action did not exist in 1852, the crucial inquiry is whether the cause of action at issue is equitable or legal in nature as those terms were used in 1852 (Cunningham v. State, 835 N.E.2d 1075, 1077 (Ind. Ct. App. 2005); see also Ind. Trial Rule 38(A)); (3) the Indiana Supreme Court has held a juvenile has no constitutional right to trial by jury at a delinquency hearing (Bible v. State, 254 N.E.2d 319 (Ind. 1970)). A.S., 929 N.E.2d at 890-91. The child, citing Cunningham, where the Court held that there is a constitutional right to a jury trial in a prosecution for speeding, argued that the right to jury trial should apply in juvenile proceedings because they are quasi-criminal since the police arrested her, the prosecutor brought the action against her, and she faced sanctions akin to criminal penalties. A.S., 929 N.E.2d at 891. The Court declined to disregard the Indiana Supreme Court's explicit holding in Bible and disagreed that the Cunningham reasoning should be applied to juvenile proceedings, as such proceedings would have been considered equitable in 1852. A.S., 929 N.E.2d at 891-92.