

## M.C. v. State

Court of Appeals of Indiana

October 9, 2019, Decided; October 9, 2019, Filed

Court of Appeals Case No. 19A-JV-703

Reporter  
134 N.E.3d 453 \*; 2019 Ind. App. LEXIS 438 \*\*; 2019 WL 5057875

### Opinion

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M.C., Appellant-Respondent, v. State of Indiana,  
Appellee-Petitioner.

[\*456] Altice, Judge .

Subsequent History: Rehearing denied by M.C. v. State, 2019 Ind. App. LEXIS 551 (Ind. Ct. App., Dec. 11, 2019)

Transfer denied by M.C. v. State, 2020 Ind. LEXIS 291 (Ind., Mar. 19, 2020)

Prior History: [\*1] Appeal from the Rush Superior Court. The Honorable Brian D. Hill, Judge. Trial Court Cause No. 70D01-1812-JD-94, 70D01-1805-JD-31.

### Case Summary

P1 M.C. was sixteen years old when the juvenile court declared him a ward of the Indiana Department of Correction (DOC). M.C. now appeals, claiming that the juvenile court abused its discretion in awarding wardship to the DOC, that such a determination violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Equal Privileges and Immunities Clause of the Indiana Constitution, and also violated the cruel and unusual punishment provision of the Eighth Amendment to the United States Constitution and the proportionality clause of the Indiana Constitution. We affirm.

Counsel: ATTORNEY FOR APPELLANT: Joel C. Wienke, Brooklyn, Indiana.

ATTORNEYS FOR APPELLEE: Curtis T. Hill, Jr., Attorney General of Indiana; Caroline G. Templeton, Deputy Attorney General, Indianapolis, Indiana.

Judges: Altice, Judge. Brown, J. and Tavitas, J., concur.

Opinion by: Altice

### Facts & Procedural History

P2 On March 23, 2018, officers from the Rushville Police Department responded to a report of a fight and observed fifteen-year-old M.C. and another individual leaving the area. When asked for identification, M.C. provided a false name to one of the officers. M.C. smelled of alcohol and submitted to a portable breath test, which revealed a blood alcohol [\*2] level of .05%.

P3 On May 11, 2018, the State filed a petition alleging that M.C. was a delinquent child. M.C. admitted the allegation, and the parties agreed to an immediate [\*457] disposition. M.C. was placed under the supervision of the county probation department for six months and was ordered to submit to random drug testing. The juvenile court also required M.C. to attend

school regularly and to not possess and use marijuana or other controlled substances.

P4 On October 2, 2018, the State filed a petition to modify the disposition, alleging that M.C. had admitted to continued marijuana use, failed to submit a urine sample on August 20, 2018, was suspended from school for two days on September 10, 2018, and was again suspended for smoking tobacco on September 13, 2018. Before the juvenile court held an initial hearing on that petition, the State filed an amendment on December 18, 2018, adding allegations that M.C. was referred to the probation department for committing theft, that he was suspended from school again in October and early November for possessing marijuana, had been again referred to the probation department for marijuana possession, and that he was expelled from school on [\*\*3] November 20, 2018.

P5 The evidence showed that during M.C.'s suspension meeting at the school on November 14, 2018, M.C. stated that he "want[ed] to join the military. I want to kill people. I would like to kill people. I love violence and blood. You know I almost killed <omit> (sic) right?" Appendix Vol. II at 93. The theft allegation arose out of an October 13, 2018 incident where M.C. went to a Pizza King, ordered a pizza and two drinks with another juvenile, ate the food and then left without paying. M.C. admitted that it was his idea to avoid paying.

P6 In November 2018, a resource officer for Rush County Schools was handed a foil ball by the dean of students that had been obtained from M.C. The officer unrolled the aluminum foil and observed suspected marijuana inside. M.C. volunteered to the officer that it was "good stuff." Id. at 125. The act of theft from Pizza King and M.C.'s possession of marijuana in November resulted in another allegation of delinquency.

P7 At a hearing on February 12, 2019, M.C. admitted to the allegations in the modification and those set forth in the delinquency petition. M.C. also admitted that he had smoked marijuana the previous Friday and a few days prior to [\*\*4] that. The juvenile court ordered M.C. detained at the Youth Opportunity Center (YOC) until his scheduled dispositional hearing on February 26, 2019.

P8 The record shows that M.C. had previously been diagnosed with ADHD and had received counseling and medication for that condition. In 2015, M.C. received a competency evaluation, outpatient sex offender treatment, and a psychosexual risk assessment and evaluation. In light of a proceeding through the

Department of Child Services (DCS), M.C. received inpatient treatment, individual and group therapy, and substance abuse treatment at Wernle Youth and Family Treatment Facility (Wernle) in 2016. Following discharge from Wernle, M.C. was provided with various services to assist him transition to his residence. Those services, which included home-based individual and family therapy, medication management, and a mentor, took place three times per week. The services ceased in January 2017, when DCS terminated its case.

P9 At the February 26 dispositional hearing, the Rush County probation officer recommended that wardship of M.C. be awarded to the DOC. The probation officer made that recommendation based on unsuccessful community and home-based [\*\*5] treatment and residential placement services through Marion County probation, Marion County DCS, Rush County probation, [\*\*458] and Rush County DCS. When the probation officer spoke with M.C. regarding the disposition, M.C. indicated that if he was placed on home detention, he would continue to have access to drugs and would have others bring marijuana and other drugs to him. M.C. testified at the hearing that he possessed and smoked marijuana on November 14, because it was his birthday and it "took the edge off." Transcript Vol. II at 39.

P10 In the end, the juvenile court granted wardship of M.C. to the DOC. Following the hearing, the juvenile court stated

[M.C.], I don't have any choice other than to recommend the, uh, wardship to [the] Department of Corrections. You've been through the probation system several times, received services from Probation, DCS. [I]t's clear to this Court, this isn't a matter of impulse control or some psychological disorder or strong addiction problem. This is that you don't have any regard for the rules. You don't see why they would be important and nothing's gonna change until you decide to change. And the fact that you may have, may or may not have come to [\*\*6] some realization in the last week, um, doesn't mean a whole lot at this point. Um, you've been on probation. You've continued, you just do whatever you want. We have a Court hearing and by the time we have another hearing you do something else and just keep it up until now. So, um, the only time where you haven't violated really between court hearings is the time that you've been secured . . . in [the] YOC. So . . . it's a DOC commitment . . . [and you will be] held at the YOC in secure, um, detention until you can be

transported to the Department of Corrections.

Transcript at 33.

P11 On March 19, 2019, M.C. was transferred to the Pendleton Juvenile Correctional facility after completing the DOC intake phase. As a ward of the DOC, M.C. will participate in programs that will include a "growth phase" and a "transition phase." Appendix Vol. II at 157. During the growth phase, a treatment plan will be developed for M.C. Once M.C. has successfully completed that program, M.C. will move to the transition phase, which involves the development of an aftercare plan. M.C.'s release from the DOC "will depend primarily on how well [M.C.] progresses in his program." Id.

P12 M.C. now appeals.

#### I. Abuse [\*\*7] of Discretion

##### A. Standard of Review

P13 In addressing M.C.'s claim that the juvenile court abused its discretion in granting wardship to the DOC, we observe that the choice of the specific disposition of a juvenile adjudicated a delinquent child will only be reversed if the juvenile court abuses its discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. *C.C. v. State*, 831 N.E.2d 215, 216-17 (Ind. Ct. App. 2005). An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Id. The juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles. *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003).

P14 Ind. Code § 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree:

[\*459] If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that

(1) is: (A) in the least restrictive (most family like)

and most appropriate setting available; [\*\*8] and (B) close to the parents' home, consistent with the best interest and special needs of the child; (2) least interferes with family autonomy; (3) is least disruptive of family life; (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

P15 Although the statute requires the juvenile court to select the least restrictive placement, it allows for a more restrictive placement under certain circumstances. *K.A. v. State*, 775 N.E.2d 382, 386-87 (Ind. Ct. App. 2002), trans. denied. That is, the statute requires placement in the least restrictive setting only "[i]f consistent with the safety of the community and the best interest of the child." See I.C. § 31-37-18-6. Thus, the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement because "commitment to a public institution is in the best interest of the juvenile and society." *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005).

P16 Here, the evidence establishes that many less restrictive rehabilitative efforts have failed to reach M.C. and have not produced positive changes in his behavior. Indeed, M.C. has admitted that he intended [\*\*9] to continue using illegal drugs, and he possessed marijuana during the pendency of the modification petition. These are certainly compelling reasons for a more closely-supervised and restrictive environment than a setting that would permit M.C. to reoffend and disregard the juvenile court's rules.

P17 M.C.'s continued marijuana use, the commission of additional offenses, school suspensions, and the act of theft after his involvement with the juvenile justice system warranted the juvenile court's determination that a more intensive services program involving a supervised environment is necessary to prevent M.C. from continuing to commit acts that are harmful to himself and the community. Put another way, M.C.'s wardship to the DOC serves the juvenile justice system's purpose, inasmuch as intervention was needed to prevent M.C.'s behavior from declining, with the hope that M.C. will not commit criminal offenses as an adult. To that end, we conclude that the juvenile court did not abuse its discretion in ordering the wardship of M.C. to the DOC. See *C.C.*, 831 N.E.2d at 218-19 (observing that a juvenile's repeated involvement with the juvenile justice system and repeated failures at rehabilitation efforts, coupled [\*\*10]

with the failure to alter behavior despite several placements by the court were appropriate considerations for a grant of wardship to the DOC).

## II. Constitutional Issues

P18 M.C. presents several constitutional challenges on appeal regarding the wardship that he did not raise at the juvenile court level. While the State asserts that these issues are waived, our Supreme Court has determined that "[e]ven though the general rule is that failure to challenge the constitutionality of a statute at trial results in waiver of review on appeal, this Court as well as the Court of Appeals has long exercised its discretion to address the merits of a party's constitutional claim notwithstanding waiver." *Plank Cnty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). We exercise our discretion to review M.C.'s claims.

### [\*460] A. Federal Equal Protection and Article 1, Section 23 of the Indiana Constitution

P19 M.C. argues, *inter alia*, that imposing greater restrictions on M.C.'s liberty than what an adult offender would receive for the same conduct violates equal protection principles under the Fourteenth Amendment to the United States Constitution and those defined in Article 1, Section 23 of the Indiana Constitution. M.C. further contends that "the government action of committing M.C. to the DOC is not substantially related to a sufficiently important government interest." *Appellant's Brief* at 25 (emphasis in original). [\*\*11]

P20 The Fourteenth Amendment to the United States Constitution provides in part that the government should not "deny to any person within its jurisdiction the equal protection of the laws." Because the juvenile justice statutes do not involve a suspect classification, rational basis review applies. *FCC v. Beach Communications*, 508 U.S. 307, 313, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993). This is a heavy burden for M.C. to overcome, in that in accordance with a rational basis review, a statutory classification comes to court bearing "a strong presumption of validity," and the challenger must "negative every conceivable basis which might support it." *Id.* "To uphold a legislative choice, we need only find a 'reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1072 (7th Cir. 2013) (quoting *Heller v. Doe*, 509 U.S. 312,

320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993)).

