



Indiana Public Defender Council Juvenile Defense Project

Improving Juvenile Defense Services in Indiana

LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

April 23, 2018
April 30, 2018



Partnering Juvenile Defense and Legal Aid to Combat Collateral Consequences

Juvenile court involvement can pose roadblocks making it harder for youth to succeed in educational, social, and professional paths. *Collateral Consequences of Juvenile Court Involvement: An Opportunity for Partnership* published on the Sargent Shriver National Center on Poverty Law's Clearinghouse Community (<http://povertylaw.org/clearinghouse/articles/juvenile>) describes how collaboration between civil legal aid attorneys and juvenile defenders can lessen the effect of collateral consequences to juvenile court involvement. The authors are a juvenile defender and a civil legal aid attorney who have worked to develop partnerships between the two practices so youth facing collateral consequences from their juvenile court experience can be assisted in dealing with issues such as housing, education, and employment.

To watch a webcast with authors **Serena Holthe**, Special Counsel, Post-Disposition at the National Juvenile Defender Center, and **Sabrina Forté**, Staff Attorney at Bay Area Legal Aid's Youth Justice Project, as they discuss the strategies to develop such partnerships, visit:

<http://povertylaw.org/clearinghouse/webcast/juvenile>

Learn and share Indiana information on collateral consequences. State-specific resources on collateral consequences of juvenile court involvement can be found on the National Juvenile Defender Center's website.

<http://njdc.info/collateral-consequences/>

In this issue

- New approaches to collateral consequences
- Appellate update
- FAQ about citing fresh cases
- Registration information for
- Lunch hour webinar CLE
- Upcoming JTIP training "To Plea or Not to Plea"

JUVENILE CASE REVIEW

APPELLATE DECISIONS



No Published JD Opinions, but some Memorandum Decisions* of



note:

Simply running from police is not enough to prove forcibly resisting law enforce-

ment

T.W. v. State, Court of Appeals Case No. 27A05-1707-JS-1656 (April 11, 2018) (Mem. Decision) REVERSED

<http://www.in.gov/judiciary/opinions/pdf/04111802mpb.pdf>

Evidence was insufficient to support true finding for what would be Class A misdemeanor resisting law enforcement if committed by an adult.

Facts: 16 -year-old T.W. and other juveniles ran from the back of a house when a Marion police officer showed up to check for runaways. Later, an assisting office saw them running and briefly activated his lights and siren. T.W. and some of the juveniles continued to run, jumped a fence, and were arrested at a water park by an assisting plain-clothed officer. When the plan-clothed officer shouted at the juveniles to get on the ground, “they immediately got to the ground.” T.W. testified that she and the others ran because her parents were at the front door, that she didn’t see or hear the lights and siren of the assisting officer, and that they stopped when they were told to get to the ground.

T.W. was alleged and found delinquent for “forcibly resist[ing], obstruct[ing], or interfer[ing] with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties” in violation of [Ind. Code § 35-44.1-3-1(a)(1)]. Noting, that it was undisputed that T.W. had not had any physical contact with any of the officers, and the State’s evidence consisted solely of the police officer’s testimony that T.W. ran from the police, the Court agreed the evidence was insufficient to prove RLE because the State failed to present evidence of requisite force. The Court noted in a footnote the State did not allege that T.W. violated [Ind. Code § 35-44.1-3-1(a)(3)], fleeing from a law enforcement officer.

Note: The appellate case number incorrectly identifies this as a status offense appeal. And the Court of Appeals’ decision incorrectly cites to the statute prohibiting ghost employment, Ind. Code § 35-44.1-1-3, rather than Ind. Code § 34-44.1-3-1, resisting law enforcement.

* **Ind. App. R. 65(D). Precedential Value of Memorandum Decision.** Unless later designated for publication in the official reporter, a memorandum decision shall not be regarded as precedent and shall not be cited to any court except by the parties to the case to establish *res judicata*, collateral estoppel, or law of the case.



