

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1500

September Term, 2014

IN RE: MALIK L.

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 1, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

On July 14, 2014, before the Circuit Court for Prince George’s County, sitting as a juvenile court, appellant, Malik L. (“Malik”), entered a plea of “involved” in the delinquent act of fourth degree burglary.¹ After reviewing the undisputed facts contained in the juvenile petition, the court found Malik “involved” as to the fourth degree burglary count. At the August 12, 2014 disposition hearing, the court committed Malik to the Department of Juvenile Services - Level B for a “6 months or longer program” and scheduled a review hearing for September 9, 2014. Malik filed a timely appeal and presents two questions for review, which we repeat *verbatim*:

1. May a juvenile court consider charges previously made against the respondent that did not result in a finding that he committed the offenses, without any additional evidence relating to the facts and circumstances of those charges, when determining the appropriate disposition?
2. Did the juvenile court err by requiring a minimum term of commitment in the disposition order?

Based on the juvenile court’s stated reasons during the disposition hearing, we are not persuaded the court’s disposition was based on an impermissible consideration, and therefore, we affirm.²

¹ See Md. Code (1974, 2013 Repl. Vol.), § 3-8A-01(1) of the Courts & Judicial Proceedings Article (“CJP”):

Delinquent act

(1) “Delinquent act” means an act which would be a crime if committed by an adult.

² In his reply brief, Malik conceded that the second issue was moot and therefore, withdrew this question from his opening brief.

BACKGROUND

Malik does not challenge the court’s finding or the factual allegations set forth in the juvenile petition. Accordingly, we limit our focus to the disposition hearing. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008) (“Appellant has not challenged evidentiary sufficiency. Therefore, we recite only the portions of the trial evidence necessary to provide a context for our discussion of the issues presented.”).

At the disposition hearing, defense counsel asked the court to accept the recommendation of the Department of Juvenile Services that Malik be placed on supervised probation for six months with special conditions. In support of his position, defense counsel stated that this was Malik’s first formal adjudication and that “he has been through a lot this past year in terms of family strife, especially the tragedy that I won’t go into details, it’s spelled out in the report, regarding the loss of his brothers.” The court responded that “this didn’t just start. This young man has a history going back to 2011.” Defense counsel confirmed that “[t]here’s the one stet from 2011” and the court replied, “[h]e has a history going back to 2011. One, two, three, four, five matters with juvenile services.”

The State requested that Malik be committed to a staff secure level B facility in light of the serious nature of the offense and his history within the juvenile system. The court agreed with the State’s recommendation, noting that Malik was “not taking this serious,” and announced the following statement of reasons in support of the level B placement:

[Defense counsel], let me say, we have a young man out of control. He stopped going to school in March. Even he

admits that he's a disciplinary problem and been suspended several times for fighting in school. We've got a young man here who is now almost 17 and-a-half and in the ninth grade.

And this didn't just start. And you know just as well as I know . . . he's not going to go to school.

This young man, if we don't do something now, we're going to lose him. And now he picks up a charge and he comes back to Court and he's told what day to come back to Court and he's smoking weed on that day.

Madam Clerk, the Court will – in fact, I believe the State is correct. You know, I'm not going to sit up here and lose this young man because, you know, we just say go back out there and do what you're doing. I'm not going to put this young man back in that position.

Defense counsel objected to the disposition, stating: “Your Honor, objection for the record. He has no former priors and this is a misdemeanor.” The court subsequently filed an order committing Malik to a level B, non-community residential facility, placement for a “6 months or Longer Program” and this appeal followed.

DISCUSSION

“In a juvenile delinquency matter, an appellate court will ‘review the case on both the law and the evidence.’” *In re Elrich S.*, 416 Md. 15, 30 (2010) (quoting Md. Rule 8-131(c)). “We review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact.” *Id.* “The hearing court’s ultimate decision, however, will not be disturbed unless ‘there has been a clear abuse of discretion.’” *Id.* at 30-31 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Pursuant to Maryland Code (2006, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 3-8A-01(p), a “Disposition hearing” is a hearing “to determine: (1) Whether a child needs or requires guidance, treatment, or rehabilitation; and, if so (2) The nature of the guidance, treatment, or rehabilitation.” Accordingly, “the foremost consideration in the disposition of a juvenile proceeding should be a course of treatment and rehabilitation best suited to promote the full growth and development of the child.” *In re Cristian A.*, 219 Md. App. 56, 66 (2014) (quoting *In re Keith W.*, 310 Md. 99, 109 (1987)).

Maryland Rule 11-115(b) provides, in pertinent part: “If the disposition hearing is conducted by a judge, and his order includes placement of the child outside the home, the judge shall announce in open court and shall prepare and file with the clerk, a statement of the reasons for the placement.” Pursuant to CJP, § 3-8A-02 (a)(1), the juvenile court is required to weigh the following objectives in reaching its disposition: “(i) Public safety and the protection of the community; (ii) Accountability of the child to the victim and the community for offenses committed; and (iii) Competency and character development to assist children in becoming responsible and productive members of society[.]”

Malik argues that “[i]t was clear that the juvenile court [impermissibly] considered [his] prior unadjudicated contacts with the juvenile justice system in determining the disposition.” Malik maintains that this is an issue of first impression because no Maryland court has addressed whether it is permissible for a juvenile court to consider prior charges in its disposition. We need not address whether it is permissible for a juvenile court to

consider prior charges because it is clear from the record in this case that the judge did not base his disposition on Malik’s prior charges.³

Even though the court and the parties discussed Malik’s prior contacts with the juvenile court system at both the adjudication stage and the disposition hearing, none of the judge’s stated reasons for the level B placement related to Malik’s prior charges. Instead, the record reflects that the disposition was based on Malik not taking the proceedings seriously, his failure to attend school, his disciplinary problems at school, and the court’s goal of rehabilitating the minor. All of these stated reasons fell well within the purpose and the objectives of the Juvenile Justice System. Accordingly, we affirm the judgment of the juvenile court.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

³ The State contends that this issue is not preserved for review. We, however, disagree. Defense counsel specifically “object[ed] for the record and stated that Malik “ha[d] no former priors” and was currently charged with “a misdemeanor.” Nevertheless, we are convinced by the State’s argument that “[t]he record in this case does not show that the juvenile court’s disposition was the product of any impermissible considerations.”