P21 States may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 83, 120 S. Ct. 631, 145 L. Ed. 2d 522 (2000). A statutory classification will not be overturned under rational basis review unless the varying treatment is so unrelated to the achievement of a legitimate purpose that a reviewing court can only conclude that the government's actions were irrational. Because M.C. is arguing his equal protection right was violated because he was not treated as an adult [\*\*12] offender would be, M.C. must demonstrate that there is no rational basis to treat juvenile delinquents differently than adult offenders. See *id.* at 83-84.

P22 M.C. correctly acknowledges that cases have applied the rational basis review to classifications based on age, yet he claims that is only because the classifications have been based on advanced age rather than youth. He argues that there should be a heightened standard of review because juveniles cannot vote for judges, legislators, and prosecutors. Hence, he asserts that juveniles are "those least likely to obtain legislative cures for their disparate treatments." *Appellant's Brief* at 20.

P23 This argument is unavailing. The United States Supreme Court has determined that advanced age is not a suspect class because it "does not define a discrete and insular minority because all persons, if they live out their normal life spans, will experience it." *Kimel*, 528 U.S. at 83. Similarly, it cannot be said that youth is a "discrete and insular minority," because all persons, including everyone drafting, interpreting, and applying the laws involved in a juvenile-delinquency case, will have experienced life as a juvenile.

P24 Indiana has long recognized that its juvenile [\*\*13] system is directed toward providing "aid to the juvenile to direct his behavior so that he will not later become a criminal." *Jordan v. State*, 512 N.E.2d 407, 408 [\*461] (Ind. 1987). The juvenile justice system was founded on the principle of *parens patriae*, which allows courts to step into the shoes of the parents when required. *In re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004). That notion permits juvenile courts to care for and further the best interests of the child, "which implies a broad discretion unknown in the adult criminal court system." *Id.* at 636.

P25 None of the dispositional options available to the juvenile court amount to "sentences" for "crimes."

Jordan, 512 N.E.2d at 408. "When a juvenile is found to be delinquent, a program is attempted to deter him from going further in that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant detriment to society is realized." Id. at 408-09. Instead of a punishment, the recommended wardship to the DOC ensures that the juvenile "receives, in a secure environment, the extended rehabilitative counseling" needed. S.C. v. State, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002), trans. denied. M.C.'s own argument demonstrates that disparate treatment between adults and juvenile offenders is required to address the nuances of youth.

P26 Additionally, *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) and *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), both highlight the widely-held [\*\*14] belief that juveniles are different because of a diminished capacity to appreciate the nature of their actions and a greater capability to change. *Roper*, 543 U.S. at 569; *Graham*, 560 U.S. at 68-69. While neither case mandates a separate system for juvenile offenders, the considerations that support less-severe treatment when juveniles are sentenced as adults, also support the State's legitimate interest in a separate juvenile justice system. The ability of juveniles to demonstrate changed behavior advances the State's goal of providing a separate system that focuses on reformation.

P27 As discussed above, the juvenile justice system had provided M.C. less-restrictive alternatives, like community and home-based therapy, before the juvenile court resorted to granting wardship to the DOC. The DOC was not granted wardship of M.C. because M.C. only possessed marijuana or only failed to pay for some pizza. Rather, it is apparent that the juvenile court resorted to the DOC for the purpose of reforming M.C.'s behavior before M.C. reached adulthood because M.C. demonstrated that he would ignore other less-restrictive attempts at reformation. M.C.'s treatment by the juvenile court was well suited to provide structured guidance and personalized [\*\*15] rehabilitative services to him. As a result, the separate systems for juvenile delinquents and adult criminal offenders are rationally related to the goal of ensuring rehabilitation of juveniles. See *K.G.*, 808 N.E.2d at 636 (holding that the State can adjust the legal system to account for children's vulnerability and needs). M.C.'s Equal Protection Argument under the Fourteenth Amendment fails.

P28 Turning to M.C.'s claim that he was denied the privileges and immunities guaranteed under the Indiana

Constitution, Article 1, Section 23 of the Indiana Constitution (Section 23) provides that "[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." Section 23 is given independent interpretation and application from federal Fourteenth Amendment claims. *Collins v. Day*, 644 N.E.2d 72, 75 (Ind. 1994). This section imposes two requirements on statutes that grant unequal privileges or immunities to different classes of persons: 1) [\*\*462] the disparate treatment must be reasonably related to inherent characteristics that distinguish the unequally treated classes; and 2) the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758, 770 (Ind. 2010). The first prong has two necessary components. *Ledbetter v. Hunter*, 842 N.E.2d 810, 813 (Ind. 2006). Specifically, the classification [\*\*16] must initially be based upon distinctive, inherent characteristics that rationally distinguish the disparately treated class. Id. And secondly, the disparate treatment must be reasonably related to the distinguishing characteristics. Id.

P29 Reviewing courts give substantial deference to legislative discretion when framing laws under the Indiana Constitution. *League of Women Voters*, 929 N.E.2d at 770; *Ledbetter*, 842 N.E.2d at 812-13. So long as a classification is based upon substantial distinctions, we will not substitute our judgment for that of the legislature nor inquire into motives prompting such classification. See *Ledbetter*, 842 N.E.2d at 813. To succeed on such a claim, the challenger must negate every conceivable basis which might have supported the classification. Id.

P30 In our view, distinguishing between juvenile delinquents and adult offenders is rationally related to the goal of promoting rehabilitation among juvenile delinquents. Restrictive placements, including the DOC, can promote rehabilitation and the policy of individual accountability. S.C., 779 N.E.2d at 940; *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), trans. denied. Here, M.C. can essentially control the length of his placement in the DOC. As soon as he completes his program and demonstrates that he has been rehabilitated, he will be released from the DOC.

P31 Additionally, [\*\*17] M.C.'s argument, under both the Fourteenth Amendment and Section 23, makes much of the fact that M.C. was sent to the DOC rather than a county jail. While it is unlikely that an adult

offender would be incarcerated at a DOC facility rather than a county jail for the commission of these offenses, see I.C. § 35-38-3-3, M.C. offers no reason why the distinction between a county facility and a statewide DOC facility specifically designed to meet the needs of a juvenile is a meaningful distinction that would support a claim of unconstitutional disparate treatment. To the contrary, this type of disparate treatment seems to address the uniqueness of juvenile offenders and provides more specialized rehabilitative efforts that might otherwise be unavailable or impractical for such offenders.

P32 For all these reasons, we conclude that M.C. has failed to show that the wardship in favor of the DOC violated either the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, or Article 1, Section 23, of the Indiana Constitution.

#### B. Cruel and Unusual Punishment Under the Eighth Amendment and the Proportionality Clause Under the Indiana Constitution

P33 M.C. maintains that his loss of liberty is disproportionate with what an adult would receive for the same conduct and that juveniles are inherently less culpable than adults. Therefore, M.C. argues that the disposition declaring him a ward [\*\*18] of the DOC violates the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution and the proportionality clause of the Indiana Constitution.

P34 The Eighth Amendment prohibits the infliction of cruel and unusual punishment. Article 1, Section 16 explicitly requires [\*463] that "All penalties shall be proportioned to the nature of the offense." Punishment for a crime should be graduated and proportioned to the offense, and the concept of proportionality is central to the Eighth Amendment. *Graham*, 560 U.S. at 59. Both clauses apply to the criminal process—that is, to direct actions by the government to inflict punishment. *Browning-Ferris Indus. of Vt., Inv. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989).

P35 The United States Supreme Court has recognized that juvenile proceedings are not criminal prosecutions. *McKeiver v. Pennsylvania*, 403 U.S. 528, 541, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971). Similarly, our Supreme Court has held that juvenile delinquency is not a crime and juvenile dispositions are not criminal sentences.

See *D.M. v. State*, 949 N.E.2d 327, 333 n.6 (Ind. 2011) (observing that juvenile proceedings are civil, not criminal, and are based on a philosophy of social welfare rather than criminal punishment); see also *T.K. v. State*, 899 N.E.2d 686, 687-88 (Ind. Ct. App. 2009) (declining to apply Indiana Rule of Appellate Procedure 7 to juvenile dispositions because juvenile disposition orders are not the same as criminal sentences).

P36 While our courts have yet to specifically address whether the Eighth Amendment applies to delinquency proceedings, the Illinois Supreme Court has concluded [\*\*19] that its state juvenile code does not implicate Eighth Amendment concerns. In *In re Rodney H.*, 223 Ill. 2d 510, 861 N.E.2d 623, 629-30, 308 Ill. Dec. 292 (Ill. 2006), the Illinois Supreme Court arrived at that conclusion, observing that the goal of the juvenile system is rehabilitation. *Id.* Ultimately, the Illinois court determined that a petition for adjudication for wardship was not an action to inflict punishment. Therefore, it determined that the Eighth Amendment does not apply to juvenile delinquency proceedings. *Id.*

P37 We adhere to the reasoning advanced in *Rodney H.*, in that the goal in Indiana is rehabilitation for its juvenile offenders. A juvenile delinquency petition is not about the State seeking to punish a young offender. Rather, our General Assembly has codified the goal of the juvenile system by requiring juvenile courts to consider the needs of the child, efforts made to prevent removal from the parents, and various services that must be offered to juvenile offenders. I.C. § 31-37-18-9.<sup>1</sup> Furthermore, our legislature has imposed

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<sup>1</sup>The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning approval, modification, or rejection of the dispositional recommendations submitted in the predispositional report, including the following specific findings:

- (1) The needs of the child for care, treatment, rehabilitation, or placement.
- (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
- (3) Efforts made, if the child is removed from the child's parent, guardian, or custodian, to:
  - (A) prevent the child's removal from; or
  - (B) reunite the child with; the child's parent, guardian, or custodian.
- (4) Family services that were offered and provided to:
  - (A) the child; or

strict requirements on juvenile facilities to provide recreation, education, counseling, and health care that must be operated by qualified staff to provide such programs and treatment. See I.C. § 31-37-19-21. Delinquency actions are designed to rehabilitate and correct, and they encourage juveniles [\*\*20] to "straighten out [their lives] before [\*464] the stigma of criminal conviction and the resultant detriment to society is realized." *Jordan v. State*, 512 N.E.2d 407, 409 (Ind. 1987). Indeed, Article 9, Section 2 of Indiana Constitution states "The General Assembly shall provide institutions for the correction and reformation of juvenile offenders."

P38 Inasmuch as the juvenile court's dispositional order was not a penalty or punishment within the meaning of the Eighth Amendment to the United States Constitution, M.C.'s claim that awarding wardship to the DOC was cruel and unusual punishment and violated the proportionality provision of Article 1, Section 16 of the Indiana Constitution, is unavailing.