Trial court did not abuse its discretion by ordering juvenile to detention center multiple times totaling more than 90 days.

A.B. v. State, Court of Appeals Case No. 71A03-1711-JV-2677 (April 16, 2018) (Mem. Decision) AFFIRMED

<http://www.state.in.us/judiciary/opinions/pdf/04161803mgr.pdf>

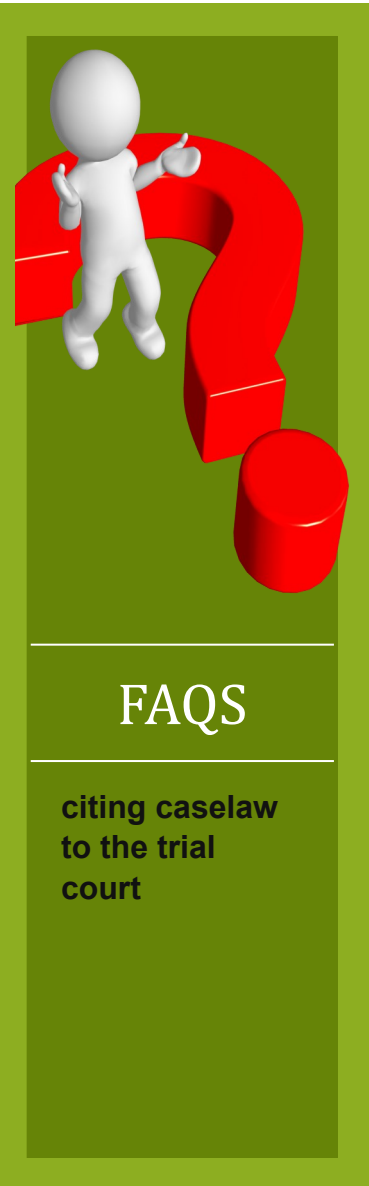
A.B. appealed the juvenile court's order modifying its dispositional decree following his adjudication as a delinquent for attempted theft and battery, arguing the juvenile court abused its discretion in detaining A.B. in a juvenile detention center on multiple occasions resulting in a total of more than ninety days confinement.

After being adjudicated delinquent for attempted theft and battery, A.B. was detained on eleven separate occasions and spent a total of over ninety days in detention, finally, A.B. was ordered to a residential placement at DePaul Academy. A.B. argued the juvenile court abused its discretion and that he should be discharged from his placement because Indiana Code section 31-37-19-6(b)(2)(B)(i) prohibits his confinement for more than ninety days.

The Court of Appeals affirmed, reasoning the juvenile court did not order A.B. detained in the juvenile detention center pursuant to a set number of days, but instead had ordered A.B. placed on home detention, which he repeatedly violated. The Court held A.B.'s own behavior led to his detention for greater than ninety days and he, not the trial court, created the length of his detention with his repeated violations.

Note: Although A.B. was not adjudicated delinquent for attempted robbery nor was he charged with attempted robbery, the Court of Appeals concluded "fifteen-year-old A.B. committed acts that would constitute attempted robbery, a Level 5 felony if committed by an adult" in his original adjudication, and states that he is "lucky" to not be at the DOC.

* **Ind. App. R. 65(D). Precedential Value of Memorandum Decision.** Unless later designated for publication in the official reporter, a memorandum decision shall not be regarded as precedent and shall not be cited to any court except by the parties to the case to establish *res judicata*, collateral estoppel, or law of the case.



Q: Memorandum decisions are included in LEXIS, can I cite them?

A: No. Under the current rules, as noted above, memorandum or “Not for Pub” decisions are not to be regarded as precedent and not to be cited as authority. **Ind. Appellate Rule 65(D)**

Q: Can I cite to a Court of Appeals or Supreme Court opinion if it has not yet been certified?

