In the
Indiana Supreme Court

M.H.,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
24A-JV-02510

Trial Court Case No.
82D04-2309-JD-1466

Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 9/10/2025.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.
Rush, C.J., dissents from the denial of transfer with separate opinion in which Goff, J., joins.

Rush, C.J., dissenting.

Before a trial court modifies a dispositional order for a child adjudicated delinquent, it must hold an evidentiary hearing at which the State produces "some evidence of the wrongdoing on which the modification is premised." *In re M.T.*, 928 N.E.2d 266, 271 (Ind. Ct. App. 2010), *trans. denied*; *see also* Ind. Code § 31-37-22-3(b). Entering a modification without complying with these requirements violates a child's due process rights. *M.T.*, 928 N.E.2d at 273. And that due process violation is particularly egregious when the court commits a child to the Department of Correction (DOC), as this option "should be treated as a last resort." *G.W. v. State*, 231 N.E.3d 184, 190 (Ind. 2024) (quoting *C.H. v. State*, 201 N.E.3d 202, 205 (Ind. Ct. App. 2022)). Unfortunately, that is exactly what occurred here.

After thirteen-year-old M.H. violated probation, the trial court ordered him to be placed at Transitions Academy. About six months later, M.H.'s probation officer received a letter from Transitions alleging that M.H., who was now fourteen years old, was not being properly supervised while on home passes and had been involved in criminal activity on a recent home pass. The letter stated M.H. was "not appropriate for placement or continued treatment at Transitions Academy." Based on this letter, the probation officer filed a motion to modify M.H.'s placement, asserting he had violated his court-ordered placement.

At a hearing on that motion, which lasted four minutes, no evidence was presented. The court asked M.H.'s counsel about the motion, and she acknowledged that Transitions had decided M.H. could no longer be placed there but declined "to make any admissions" on the reasons it cited for removing him from the program. The court then ordered M.H. to remain in secure detention at the Youth Care Center and set a dispositional hearing. At that hearing, which lasted a little over five minutes, once again no evidence was presented. The probation officer argued why she believed M.H. should be committed to the DOC. And the prosecutor agreed with that recommendation, indicating he was unaware of another placement option. M.H.'s attorney recognized they were "operating on the assumption" that Transitions "did not find him

appropriate for their program." She then asked the court to consider placing M.H. somewhere other than the DOC, such as on electronic home detention. Ultimately, the court issued an order committing M.H. to the DOC.

On appeal, M.H. argued that the trial court committed fundamental error by modifying his dispositional order and placing him in the DOC without holding an evidentiary hearing. Our Court of Appeals disagreed, holding that an evidentiary hearing was not required because M.H.'s attorney "stated unequivocally that M.H. did not challenge his removal from Transitions or the reasons therefore," which constituted "a judicial admission." *M.H. v. State*, No. 24A-JV-2510, at *10 (Ind. Ct. App. Mar. 21, 2025) (mem.).

We should grant transfer for two reasons. The panel mischaracterized the record in viewing M.H.'s attorney's "remarks as an intentional act of waiver as to the issue of M.H.'s violation of the terms of his placement at Transitions." *Id.*; *see* Ind. Appellate Rule 57(H)(6). And, because the trial court never held an evidentiary hearing, the panel's decision conflicts with other decisions from the Court of Appeals on a child's due process rights when the State moves to modify a dispositional order. App. R. 57(H)(1). I would grant transfer and hold that the court committed fundamental error by placing M.H. in the DOC based on an alleged violation for which **no** evidence was presented.

To qualify as a judicial admission, an attorney's statement "must be an intentional act of waiver, not merely assertion or concession made for some independent purpose." *Tanksley v. State*, 144 N.E.3d 824, 826 (Ind. Ct. App. 2020) (quoting *Collins v. State*, 366 N.E.2d 229, 232 (Ind. Ct. App. 1977)) (citation modified), *trans. denied*. A review of this record establishes that M.H.'s attorney admitted only that Transitions had refused M.H.'s placement. Indeed, she explicitly declined to "make any admissions" on M.H.'s involvement in the "incident that happened on a home pass." And she never made any admission as to whether M.H. violated his court-ordered placement at Transitions, which was the basis for the State's motion to modify. The trial court understood the limited scope of counsel's statements, noting that Transitions had found M.H. was "no

longer appropriate for their facility . . . based on alleged violations of rules and negative behavior on home passes back in the community, which the Juvenile's not admitting to." Thus, the Court of Appeals erred in holding counsel made a judicial admission as to the reasons for M.H.'s removal from Transitions.

Because there was no such admission, the trial court was required to hold an evidentiary hearing at which the State needed to present "some evidence of the wrongdoing on which the modification" was premised. *M.T.*, 928 N.E.2d at 271; *see also* I.C. § 31-37-22-3(b)*; K.A. v. State*, 938 N.E.2d 1272, 1275 (Ind. Ct. App. 2010), *trans. denied*. On at least two occasions, our Court of Appeals has issued published opinions reversing a modification when courts failed to comply with these requirements. *M.T.*, 928 N.E.2d at 273; *K.A.*, 938 N.E.2d at 1276. The same result should follow here because the court never held an evidentiary hearing on the State's motion to modify M.H.'s placement.[1]

At the two abbreviated hearings on that motion, no evidence was presented, only argument. And so, the State never produced any evidence in support of its allegation that M.H. had violated his court-ordered placement at Transitions. Just because Transitions no longer found M.H. suitable for their program did not mean that he violated any court order. And children should never be subjected to imprisonment solely because a treatment program refuses placement. Simply put, committing a child to

[1] In the past few years, five other appeals have revealed this court's failure to comply with statutory mandates. *J.M. v. State*, No. 25S-JV-87, 2025 WL 2486246, at *8 (Ind. Aug. 27, 2025) (Rush, C.J., dissenting from the denial of transfer) (observing that a child's initial and dispositional hearings "were marred by at least **six statutory** violations"); *A.B. v. State*, No. 24A-JV-2062, at *8 (Ind. Ct. App. Feb. 13, 2025) (mem.) (recognizing that the court failed "to acknowledge" a child's "dual status"), *trans. denied*; *In re Adoption of H.A.*, 24A-AD-1954, at *6 n.1 (Ind. Ct. App. Jan. 31, 2025) (mem.) (observing that the court failed to issue a separate order finding a biological father's consent unnecessary for a child's adoption), *trans. denied*; *A.F. v. State*, 247 N.E.3d 841, 844 (Ind. Ct. App. 2024) (finding that the "court clearly failed to follow the mandates set forth in the juvenile statutes"); *In re Adoption of N.A.*, No. 21A-AD-2743, 2022 WL 2436291, at *4 (Ind. Ct. App. July 5, 2022) (noting that the "court failed to consolidate the adoption proceeding and paternity action before it issued its Order of Adoption"), *trans. denied*.

the DOC without a hearing at which the State produces evidence supporting its basis for modification not only violates basic principles of due process, *see M.T.*, 928 N.E.2d at 271, but also thwarts the child's prospects of rehabilitation—a primary purpose of our juvenile justice system, I.C. § 31-10-2-1(6).

Yet that is what happened to M.H. The trial court violated his due process rights by modifying his disposition without evidence that he had violated the terms of his placement. And that due process violation resulted in significant harm to M.H. because the court imposed the most severe, restrictive sanction by committing him to the DOC. For these reasons, M.H. has demonstrated fundamental error. *See Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014) (recognizing that a fundamental error is "a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm") (citation modified). And because our Court declines to rectify this grievous error, I dissent from the denial of transfer.

Goff, J., joins.