### III. Conclusion

P39 We conclude that M.C. has failed to show that the juvenile court's disposition granting wardship to the DOC was an abuse [\*\*21] of discretion. Additionally, there was no violation of the Equal Protection Clause under the Fourteenth Amendment to the United States Constitution or the Privileges and Immunities Clause of the Indiana Constitution. Finally, we conclude that juvenile proceedings are not criminal in nature and do not amount to a direct action by the State to inflict punishment upon a juvenile. Therefore, neither the cruel and unusual punishment clause under the United States Constitution nor the proportionate penalties clause under the Indiana Constitution is implicated.

P40 Judgment affirmed.

Brown, J. and Tavitas, J., concur.

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(B) the child's parent, guardian, or custodian.

(5) The court's reasons for the disposition.

Id.

Approved: 8.08  
Revised: 1.10

D-14.07

## STATE OF INDIANA

## RUSH SUPERIOR COURT

In The Matter Of  
M [REDACTED] A. C [REDACTED]  
A Delinquent Child

Case No. 70D01-1805-JD-0317. *[Signature]*

FILED  
FEB 26 2019  
RUSH COUNTY CLERK  
OF COURTS  
*[Signature]*

**ORDER ON MODIFICATION/REVIEW HEARING**

The State of Indiana appears by Deputy Prosecuting Attorney, Phillip Morgan. The child appears in person and with counsel, Bryan E. Barrett. The child's mother appears in person. Also, juvenile Probation Officer, Kayleigh Gordon, appears.

A modification hearing is held.

The Court FINDS and ORDERS as follows:

[ x ] The Child's disposition was entered July 17<sup>th</sup>, 2018 placing the child under the supervision of the Rush County probation department, and the Court finds that due to the child's continued non-compliance and arrest for new charges, good cause exists to modify the Court's prior Dispositional Order.

**The Court finds that it is in the best interests of the child to be removed from the home environment and remaining in the home would be contrary to the welfare of the child because: the child continues to violate his rules of probation and is need of a more structured environment.**

**( x ) The Court finds that reasonable efforts were made by the probation department to prevent or eliminate the need for removal of the child. The statements of reasonable efforts as set forth in the pleadings, reports, and documents of the probation department and/or all other service providers filed herein are incorporated by reference.**

The Court finds responsibility for the placement and care of the child is ordered or continues to be ordered to the probation department of Rush County.

The Court finds good cause to grant the modification and orders the following:

[ x ] Pursuant to (IC 31-37-19-6) (IC 31-37-19-9), the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children.

The child does not have any pending charges known to the Court at this time.

Approved: 8.08  
Revised: 1.10

D-14.07

The child is ordered detained at the Youth Opportunity secure facility pending transport to the Department of Correction.

So ordered this 26<sup>th</sup> day of February, 2019.



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BRIAN D. HILL, Judge  
Rush Superior Court

DISTRIBUTION:

State  
Probation  
Child's attorney  
Child's parents  
DCS

Approved: 8.08  
 Revised: 1.10

D-11.04

FILED

FEB 26 2019

RUSH COUNTY CLERK  
OF COURTS*Angela M. Buckley*

Case No. 70D01-1812-JD-094

In The Matter Of  
 M■■■■ A. C■■■■  
 A Delinquent Child.  
 Date of Birth: 10-19-2002

STATE OF INDIANA  
RUSH SUPERIOR COURTDISPOSITIONAL ORDER  
Wardship Awarded to Department of Correction

The State of Indiana appears by Chief Deputy Prosecuting Attorney, Phillip Morgan. Probation officer, Kayleigh Gordon, appears. The child appears in person and with counsel, Bryan Barrett, and the mother appears in person.

The delinquency petition comes on for a dispositional hearing.

The juvenile having been found guilty of committing delinquent act alleged in the petition filed herein, the Court now finds that the child did: Theft and Possession of Marijuana, Misdemeanors.

The Court reviewed the pre-dispositional report and having heard evidence and statements presented to the Court concerning the disposition, and the Court having considered the interests of the child and the public makes the following findings of fact: the child has had numerous contacts with the juvenile justice system. Services including probation, home-based therapy, and a previous stay at the department of corrections have been provided to the child. He has shown a consistent unwillingness to apply himself and follow rules.

The Child has a prior history of delinquent adjudications in the following case numbers: 49D09-1412-JD-03075; 70D01-1607-JD-058; 70D01-1711-JM-093; and 70D01-1805-JD-031.

The Court finds responsibility for the placement and care of the child is ordered or continues to be ordered to the probation department of Rush County.

Pursuant to (IC 31-37-19-6) (IC 31-37-19-9), the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children.

The child does not have any pending charges known to the Court at this time.

The Court recommends that the Department of Correction [*add placement, treatment, length of stay recommendations*]: **no recommendation**.

The Court's dispositional order is entered for the following reasons: Rush Co. juvenile justice system has offered all reasonable services to the child and has received no willingness on behalf of the child to change his behavior.

The probation officer is hereby ordered to transmit this dispositional order, a copy of the delinquency petition, a copy of the pre-dispositional report, and a summary of the Court's information concerning the child to the Indiana Department of Correction.

The Child shall remain in secure detention at YOC until transport to the Indiana Department of Correction.

YOC is hereby ordered to transport the child to DOC at its earliest possible convenience.

So ORDERED this 26<sup>th</sup> day of February, 2019.



BRIAN D. HILL, Judge  
Rush Superior Court

Distribution:

State  
Child's attorney  
Probation  
Child's parents  
DCS

State of Indiana

County of Rush

I, Deborah Richardson, Clerk of said County, do hereby certify that Brian D. Hill, whose genuine signature is appended to the foregoing Dispositional Order, was, at the date thereof, and is Judge of the Court having juvenile jurisdiction in this county. IN WITNESS whereof, I have hereunto set my hand and affixed the seal of said Court at \_\_\_\_\_, Indiana, this \_\_\_\_\_ day of February 27, 2019 20

Clerk \_\_\_\_\_



Angela M. Buckley

JB



JB

**M.C. v. State**

Supreme Court of Indiana

March 19, 2020, Decided

No Number in Original

Reporter  
2020 Ind. LEXIS 291 \*; 143 N.E.3d 962

**M.C. v. State of Indiana**

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: [\*1] 19A-JV-703.

M.C. v. State, 2019 Ind. App. LEXIS 438, 134 N.E.3d 453 (Ind. Ct. App., Oct. 9, 2019)

**Opinion**

Transfer Denied.

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APPENDIX D

1 IN THE

2 **INDIANA COURT OF APPEALS**

3 **APPELLATE NO: 19A-JV-00703**

4 M.C., ) APPEAL FROM THE RUSH SUPERIOR COURT  
5 Appellant ) TRIAL COURT CASE NO.: 70D01-1812-JD-94 &  
6 v. ) 70D01-1805-JD-31  
7 STATE OF INDIANA, ) BEFORE THE HONORABLE BRIAN D. HILL  
8 Appellee.

9  
10 **TRANSCRIPT OF EVIDENCE**

11 VOLUME II OF II

12 PAGES 1 TO 50

13  
14 **ATTORNEY FOR APPELLEE:**

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16 DEPUTY PROSECUTING ATTORNEY

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26 TONYA L. MUCKERHEIDE

27 OFFICIAL COURT REPORTER

28 RUSH SUPERIOR COURT

29 [superiorreporter@rushcounty.in.gov](mailto:superiorreporter@rushcounty.in.gov)

1 STATE OF INDIANA ) IN RUSH SUPERIOR COURT  
2 ) SS:  
3 COUNTY OF RUSH ) CAUSE NO. 70D01-1812-JD-94 &  
4 ) 70D01-1805-JD-31  
5 M. C., )  
6 Appellant,  
7 )  
8 v. )  
9 STATE OF INDIANA )  
10 Appellee.

11  
12 TRANSCRIPT OF ALL HEARINGS IN BOTH CAUSES  
13

14 BEFORE THE HONORABLE BRIAN D. HILL  
15 JUDGE OF THE RUSH SUPERIOR COURT

16 DATES: July 17, 2018; December 20, 2018;

17 January 17, 2019; February 12, 2019; February 26, 2019  
18  
19  
20  
21

22 TONYA L. MUCKERHEIDE  
23 OFFICIAL COURT REPORTER  
24 RUSH SUPERIOR COURT  
25 [superiorreporter@rushcounty.in.gov](mailto:superiorreporter@rushcounty.in.gov)

## APPEARANCES

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CAUSE 70D01-1805-JD-031

MAY 24, 2018

## INITIAL HEARING

THE COURT: This is, uh, case number 70D01-1805-JD-031. In re: the Matter of M [REDACTED] C [REDACTED], a Child Alleged to be a Delinquent Child. Let the record reflect, the child appears in person. His mother also appears. This matter was set today for an Initial hearing. Can I have both of you, please, raise your right hands? Do both of you, swear or affirm, under the penalties for perjury, that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

MOTHER: Yes.

CHILD: Yes.

THE COURT: Okay, both parties did answer affirmatively. M [REDACTED], will you please state your full, true name?

CHILD: M [REDACTED] A [REDACTED] C [REDACTED].

THE COURT: And what is your age?

CHILD: 15.

THE COURT: Your date-of-birth, please?

CHILD: [REDACTED].

THE COURT: And your current address?

MOTHER: 8-9-4-9 North 450 East, Rushville.

THE COURT: You live there with your mother?

CHILD: Yes.

## THE COURT

THE COURT. And, ma am, will you please state your full, true name?

MOTHER. Cynthia Marie Weinert.

THE COURT: And you're M\_\_\_\_\_s mother, is that correct?

1 MOTHER: Yes.

2 THE COURT: Did he give his correct name and date-of-birth?

3 MOTHER: Yes.

4 THE COURT: Alright. Um, there was a Petition alleging delinquency, uh,  
5 filed on May 9<sup>th</sup>, uh, 2018. You should have received a copy of that Petition. Did you, in  
6 fact, receive that?

7 MOTHER: Yes.

8 THE COURT: Okay. And that reads, in part, as follows: It states, the above-  
9 named child, M█████ C█████, was born on October 19<sup>th</sup>, 2002. He's fifteen years-of-age.  
10 Resides at 8949 North 450 East in Rushville with Cynthia Patterson. The names and  
11 addresses of the child's parents or guardians or custodians are as follows: That'd be Cynthia  
12 Patterson at 8949 North 450 East in Rushville. And Paul Cox, as Father, and it's got no  
13 address on this Petition. Citation to the section of the Juvenile code that gives the Court  
14 jurisdiction in this, uh, proceeding is I.C. 31-30-1-1. The State alleges the Child is a  
15 delinquent child in that: On or about March 23<sup>rd</sup> in Rush County, the Child did, knowingly,  
16 consume an alcoholic beverage and he's a minor. They also allege that, on or about, March  
17 23<sup>rd</sup> in Rush County, he did give false information in the official investigation of a crime.  
18 That being, provided false name to investigating officer knowing that information to be  
19 false. And those would, both would be misdemeanors if they'd been committed by an adult.  
20 M█████, do you understand the nature of the allegations against you in this case?