A: Yes. A “for publication” Court of Appeals decision can be cited as precedent as soon as it is issued,. The prohibition against taking action in reliance on the opinion only applies to the trial court and parties involved in that specific case.

Ind. Appellate Rule 65 (A) states “All Supreme Court opinions shall be published in the official reporter. A Court of Appeals opinion shall be published in the official reporter and be citable if the case: (1) establishes, modifies, or clarifies a rule of law; (2) criticizes existing law; or (3) involves a legal or factual issue of unique interest or substantial public importance.

A trial court that is the subject of the case can’t take any action ordered by the appellate opinion in that particular case until the opinion is certified. **App. R. 65(E)** states “ The trial court, Administrative Agency, and parties shall not take any action in reliance upon the opinion or memorandum decision until the opinion or memorandum decision is certified.” The opinion is not certified until after either rehearing and transfer are completed or the time for seeking rehearing or transfer has expired (30 days after the opinion is issued). Then, the appellate docket will reflect that the opinion has been certified and the trial court will receive a copy of the certified opinion.

Q: Can I cite to a “For Pub” Court of Appeals opinion if transfer is pending?

A: Yes, unless transfer has been granted.

If the Supreme Court grants transfer, then the Court of Appeals case is vacated and is no longer precedent and can’t be cited as authority unless the Supreme Court adopts or summarily affirms the opinion. **Ind. Appellate Rule 58(A)**. If one of the parties has filed a Petition to Transfer, but transfer has not yet been granted, the case is in the same position as above.

JTIP Training June Series



Juvenile Delinquency Cases: To Plea or Not to Plea

During this 3 hour CLE which includes 1 hour of ethics credit, ethical considerations regarding the defender's obligations to provide effective assistance of counsel during the plea negotiation stage will be explored. Defenders will develop skills and strategies for communicating and negotiating with other stakeholders in the juvenile justice system with the goal of achieving the client's stated outcome.

Defenders will review the advantages and disadvantages of pleas, including long term collateral consequences. And defenders will explore ways to counsel youth clients regarding plea considerations that take into account and overcome developmental barriers that may exist.

Presenters: Jill Johnson and Rachel Roman-Lagunas

Cost: Free to public defenders handling juvenile delinquency cases

June 1st Hamilton County 1:00-4:30 p.m. (EST)

Hamilton County Government & Judicial Center (Jury Orientation Room, 3rd Fl)

One Hamilton Square

Noblesville, IN 46060

Register at: <https://goo.gl/forms/MMqfeTqZ3EIMQIYo2>

June 15th Vigo County 1:00-4:30 p.m. (EST)

Vigo County Council Chambers

127 Oak Street

Terre Haute, Indiana 47807

Register at: <https://goo.gl/forms/83HWnqkjoRpvCcj63>

June 22nd Lake County Welcome and lunch 11:30 a.m. (CST)

Training 12:00 p.m. – 3:30 p.m. (CST)

Lake County Juvenile Justice Complex

3000 W. 93rd Ave

Crown Point, IN 46307

Register at: <https://goo.gl/forms/kmjzGro33qNezqls2>



Adolescent Development (lunchtime webinar)

May 18th 12:00-1:00 p.m. EST

This live 1 hour webinar will discuss adolescent development, including normative development, cognitive development, psychosocial development, and brain development. The presentation will also discuss national and local case law that supports using adolescent development in cases involving juveniles and how to best present this information to a judge. There will be multiple resources available to participants including bibliographies of research articles and case law, sample questions to ask experts, and a sample pre-dispositional report.

Presenter: Rachel Roman-Lagunas

1 hour CLE credit

Cost: Free to public defenders

Log on instructions will be e-mailed prior to the webinar.

Register at:

<https://goo.gl/forms/tl4XI09GO8vceBOS2>

For more information, please contact

Amy Karozos, IPDC Juvenile Defense Project Director

Ofc: (317) 232-0106

E-mail: akarozos@pdc.in.gov