21 CHILD: Yes.

22 THE COURT: And Ms., uh, Wenhart, do you understand those allegations?

23 MOTHER: Yes.

24 THE COURT: M█████, you are entitled to be represented by an attorney in  
25 this matter. Uh, you can hire your own or the Court will appoint one to represent you. Law

1 also states that a child cannot waive their right to an attorney unless that's consented to by  
2 your parents. In addition, you have the following rights: You have the right to a speedy trial  
3 on those allegations. You have the right to ask questions or cross-examine any of the State's  
4 witnesses they would call to prove their case. You'd also have the right to call your own  
5 witnesses and present your own evidence in your defense. You have the right to require the  
6 State to prove those allegations beyond a reasonable doubt for the court to find you to be a  
7 delinquent child. And you have the right to appeal this case to a higher court if we had a  
8 trial and I found you to be a delinquent child. Do you understand those rights?

9 CHILD: Yes.

10 THE COURT: And Ms. Wenhart, do you understand the child's rights?

11 MOTHER: I do.

12 THE COURT: Um, I've informed the child of his rights during these  
13 proceedings, Ms. Wenhart, I must now inform you that if the child were found to be a  
14 delinquent child, uh, you and the child could be ordered to participate in a program of care,  
15 treatment, rehabilitation for the child and could be held financially responsible for any  
16 services provided to the child. Do you understand that?

17 MOTHER: Yes.

18 THE COURT: They, uh, dispositional alternatives, uh, that's what the Court  
19 could do if you were found to be a delinquent child. Um, there's all kinds of alternatives. A  
20 complete list of those were listed on the back of your petition, or the last page of your  
21 Petition of Delinquency. They range from the most severe, placing at the Department of  
22 Corrections to the least severe of placing on some sort of supervisory probation through the  
23 local probation department. Do you have any specific questions about any of those  
24 alternatives at this time, M█████?

25 CHILD: No.

1 THE COURT: And Ms. Wenhart?

2 MOTHER: No, sir.

3 THE COURT: Um, have you discussed with your mother about whether or  
4 not you wish to be represented by an attorney in this matter?

5 MOTHER: Your Honor, I think that we want a court-appointed attorney.

6 THE COURT: Alright. I'll appoint the office of the Public Defender to  
7 represent you in this matter and since I'm doing that, I'll enter a denial of the allegations at  
8 this time to offer you a chance to speak with your attorney before our next hearing. We'll  
9 come back on June 7<sup>th</sup> at, uh, 2 in the afternoon. You both need to appear at that date and  
10 time. Uh, also, after this hearing, you should report over to the Public Defender's office  
11 across the hall to the right of the elevator doors. Check in with them. Uh, you may be able  
12 to speak with, uh, your attorney or at least, you can schedule a time to speak with him.  
13 There's another hearing right after yours but he might be free after that. Uh, do you have  
14 any questions, M█████?

15 CHILD: No.

16 THE COURT: Uh, Ms. Wenhart, any questions?

17 MOTHER: No, sir.

18 THE COURT: Alright, that's all for today. Report to the Public Defender's  
19 office and come back on June 7<sup>th</sup> at 2 p.m.

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CAUSE 70D01-1805-JD-031

JULY 17, 2018

## FACT-FINDING HEARING

THE COURT: This is, uh, case number 70D01-1805-JD-031, State of Indiana versus M [REDACTED] C [REDACTED]. Uh, let the record reflect, the State appears by Deputy Prosecuting Attorney, Kara Kerker, and the, uh, child appears in person and by counsel, Bryan Barrett. And his mother also appears. This matter is set today for a Fact-Finding Hearing on a Petition for Delinquency. Um, Mr. Barrett, will be having a Fact-Finding Hearing or will Mr. Cox be admitting to the allegations?

MR. BARRETT: Mr. [REDACTED]'s going to admit, your Honor.

11 THE COURT: Alright. Uh, M█████, will you, please, raise your right hand?  
12 Do you swear or affirm, under the penalties for perjury, that the testimony you are about to  
13 give is the truth, the whole truth, and nothing but the truth?

CHILD: Yes.

THE COURT: Please, state your full, true name.

CHILD: M [REDACTED] C [REDACTED].

THE COURT: You can put your hand...

CHILD: M [REDACTED] A [REDACTED] C [REDACTED].

THE COURT: You can put your hand down. Um, what's your age?

CHILD: Uh, 15.

THE COURT: Your date-of-birth, please?

CHILD: [REDACTED].

THE COURT: [REDACTED]?

CHILD: Yes.

THE COURT: Okay. And your current address?

1 CHILD: I don't know. Eight nine...

2 MOTHER: 8949...

3 CHILD: 8949...

4 MOTHER: North...

5 CHILD: North...

6 MOTHER: 450 East.

7 CHILD: 450 East.

8 THE COURT: Okay. Do you live there with your mother?

9 CHILD: Yes.

10 THE COURT: Alright. And, um, back at your initial hearing, I advised you  
11 that you had certain rights. Um, well, first of all, your attorney said that he believes that  
12 you're willing to admit to the allegations today. Is that correct?

13 CHILD: Yes.

14 THE COURT: And back at your Initial hearing, I advised you that you had  
15 certain rights. You had the right to remain silent. You have the right to a hearing, uh, to  
16 determine whether or not, uh, you did those things. You'd have the right to require the State  
17 to prove, uh, those allegations beyond a reasonable doubt for me to find you'd be a  
18 delinquent child. You have the right to be represented by an attorney. You have the right to  
19 cross-examine the State's witnesses and you have the right to call your own witnesses and  
20 your own defense in this matter. Do you understand those rights?

21 CHILD: Yes, sir.

22 THE COURT: And do you understand by admitting, you're waiving or  
23 giving up those things? That you'll be testifying against yourself and we won't be having a  
24 trial? You understand that?

25 CHILD: Yes.

1 THE COURT: Okay. And, that Petition...was filed, where's the one? I don't  
2 know why I don't have a copy of the Petition.

3 MR. BARRETT: The Petition, Judge?

4 THE COURT: Yeah.

5 KARA KERKER: Well, I have one right here. Looks like it was filed on...5-9  
6 of 18.

7 THE COURT: Can I take a look at the hard copy there? Thank you.

8 KARA KERKER: It's just not notarized. (Inaudible) filed it.

9 THE COURT: Alright. Um, they allege that you, knowingly, consumed an  
10 alcoholic beverage and you're a minor. And that, also, that you gave, uh, false information  
11 in the official investigation of a crime, being you provided a false name to an investigating  
12 officer. Do you understand those allegations against you?

13 CHILD: Yes.

14 THE COURT: And have you discussed this matter, uh, with your attorney  
15 and your mother?

16 CHILD: Uh-huh. Yes.

17 THE COURT: And has anyone forced, threatened, or placed you in fear to  
18 cause you to admit?

19 CHILD: No.

20 THE COURT: Has anyone offered you any leniency or anything of value to  
21 cause you to admit?

22 CHILD: What does that mean?

23 THE COURT: Like money or anything?

24 MR. BARRETT: Has anybody offered you any money or?

25 CHILD: No.

1 THE COURT: If I'd pay you money...?

2 MR. BARRETT: ...to give you anything.

3 CHILD: No.

4 THE COURT: Have you had any drugs or alcohol in the last twelve hours?

5 CHILD: No.

6 THE COURT: Do you now, in fact, admit to those allegations that were  
7 contained in that Petition alleging delinquency?

8 CHILD: Yes.

9 THE COURT: Okay. I'm going to ask Ms. Kerker for a Basis and Fact. She's  
10 going to tell me what she would have proved if this matter had gone to trial. Um, I want  
11 you to listen to her cause when she's done, I'm gonna ask if it's true, okay? Ms. Kerker, do  
12 you have a Factual Basis?

13 KARA KERKER: Yes, your Honor. Were this matter to proceed to a Fact-  
14 Finding hearing, the State would prove beyond a reasonable doubt that the child is a  
15 delinquent child as defined by I.C. 31-3-7-2-1. In that, on or about, March 23<sup>rd</sup>, 2018,  
16 M [REDACTED] A. C [REDACTED], did knowingly consume an alcoholic beverage. He was, um, the defendant  
17 was a minor. And that on, or about, March 23<sup>rd</sup>, 2018, M [REDACTED] A. C [REDACTED], did give false  
18 information to the official investigation of a crime, to wit: provided a false name to the  
19 investigating officer knowing said information to be false. The State would further prove  
20 that this, uh, both of these occurred here within Rush County, Indiana.

21 THE COURT: M [REDACTED], are those facts true?

22 CHILD: Yes.

23 THE COURT: Court finds the Child to be 15 years-of-age, understands the  
24 nature of the allegations to which he is admitting. I'll find that the admission is freely and  
25 voluntarily given and that a factual basis exists. I'll accept the admission. By doing so, I'll

1 find that you're a delinquent child and that you committed acts which would be  
2 misdemeanors if they'd been committed by an adult. Um, and, do we have an agreed-upon  
3 disposition? Uh, I guess, what's the State's recommendation as far as disposition?

4 KARA KERKER: Uh, your Honor, the State's recommendation would be  
5 that the, uh, Defendant serve, uh, formal probation in this matter and participate in  
6 counseling services with Meridian Health Services. Um, it's the State's understanding that  
7 Mr. C█ has been, uh, receiving services already. The length of probation, uh, we would  
8 leave up to, up to the Court.

9 THE COURT: Uh, does the Child or Mother wish to say anything in regards  
10 to that recommendation, Mr. Barrett?

11 MR. BARRETT: Judge, he was, he received services. It was a Child in Need  
12 of Services case that was terminated, I believe, in January?

13 MOTHER: I think so.

14 MR. BARRETT: And they were receiving home-based services through that  
15 case. Um, so those terminated in, yeah, in January. That's right.

16 THE COURT: So...I mean...

17 MR. BARRETT: I know that wasn't your case.

18 THE COURT: ...I guess, I'm a little unclear. Are we asking that those be  
19 started up again? Or just at the Probation Officer's recommendation?

20 MR. BARRETT: No. Just, just that, no. They were through LifeLine, which  
21 is, I was just, I, that was not your case, Judge. So I didn't know if you were familiar with  
22 that or not, but. No, I think the Probation Department's recommending counseling through  
23 Meridian Health Services.

24 THE COURT: Okay.

25 MR. BARRETT: And we're, they're fine with that.

1                   THE COURT: Alright. I will accept that and approve that recommendation  
2 as disposition. M█████, I'm gonna place you on six months of probation. And, um, you are  
3 to participate in counseling or any services recommended by your probation officer. Uh,  
4 you've got Court Costs of a hundred and seventy-six dollars. And initial probation fee of a  
5 hundred dollars plus fifteen dollars a month. Uh, just get that paid during the time that  
6 you're on probation.

7 (PAUSE WHILE COURT IS FILLING OUT PAPERWORK.)

8                   THE COURT: Uh, I've prepared, uh, I've got your Rules of Probation here  
9 that you'll need to, uh, take down with you. You're ordered to report, uh, to the Probation  
10 office after this hearing. Take these rules with you. I've signed them. They're gonna require  
11 you and your mother's signature along with your Probation Officer. And then she'll get  
12 those back to me. And you'll do that right after this hearing. Is there anything else in this  
13 case today from the State, Ms. Kerker?

14                   KARA KERKER: No your, your Honor.

15                   THE COURT: Anything else or any questions, Mr. Barrett or Mr. C████?

16                   MR. BARRETT: No, your Honor.

17                   THE COURT: Okay. Mr. Barrett, if you'll step forward with these rules and  
18 Order of Urinalysis Drug Testing. Uh, report down to probation. Good luck.

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CAUSE 70D01-1805-JD-031

DECEMBER 20, 2018

PRETRIAL ON PETITION FOR MODIFICATION

4 THE COURT: This is, uh, case number 70D01-1805-JD-031. In re: the  
5 Matter of M [REDACTED] C [REDACTED], a Child Adjudicated to be a Delinquent Child. Let the record  
6 reflect, the State appears by Deputy Prosecuting Attorney, Kristin Alosinac, and the  
7 Juvenile Probation Officer, uh, Kayleigh Gordon. Child appears in person and by counsel,  
8 Bryan Barrett. His mother, also, appears. This matter is set today, uh, for a Pretrial on a  
9 Petition for Modification of Dispositional Decree that was filed. Uh, there was an original  
10 filing, there was an amended one that, I think, included all the most recent allegations filed  
11 on December 18<sup>th</sup>. Uh, Mr. Barrett, is the, uh, child received a copy of that Amended  
12 Petition?

13 MR. BARRETT: Yes, your Honor.

14 THE COURT: And have you had an opportunity to discuss, uh, his  
15 intentions as to admitting or denying those allegations?

16 MR. BARRETT: I have, your Honor.

17 THE COURT: And what's the status today?

18 MR. BARRETT: We would ask to enter, a denial be entered on his behalf  
19 and that the matter be set for a Fact-Finding.

20 THE COURT: Alright.

21 (PAUSE – WAITING ON COURT)

22 THE COURT: Set this matter for a Fact-Finding hearing on January 17<sup>th</sup> at 2  
23 p.m. M [REDACTED] and Mother, you need to appear at that date and time. Anything...

24 MR. BARRETT: Could I have a second, Judge? His mother's asking me a  
25 question.

1 THE COURT: Okay.

2 MR. BARRETT: She's asking if it could be set earlier in the days. She doesn't  
3 have any more points for her job. She'll lose her job she's afraid if she's here on that day at  
4 that time. She normally goes to work at 2:00, Judge.

5 THE COURT: I could do 11:00, that'd be as early as I can go that day.

6 MR. BARRETT: That same day, Judge?

7 THE COURT: Yeah.

8 MR. BARRETT: Thank you, your Honor.

9 THE COURT: Does the State have any major problem with that?

10 MS. ALOSINAC: I don't have access to my calendar. Um, I don't think it  
11 should be a problem though.

12 THE COURT: We'll say January 17<sup>th</sup> at 11:00. Anything else in this case  
13 today from the State, Ms. Alosinac?

14 MS. ALOSINAC: No, thank you, your Honor.

15 THE COURT: Anything else in that case today, Mr. Barrett?

16 MR. BARRETT: No, your Honor. Thank you.

17 THE COURT: That's all in that matter.

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CAUSE 70D01-1812-JD-094

JANUARY 17, 2019

INITIAL HEARING

THE COURT: Alright, we're here in, uh, case number 70D01-1812-JD-094.

5 In re: the Matter of, uh, M [REDACTED] C [REDACTED] a Child Alleged to be a Delinquent Child. Let the  
6 record reflect, the State appears by Deputy Prosecuting Attorney, Kristin Alosinac. The  
7 Defendant appears in person and Mr. Barrett's appearing, uh, on his behalf. I believe you've  
8 already been appointed in another pending case?

MR. BARRETT: Correct, Judge.

10 THE COURT: And the Child's Mother appears in person. This matter is set  
11 today for an Initial hearing on this Petition Alleging Delinquency. That, uh, and this is  
12 through no fault of the State, I don't believe, that should have been filed as of December  
13 31<sup>st</sup>. There's a...

MR. BARRETT: I think that's right.

15 THE COURT: ...issue with the Clerk's office at this time. Um, M█████, can I  
16 have you and your mother, please, raise your right hands? Do both of you, swear or affirm,  
17 under the penalties for perjury, that the testimony you are about to give is the truth, the  
18 whole truth, and nothing but the truth?

CHILD: Yes, sir.

MOTHER: Yes.

21 THE COURT: Both parties did answer affirmatively. M█████, will you  
22 please state your full, true name?

CHILD: M [REDACTED] A [REDACTED] C [REDACTED]

THE COURT: You're, uh, date-of-birth, please?

CHILD: [REDACTED]

1 THE COURT: Your current address?

2 CHILD: 4, uh, 8949 North 450 East, Rushville Indiana.

3 THE COURT: And do you live there with your mother?

4 CHILD: Yes.

5 THE COURT: And Ms. Patterson, uh, will you please state your full, true  
6 name?

7 MOTHER: Cynthia Marie Wenhart.

8 THE COURT: You can put your hand down. And you're M████████'s mother?

9 MOTHER: Yes.

10 THE COURT: Did he give his correct name and date-of-birth?

11 MOTHER: Yes.

12 THE COURT: And does he live there at that address with you?

13 MOTHER: He does.

14 THE COURT: Alright. And as I stated, there's been a Petition Alleging a  
15 Delinquency. That alleges that the above-named child, M████████ C████, was born on 10-19 of  
16 02 and he's 16 years-of-age. That he resides at 8949 North 450 East in Rushville with  
17 Cynthia Patterson. That the names and addresses of the child's parents are Cynthia  
18 Patterson at that same address. And Paul Cox at an unknown address in Greenfield.  
19 Citation of the section of the Juvenile Code the Court that gives the Court jurisdiction of  
20 this matter is I.C. 31-30-1-1. State alleges the child is a delinquent child as defined by I.C.  
21 31-37-2-1. In that they allege on, or about, October 15<sup>th</sup>, 2018 in Rush County, the  
22 Defendant, uh, the Child did, knowingly or intentionally, exert unauthorized control over  
23 the property of Pizza King, that being the food, um, with the intent to deprive Pizza King of  
24 any part of use or value of that property, contrary to I.C. 35-43-4-2. Further allege, on or  
25 about, November 14<sup>th</sup>, the Defendant did, knowingly or intentionally, possess marijuana,

1 contrary to I.C. 35-48-4-11. Uh, M█████, do you understand the nature of the allegations  
2 against you in that case?

3 CHILD: Yes.

4 THE COURT: And Ms., uh, Patterson, do you understand that, uh,  
5 allegations against the child?

6 MOTHER: I do.

7 THE COURT: You're entitled to be represented by an attorney. Do you, uh,  
8 wish for Mr. Barrett to continue to represent you in this case, as well, M█████?

9 CHILD: Yes.

10 THE COURT: Alright. In addition, you have the following rights. You have  
11 the right to a speedy trial on those allegations. You have the right to cross-examine and  
12 confront any of the State's witnesses that they've called to prove their case. You'd have the  
13 right to call your own witnesses and present your own defense in this matter. You have the  
14 right to remain silent and cannot be ordered to testify against yourself at any trial or hearing.  
15 You have the right to require the State to prove the allegations against you beyond a  
16 reasonable doubt for the Court to find you to be a delinquent child. You also have the right  
17 to know the dispositional alternatives or what the Court could do if you're found to be a  
18 delinquent child. Do you understand those rights?

19 CHILD: Yes.

20 THE COURT: And, Ma'am, do you understand the child's rights?

21 MOTHER: Yes.

22 THE COURT: And does the State intend to seek waiver in this case?

23 MS. ALOSINAC: We do not.

24 THE COURT: I've informed the child of his rights during these proceedings.  
25 I must, now, inform, uh, Mother that if the child were found to be a delinquent child, you

1 may be required to participate in a program of care, treatment or rehabilitation for the child.  
2 And may be held financially responsible for any services provided to the child. Do you  
3 understand that?

4 MOTHER: I do.

5 THE COURT: And being that, uh, uh, counsel appointed, uh, Mr. Barrett, do  
6 you wish to enter a denial on behalf of the child at this time?

7 MR. BARRETT: Yes, your Honor.

8 THE COURT: Alright.

9 MR. BARRETT: Judge, if this case could track with 1805-JD-31.

10 THE COURT: Alright.

11 MR. BARRETT: I don't...

12 THE COURT: Well...

13 MR. BARRETT: ...know when that's been reset. But...

14 THE COURT: Well, and that's my question. Cause we've got 70D01-1805-  
15 JD-31 that'd be, also set for a Fact-Finding hearing today. There was a continuance filed by  
16 the State before. I think there was a misunderstanding of when that Fact-Finding was set.  
17 Or is the State ready to proceed with that Fact-Finding today on the modification?

18 MS. ALOSINAC: Unfortunately not, your Honor. Uh, the allegations, uh, or  
19 part of the allegations, are the same as the new delinquency petition. And Mr. Barrett was  
20 kind enough to agree to go straight to trial on both cases. And, uh, unfortunately, we just  
21 found out this morning that, uh, the, um, alleged marijuana, uh, was taken to the State Lab  
22 so we couldn't bring it into Court today.

23 THE COURT: Okay.

24 MS. ALOSINAC: So...

25 THE COURT: So...

1 MS. ALOSINAC: ...when we just get that.

2 THE COURT: ...it's, would the State be alright with going forward, uh, are  
3 the allegations substantially similar on the modification as to this new delinquency or can  
4 we do them both at the same time, I guess?

5 MS. ALOSINAC: I would like to do that, yes.

6 THE COURT: Alright.

7 MR. BARRETT: That's fine, Judge.

8 MS. ALOSINAC: Other than trying it twice.

9 MR. BARRETT: That's what I was trying to say.

10 THE COURT: Uh, I'm looking at, uh, February 12<sup>th</sup> at 1:30. It's a Tuesday.  
11 So we'll set both of those at that time. Have a Fact-Finding hearing on both. Is there  
12 anything else from the State today, Ms. Alosinac?

13 MS. ALOSINAC: No, thank you, your Honor.

14 THE COURT: Uh, anything else in this case today from the child, Mr.  
15 Barrett?

16 MR. BARRETT: No, Judge.

17 THE COURT: Alright. That's all in that matter.

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## CAUSES 70D01-1805-JD-031 & 70D01-1812-JD-094

FEBRUARY 12, 2019

## FACT-FINDING HEARING & MODIFICATION HEARING

4 THE COURT: We're here in, uh, two cases. Both are, uh, in re the Matter of  
5 the Juvenile, M [REDACTED] A. C [REDACTED]. Uh, one is a Child Alleged to be a Delinquent Child and one,  
6 uh, Child Adjudicated to be a Delinquent Child. Those are case numbers 70D01-1805-JD-  
7 031 and 70D01-1812-JD-94. And, uh, 1805-JD-31, we're set today for a Modification  
8 hearing on an Amended Petition for Modification, uh, that was filed, uh, in December. It's  
9 December 28<sup>th</sup>, 2018. In the, uh, 1812-JD-094, we're here for a Fact-Finding on a Petition  
10 Alleging Delinquency, uh, filed on or about December 31<sup>st</sup>, 2018. The State appears by  
11 Deputy Prosecuting Attorney, Kristin Alosinac. The Juvenile Probation Officer, Kayleigh  
12 Gordon, appears in person. And the Child appears in person and by counsel, Bryan Barrett.  
13 And his mother also appears. Uh, and Mr. Barrett, you just indicated to me off the record  
14 that you felt your client may be inclined to admit, uh, the allegations on the new petition  
15 and also on the modification. Is that your understanding?

MR. BARRETT: I believe so, your Honor.

17 THE COURT: Uh, M█████, can I have you and your mother, please, raise  
18 your right hands? Do both of you swear or affirm, under the penalties for perjury, that the  
19 testimony you are about to give is the truth, the whole truth, and nothing but the truth?

CHILD: Yes, sir.

21 THE COURT: Alright, M█████, will you, please, state your full, true name?

CHILD: M [REDACTED] A [REDACTED] C [REDACTED].

23 THE COURT: And your date-of-birth, please?

24 CHILD: [REDACTED] .

25 THE COURT: And does that make you 16?

1 CHILD: Yes.

2 THE COURT: And your current address?

3 (SILENCE)

4 THE COURT: Your current address?

5 CHILD: I'm not sure. I keep on forgetting.

6 THE COURT: Alright.

7 CHILD: 8949 North 4 easy...

8 MR. BARRETT: 450.

9 CHILD: 450 East, Rushville Indiana.

10 THE COURT: Alright. Do you live there with your mother?

11 CHILD: Yes.

12 THE COURT: And, ma'am, will you, please, state your full, true name?

13 MOTHER: Cynthia Marie Wenhart.

14 THE COURT: And you're M █'s mother, is that correct?

15 MOTHER: Yes.

16 THE COURT: And did he give his correct name and date-of-birth?

17 MOTHER: He did.

18 THE COURT: Does he live with you at that address?

19 MOTHER: He does.

20 THE COURT: Um, M █, you were, uh, your attorney has stated that he

21 believes that, uh, you're willing to admit to the Petition Alleging Delinquency that was filed

22 on December 31<sup>st</sup> and also admit to the allegations contained in the Petition to Modify,

23 which was filed last December. Um, is that the case today?

24 (SILENCE)

25 THE COURT: I need you to answer out loud.

1 CHILD: Yes.

2 THE COURT: Okay. And, um, you were advised at the Initial hearings in  
3 these matters that you had certain rights. You had the right to be represented by counsel.  
4 You have the right to the appointment of an attorney. You had the right to remain silent.  
5 You have the right to a hearing on these allegations. You have the right to require the State  
6 to prove the allegations beyond a reasonable doubt for me to find that you're a delinquent  
7 child. And you also have to, uh, you have the right to cross-examine or ask questions of any  
8 of the State's witnesses that they would call to prove their case. You'd also have the right to  
9 call your own witnesses and present your own defense. And you'd have the right to appeal  
10 to a higher Court if we had a trial and you were found to have either violated your previous  
11 disposition or committed the new acts in the new petition. Do you understand those rights?

12 CHILD: Yes.

13 THE COURT: Do you understand by admitting you're waiving or giving up  
14 those rights?

15 CHILD: Yes.

16 THE COURT: And Ms. Wenhart, do you understand the child's rights?

17 MOTHER: I do.

18 THE COURT: Okay. And, um, M█████, have you discussed these matters  
19 with your attorney to your satisfaction?

20 CHILD: Yes.

21 THE COURT: And, has anyone forced, threatened, or placed you in fear to  
22 cause you to admit?

23 CHILD: No.

24 THE COURT: Has anyone offered you any leniency or anything of value to  
25 cause you to admit?

1 CHILD: No.

2 THE COURT: Have you had any drugs or alcohol in the last twelve hours?

3 CHILD: I really, I relapsed last Friday.

4 THE COURT: Okay. And, but anything, are you currently under the  
5 influence of any drugs or alcohol?

6 CHILD: No.

7 THE COURT: And, uh, is this decision your own free and voluntary act? Are  
8 you doing this of your own free will? I need you to answer out loud.

9 CHILD: Yeah.

10 MR. BARRETT: You wanted, yeah.

11 THE COURT: Do you, now in fact, admit, uh, to the, uh, facts contained in  
12 the Petition Alleging Delinquency that was filed on December 31<sup>st</sup>, um, alleging that you,  
13 uh, committed theft? And that was, uh, with the food at Pizza King. And that on October  
14 15<sup>th</sup>, 2018, uh, and the Possession of Marijuana in November of 2018. Do you admit to  
15 those things?

16 CHILD: Yes.

17 THE COURT: And then also, on the Amended Petition for Modification of  
18 Dispositional Decree filed on December 18<sup>th</sup>, um, the allegations were that you were unable  
19 to maintain sobriety in your home environment, you failed to provide a urine sample on  
20 August 20<sup>th</sup>, 2018. On September 10<sup>th</sup>, 2018, you were suspended for two days following an  
21 incident during lunch. On September 13<sup>th</sup>, you were suspended for three days due to  
22 smoking, uh, tobacco cigarettes on school grounds. On October 20<sup>th</sup>, you were referred to  
23 the Probation Department for theft. On October 29<sup>th</sup>, suspended for three days as a result of  
24 behavior during, behaviors during class. November 14<sup>th</sup>, suspended for two days for  
25 possession of marijuana. And November 16<sup>th</sup>, referred to the Probation Department for a

1 possession of marijuana. And November 20<sup>th</sup>, expelled, uh, from the high school for the  
2 remainder of the 2018-2019 school year. Um, do you admit to those allegations as well?

3 CHILD: Yeah.

4 THE COURT: Does the State have a Basis and Fact to offer?

5 MS. ALOSINAC: Uh, yes, your Honor. Thank you. Um, it's, actually,  
6 October 13<sup>th</sup> of 2018 is the incident, uh, that, uh, Mr. C█ was involved in. Uh, and  
7 specifically on that date, both, he and James Dishman went into the, uh, oops! Sorry! To the  
8 Pizza King located on Perkins Street here in Rushville, in Rush County, Indiana. While  
9 they were there they ordered a large, uh, a 16-inch pizza as well as two large Pepsi's. They  
10 then left the Pizza King without paying for those items and did not have the permission of  
11 Pizza King, uh, to take the value of that food. And on November 14<sup>th</sup> of 2018, um, at  
12 school, located here in Rushville in Rush County, Indiana, uh, Mr. C█ did, knowing or  
13 intentionally, possess marijuana. Um, in that, uh, he was found to be in possession of it by  
14 Dean Men, Mendosa. And, uh, and then, uh, Robert Bridges did, uh, take, uh, that  
15 marijuana from him. And furthermore, M█ C█ was on probation at the time, uh, that  
16 this offense was committed and as the Court had indicated, uh, he, uh, had been suspended  
17 from school on September 10<sup>th</sup>, September 13<sup>th</sup>, October 29<sup>th</sup>, and November 14<sup>th</sup> of 2018.  
18 And was then expelled from the school. And these were all violations of his probation.

19 THE COURT: M█, are those facts true?

20 CHILD: Yes.

21 THE COURT: Court finds the child to be 16 years-of-age, understands the  
22 nature of the allegations to which he is admitting, the possible dispositions. I'll find the  
23 admissions are freely and voluntarily given, that a factual basis exists. I'll accept the  
24 admissions. Find the Defendant to be a Delinquent Child in accordance with the, uh,  
25 Petition Alleging Delinquency filed in 70D01-1812-JD-94. And also find that the previous

1 Disposition issued in 70D01-1805-JD-031, uh, should be modified, uh, due to M [REDACTED]'s  
2 performance on probation. Uh, what's the State's position as to where we go from here? On  
3 the Petition Alleging Delinquency for Disposition, I think, uh, we probably need a pre, do a  
4 Pre-Dispositional Report. Um, is the State's recommendation on the Modification still  
5 DOC?

6 MS. ALOSINAC: It is, your Honor.

7 THE COURT: How much time would be necessary to do a Pre-Dispositional  
8 on the new JD, the 1812, Ms. Gordon? I mean, you know, a week? Is that possible or is that  
9 gonna push you?

10 MS. GORDON: That should be fine.

11 THE COURT: I'm looking at modifc (sp) or a, uh, Disposition on next  
12 week, February 20<sup>th</sup>. That's a Wednesday afternoon at 2:30.

13 (SILENCE)

14 THE COURT: Um, based on, um, the recommendations and the repeated  
15 violations, basically, for the last several months on the, on probation, I'd be inclined to hold  
16 the child in the detention, in detention at YOC until, um, we have the Disposition next  
17 week. Does the State have any, uh, position on that?

18 MS. ALOSINAC: The State, uh, would be in agreement with that  
19 recommendation. I believe Probation is as well.

20 THE COURT: Does the child wish to put on any evidence or argument in  
21 regards to the detention issue at this time, Mr. Barrett?

22 MR. BARRETT: Yes, your Honor.

23 THE COURT: You may go ahead, they're both sworn in.

24 MR. BARRETT: Thank you, your Honor.

## CHILD'S EVIDENCE

# M A C

## **DIRECT EXAMINATION**

By Bryan E. Barrett, Child's Counsel

Q Uh, M [REDACTED], state your name again, please.

A      M      A      C .

Q      And you're 16, correct?

A Yes.

Q Um, you understand what the Judge just said?

A      Yeah.

Q With regard to detention? Prior to coming in, you asked, essentially, you asked me to get you some help. Is that right?

A Yeah.

Q      Because of why?

A Of the decisions I made.

Q      Which are?

## A Possession of marijuana.

Q No, I understand. But what did you tell me happened, recently?

A      Oh, I, uh, was it relapse?

Q And when you say you relapsed, what do you mean by that?

## A Smoking pot.

Q      When?

A Last Friday.

Q Okay. Um, and when, when you say relapse, what, prior to that, when was the last time you'd used?

1 A Last Friday.

2 Q Before last Friday though, when, when did you use?

3 A Probably a couple days before Friday, maybe even...

4 Q Okay.

5 A (Inaudible.)

6 Q Okay. Um, where have you been living?

7 A Raleigh.

8 Q And that's in the house you mentioned earlier, correct?

9 A Yes.

10 Q Okay. And that, who lives there?

11 A Mom, grandparents.

12 Q Okay. Um, you're asking the Court to allow you to remain there on Home Detention

13 pending the Pre-Dispositional Report and the Disposition in this case?

14 A Yes.

15 Q You would follow those rules?

16 A Yeah.

17 Q Have you been on Home Detention before?

18 A Uh, yeah, I think.

19 Q Did you follow the rules?

20 A Yeah.

21 Q Is there anything else you want to tell Judge Hill with regard to your situation?

22 A No.

23 Q As it applies to whether you should be placed in detention or not?

24 A No.

25 MR. BARRETT: Briefly call Ms. Wenhart, your Honor.

1 THE COURT: Go ahead.

2 **CHILD'S EVIDENCE**

3 **CYNTHIA WENHART**

4 **DIRECT EXAMINATION**

5 By Bryan E. Barrett, Child's Counsel

6 Q Would you state your name, please, ma'am?

7 A Cynthia Marie Wenhart.

8 Q And you are the mother of M█████ C█████, correct?

9 A I am.

10 Q Um, the information M█████ gave with regard to his residence and such are correct?

11 A Yes.

12 Q And also with regard to who resides in your residence?

13 A Yes.

14 Q Are you employed outside the home?

15 A I am.

16 Q Where?

17 A Intat.

18 Q And how long have you been there?

19 A Almost two years.

20 Q Okay. What hour, what is your hour, what are your hours?

21 A I work second shift, 2 to 10:30.

22 Q 2:00 p.m. to 10:30?

23 A Uh-huh.

24 Q Um, your parents reside there also, though?

25 A Yeah.

1 Q So there would be someone there with M█████?

2 A And my parents never leave.

3 Q Are you willing to have him placed on Home, House, Home Detention in your

4 home?

5 A Yeah.

6 Q You would assist the Court in ensuring that he followed those rules?

7 A I will do my best.

8 Q I'm sorry?

9 A I will do my best.

10 Q Is there anything else you'd like to say with regard to M█████'s situation?

11 A No.

12 MR. BARRETT: I don't have any other questions at this, Judge, or any other

13 evidence.

14 THE COURT: Alright.

15 MR. BARRETT: We just ask the Court consider placing him on Home

16 Detention pending the Dispositional hearing.

17 THE COURT: I'm gonna go off briefly, just a moment.

18 (OFF RECORD - 1:49 P.M.)

19 (ON RECORD – 1:51 P.M.)

20 THE COURT: We're back on in 70D01-1812-JD-94. Um, having found that

21 the child to be a delinquent child in the new case and also, the previous adjudication in the,

22 uh, modification in 1805-JD-31. Um, until, uh, disposition next week, I'm gonna find that,

23 uh, detention's necessary, uh, due to the child being a, both a danger to himself and the

24 community for continued, uh, disregard for, uh, any of the laws and his rules of probation.

25 I'm gonna order the, uh, Probation Department to do a updated, uh, I guess,

1 recommendation. There's already been a couple modifications reports on the two  
2 modifications. But then also a PDR on the, uh, new allegation in support of those  
3 recommendations. And then we'll be back on February 20<sup>th</sup> at 2:30. Is there anything else  
4 from the State in this case today, Ms. Alosinac?

5 MS. ALOSINAC: No, thank you, your Honor.

6 THE COURT: Any questions, Ms. Gordon?

7 MS. GORDON: Uh-huh.

8 THE COURT: Anything else from the child today, Mr. Barrett?

9 MR. BARRETT: Not today, your Honor. Thank you.

10 THE COURT: Okay. That's all for today. Oh, I didn't announce, that  
11 detention will be at YOC until then, so. Okay?

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## CAUSES 70D01-1805-JD-031 & 70D01-1812-JD-094

FEBRUARY 26, 2019

## DISPOSITIONAL HEARINGS

THE COURT: We're here in, uh, two cases. One being, 70D01-1812-JD-094 and the other, 70D01-1805-JD-031. Both are in re: the Matter of M [REDACTED] A. C [REDACTED], a Child Adjudicated to be a Delinquent Child. In the 1805-JD-31, it's on Modification hearing, uh, or actually, Disposition and Modification. And then in 1812-JD-094, we're set for Dispositional hearing. There was a Pre-Dispositional Report, uh, filed yesterday. I've reviewed that. Has the State received a copy of that Mr. Morgan?

MR. MORGAN: We did, your Honor.

THE COURT: And the child, Mr. Barrett?

MR. BARRETT: Yes, your Honor.

THE COURT: Uh, the State appears by Chief Deputy Prosecuting Attorney, Phillip Morgan. And the child appears in person and by counsel, Bryan Barrett. And his mother also appears. And our Juvenile Probation Officer, Kayleigh Gordon, appears in person. Um...does the, uh, State wish to present any evidence in regards to, uh, the recommendation or just argument or...?

MR. MORGAN: Um, we would, briefly, present some evidence, your Honor

THE COURT: Alright. You may call your first witness.

MR. MORGAN: We would call Kayleigh Gordon.

## STATE'S EVIDENCE

## KAYLEIGH GORDON

THE COURT: Do you swear or affirm, under the penalties for perjury, that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

1 MS. GORDON: Yes, I do.

2 THE COURT: Please have a seat.

3 **DIRECT EXAMINATION**

4 By Phillip Morgan, Chief Deputy Prosecuting Attorney

5 Q Ms. Gordon, can you state your full name for the record?

6 A Kayleigh Gordon.

7 Q And you're the Juvenile Probation Officer that completed the Pre-Dispositional  
8 Report on these cases, is that correct?

9 A Yes.

10 Q And your recommendation is that, uh, M█████ go to the Indiana Department of  
11 Correction?

12 A Yes.

13 Q And what services has he received prior to this?

14 A Um, M█████ has received services through, um, Marion County Probation, Marion  
15 County Department of Child Services, Rush County, um, Department of Child Services and  
16 Rush County Probation. He's received, um, community-based services, assistance with  
17 schooling, intensive home-based services, residential services. And then after residential,  
18 wraparound services to re-integrate him home.

19 Q Okay. And none of those have been successful?

20 A That is correct.

21 Q And is, are there any other services outside of the Department of Correction that you  
22 believe would benefit M█████?

23 A Not at this time.

24 Q Okay. And did you look into any other services or, uh, just based on your knowledge  
25 of what other options we have available, that's how you came to your conclusion?

1 A Um, just based on all of the history of, um, his services.

2 Q Okay. And, um, do you believe that, um, M█████ being on, um, a Home Det (sp),

3 Home Detention or some sort of, um, electronic monitoring would be in his best interest?

4 A No.

5 Q And why is that?

6 A With talking to M█████, um, prior to completing this Pre-Dispositional Report, um,

7 he has made it known to me that he would be at home and also have, um, people bring him

8 drugs, illegal, marijuana to his home. So, I just feel like if, even if he were on Home

9 Detention, he would still have access to those drugs. Um, and not really learn any of the,

10 um, his substance abuse treatment in, at the Department of Corrections.

11 Q Okay. And he, he told you that in one of your meetings, is that correct?

12 A Yes.

13 Q Okay.

14 MR. MORGAN: Thank you, your Honor. I have no other questions at this

15 time.

16 THE COURT: Any questions for this witness, Mr. Barrett?

17 MR. BARRETT: Yes, Judge.

18 THE COURT: Go ahead.

19 **CROSS EXAMINATION**

20 By Bryan E. Barrett, Child's Counsel

21 Q Um, when M█████ was released from Wernle, he was, uh, provided with

22 wraparound services, is that right?

23 A Yes, through the Department of Child Services.

24 Q At the time that he was, um, arrested in this most recent case, was he still receiving

25 those services?

1 A No.

2 Q Do you know why?

3 A Um, once DCS's case close, those services stopped.

4 Q And the DCS case closed...?

5 A Um, I'd have to look...

6 Q Ohhhh! Actually, he was sent to Wernle through the DCS case, wasn't he?

7 A Yes. And...

8 Q I remember that now.

9 A DCS terminated their case January of 2018.

10 Q Okay. So he has not had, has he had services since then? I guess, that's my question.

11 A No.

12 Q Okay. Um, he was on probation?

13 A Yes.

14 Q And that's the case that's being modified, correct?

15 A Yes.

16 Q So, there were no additional services? Uh, I, did you receive a report or anything about when the services were stopped through a DCS Order?

18 A No, I didn't receive a, like, a summary of those services?

19 Q Right.

20 A No.

21 Q Um, okay. So then, this newest case, actually, happened in December, is that right?

22 2018?

23 A Yes.

24 Q Or, that's when it was filed, I guess, it didn't happen then, did it? It was...

25 A Hmm, October.

1 Q October, yeah. Okay. So he was, so, it, it, so at least, from January through October  
2 he did not have any services, correct?

3 A That's correct.

4 Q And as far as you know, he was residing in his mother's home at that, through that  
5 period of time?

6 A Yes.

7 Q Um, okay. So, M [REDACTED], if I understand, just by way of (inaudible), M [REDACTED] had told  
8 me that he had spoken with you, um, here recently and, and asked you about placing him  
9 on Home Detention. And your main concern with that is what you've expressed?

10 A Yes.

11 Q Um, what about this situation in the home, are you aware of that at this point?  
12 Who's there?

13 A Um, to my knowledge, it's mom, her parents and his sister. His youngest sister.

14 Q M [REDACTED]'s sister?

15 A Yes.

16 Q The child that is present here today?

17 A Yes.

18 Q Okay. And if I'm correct from reading your report and your testimony, listening to  
19 your testimony, Michael has never been on Home Detention here, is that correct?

20 A That's correct.

21 Q Okay. Um, it's possible to place him on Home Detention with, um, electronic  
22 monitoring, correct?

23 A It is possible, yes.

24 Q I understand it's not your recommendation, but...

25 A Yes, it's possible.

1 Q ...it can happen.

2 A Uh-huh.

3 Q Okay.

4 A Yes.

5 MR. BARRETT: I don't have any other questions for Ms. Gordon, your  
6 Honor.

7 THE COURT: Any redirect, Mr. Morgan?

8 MR. MORGAN: No, your Honor. Thank you.

9 THE COURT: You may step down. Any other evidence to present, Mr.  
10 Morgan?

11 MR. MORGAN: Not from the State, your Honor.

12 THE COURT: Uh, Mr. Barrett, do you wish, does the Child wish to present  
13 evidence?

14 (MR. BARRETT SPEAKING WITH CHILD)

15 MR. BARRETT: Do you want him to testify from here, Judge?

16 THE COURT: So he can testify from his seat.

17 **CHILD'S EVIDENCE**

18 **M [REDACTED] A [REDACTED] C [REDACTED]**

19 MR. BARRETT: We'd call, um, M [REDACTED].

20 THE COURT: Will you, please, raise your right hand? Do you swear or  
21 affirm, under the penalties for perjury, that the testimony you are about to give is the truth,  
22 the whole truth, and nothing but the truth?

23 CHILD: Yes, sir.

24 THE COURT: Go ahead, Mr. Barrett.

25 MR. BARRETT: Thank you, your Honor.

## **DIRECT EXAMINATION**

By Bryan E. Barrett, Child's Counsel

Q State your name, M [REDACTED].

A M A C .

Q      And, how old are you now?

A I'm sixteen.

Q      How long have you been at YOC?

A Uh, I think, maybe a week-and-a-half probably.

9 Q Okay. Um, I want to take you back a little bit before we talk about this case. You  
10 were placed at Wernle, you remember that?

11 A Yes.

12 Q And you, do you know why you went there?

13 A Uh, abusing drugs.

14 Q Okay. Specifically, what kind of drugs?

15 A Uh, marijuana.

16 Q Alright. And how long were you at Wernle?

17 A Um, I think six to seven months.

18 Q Then you were released. Did you get services when you were released?

19 A Yeah.

20 Q People came to your house?

21 A Yes.

22 | Q Talked to you?

23 A Yes.

24 Q Did you talk to them?

25 A Yes, I did.

1 Q Were you honest?

2 A I was.

3 Q How old, if you remember. When did you turn sixteen?

4 A It was...

5 Q October?

6 A Yes.

7 Q Okay. So, most of that time you were fifteen, is that right?

8 A Yes.

9 Q When you moved, or when you were placed at YOC this last time, who was living in

10 your home? Your mom?

11 A My mom and, and grandparents.

12 Q And your grandparents and your younger sister?

13 A Yes.

14 Q Okay. Um, alright. You, uh, were charged with possessing marijuana recently. Is

15 that correct?

16 A Yes.

17 Q Tell us about that. What happened? Why were, why were you smoking pot?

18 A Uh, it took the edge off and it was my birthday.

19 Q So, you were celebrating?

20 A Uh, yes.

21 Q When you say it took the edge off, what do you mean?

22 A Um, if I'm feeling mad or sad, or just wanting to feel that feeling. I, I would smoke.

23 Q Kay. After you got out of Wernle, how often did that happen, if you know?

24 A Um, it wouldn't. Until she took me off probation and then I started smoking again.

25 Q When was that?

1 A Um, honest, I, it's been a long time ago.

2 Q Okay.

3 A Um, um...

4 Q To you, a long time is... what?

5 A Maybe a couple months...

6 Q Okay.

7 A ...you know.

8 Q When you were in Court last time, at the Detention hearing, you said something

9 about relapsing.

10 A I did.

11 Q What, what did you mean by that?

12 A Um, I smoked pot.

13 Q Okay.

14 A It was Friday. It was on the last Friday.

15 Q Prior to that, how long had it been?

16 A It was, it was a couple weeks.

17 Q Okay. When you were out and you weren't on probation, so whatever period of time

18 we're talking about, how often were you smoking?

19 A Not often.

20 Q Once a week? Less than that?

21 A Maybe, maybe once or twice.

22 Q Okay. And, how much would you, normally, smoke?

23 A Not that much. Maybe a bowl.

24 Q Okay. And, that, you said, took the edge off.

25 A It did.

1 Q From?

2 A Just being nervous for Court.

3 Q Okay. I think we all understand that. What else was going on in your life?

4 A Nothing, really.

5 Q Were you taking any other kind of medication at that time, M█████?

6 A No.

7 Q How long has it been since you took medication for...?

8 A Um, whenever I was in Wernle, they put me on that ADHD medication and then

9 they took me off because it was making it worse.

10 Q It was making your symptoms worse?

11 A Yes.

12 Q What were, what were the symptoms?

13 A Just outbursts, uh...

14 Q Anger?

15 A ...lots of...yeah.

16 Q Okay. Depression?

17 A Yeah.

18 Q And the depression issues have been, kind of, an issue your whole life, have they

19 not? Or at least since you've been...

20 A Yeah.

21 Q I assume those are an issue now? Being at YOC and such?

22 A Yes.

23 Q Prior to you getting arrested were they?

24 A Yes.

25 Q You have a rather, I'm going to use the word difficult, I, I don't know if that's the

1 right word, but you have a kind of difficult home situation sometimes, don't you?

2 A Sometimes. But not all the time.

3 Q I, I, you love your mother.

4 A Yes.

5 Q And, and, that you want to be with her.

6 A I do.

7 Q But you've had issues with your step-father? Is that fair to say?

8 A Well, not really big issues. But, I mean, just disagreements.

9 Q Okay. What about your grandparents, how do you get along with them?

10 A I mean, they're just there. I mean, if...

11 Q They're older, correct?

12 A Yeah, they're older.

13 Q You don't have...

14 A I love my grandparents, as well.

15 Q I, I understand that. I'm not implying that you don't love any of these people. I'm just, uh, just trying to give the Court, kind of, an idea of what the situation is in, in your life.

17 Cause you're who we're talking about here, right?

18 A Yeah.

19 Q Um, okay. So, you're asking, you've prepared a letter, is that correct?

20 A Yes.

21 Q Or a, I don't know if it's a letter. It's a note of some sort?

22 A Yeah.

23 Q And you're asking the Court to look at that?

24 A Yes.

25 MR. BARRETT: Could I provide that to you, Judge?

THE COURT: Sure.

2 (MR. BARRETT GIVES COURT NOTE)

3 | Q Do you feel like you have a problem with depression, M\_\_\_\_\_?

4 A Yeah. I like to be happy.

5 Q Sure. We all do. But you're not happy. Obviously, not now. What about before?

## 6 A Before now?

7 | Q Before you got in trouble this last time. Before you got...

8 | A Um...

9 Q ...arrested.

10 A Well, I, I was going through depression, as well. Just because, you know, I'm going  
11 through a bunch of trouble now.

12 Q Are you referring to what you're here for or something different?

13 A Just something from the charges that I've had.

14 Q Right.

15 A And I'd, just knowing that I was going to get locked up. What, it would eat, ate me,  
16 you know?

17 Q I understand. Alright. So, you, again, you and I spoke before we came into the Court  
18 room, and, and you told me that you had talked to Miss, Ms. Gordon, and you'd asked her  
19 to consider putting you on Home Detention, is that right?

20 A Yes.

21 Q Why did you ask that? Besides the obvious reason that you don't want to go to the  
22 Department of Corrections?

23 A Um, just so that I could prove to the Judge and Kayleigh and my mother that I  
24 really, really want to change and I want to stay away from drugs.

25 Q Is that different than before?

1 A It is different.

2 Q How so? If you can express that.

3 A Um, I pray every night. Ever since I, that, that you guys put me in YOC. Just  
4 praying to God. Hoping that you'd let me go. Um, and just doing well in there and not  
5 getting into any trouble or nothing like that.

6 Q And that's, that's the case? You haven't been in trouble in YOC?

7 A I haven't.

8 Q Um, so's the praying a new thing for you?

9 A Yes. And they have a church program there. I've been going. And then they have a,  
10 uh, bible study thing. I went there too.

11 Q Okay. So, you're asking the Court to consider putting you on Home Detention?

12 A Yes.

13 Q At your mother's home or, or you're grandparents' home?

14 A My mother's home.

15 Q And you believe you could follow those rules?

16 A Yes, sir.

17 Q The, the Court's been provided with your note, or your letter. Is there anything else  
18 that you would like to tell Judge Hill that's not contained in the, what you've written or the  
19 questions I've asked you?

20 A That I'm sorry.

21 Q Anything else?

22 A No.

23 MR. BARRETT: I don't have any other questions for M███████████, your Honor.

24 THE COURT: Okay. Any other evidence, Mr. Barrett?

25

## CHILD'S EVIDENCE

## CYNTHIA WENHART

MR. BARRETT: Uh...I'd call Ms. Wenhart, just briefly, Judge.

THE COURT: Ma'am, will you, please, raise your right hand? Do you swear or affirm, under the penalties for perjury, that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

MOTHER: I do.

THE COURT: Alright. Go ahead, Mr. Barrett.

**DIRECT EXAMINATION**

By Bryan E. Barrett, Child's Counsel

Q State your name, please.

A Cynthia Marie Wenhart.

Q And you're M█████'s mother, is that correct?

A I am.

Q Prior to him being taken into custody, he resided with you, correct?

A Yes.

Q Um, you've heard him ask to be returned to your home on Home Detention, is, is that correct?

A Yes.

Q      Are you willing to do that?

A Yes.

Q      Um, you work outside the home?

A I do.

Q Where, where do you work?

A I work at INTAT.

1 Q How long? When do you, normally, work?

2 A Uh, I work from 2 to 10:30.

3 Q So...

4 A Most days, it's 2 to 2.

5 Q Two...?

6 A Twelve-hour shifts.

7 Q ...in the afternoon to two in the morning?

8 A Uh-huh.

9 Q But there's somebody there at the house when you're not?

10 A My parents are always home.

11 Q Okay. Are they able to supervise M█████ at all?

12 A Uh, they are able to supervise M█████ as long as he behaves, follows the home rules.

13 Q Okay. What if he doesn't? Then what happens?

14 A Uh, I'm pretty sure that part of the house arrest rules would be him, uh, behaving,

15 so...

16 Q Absolutely.

17 A ... (inaudible).

18 Q Okay. Um, alright. But you are willing to let him come back in your home, is that

19 right?

20 A Of course that I want my son home. Absolutely.

21 Q I under, I wasn't implying you didn't...

22 A Yeah.

23 Q ...I was just, we just need to...

24 A Well...

25 Q Be sure it's on the record. Are you, do you have anything else you want to tell the

1 | Judge?

2 A I'll do everything that I can do for my son.

3 Q Okay. Anything else?

4 | A No.

5 MR. BARRETT: I don't have any other questions, your Honor.

6 THE COURT: Having, uh, reviewed the Pre-Dispositional Report and the  
7 evidence, uh, presented here today, I'm going to, um... M█████, I don't have any choice  
8 other than to recommend the, uh, award ward ship to Department of Corrections. You've  
9 been through the probation system several times, received services from Probation, DCS.  
10 Um, it's clear to this Court, this isn't a matter of impulse control or some psychological  
11 disorder or strong addiction problem. This is that you don't have any regard for the rules.  
12 You don't see why they would be important and nothing's gonna change until you decide to  
13 change. And the fact that you may have, may or may not have come to some realization in  
14 the last week, um, doesn't mean a whole lot at this point. Um, you've been on probation.  
15 You've continued, you just do whatever you want. We have a Court hearing and by the  
16 time we have another hearing you do something else and just keep it up until now. So, um,  
17 the only time where you haven't violated really between court hearings is the time that  
18 you've been secured attention in, uh, YOC. So, um, it's a DOC commitment on both, the  
19 Modification and the Disposition in JD-094. You'll be, uh, held at the YOC in secure, um,  
20 detention until you can be transported to the Department of Corrections. You do have 30  
21 days to appeal this decision. I'll appoint the office of the Public Defender to represent you. If  
22 you wish to appeal that, you can talk to Mr. Barrett about that process following this  
23 hearing. Is there anything else in this case today from the State, Mr. Morgan?

24 MR. MORGAN: Your Honor, Ms. Alosinac, who was handling these cases,  
25 indicated that she had filed Parental Participation orders, or petitions, excuse me. And a

1 Restitution Order, proposed, I believe. If not we can...

2 THE COURT: I mean, I believe she has but I'm not sure what, uh, and I, I'm  
3 open for suggestions. I'm not sure what parental participation...

4 MR. MORGAN: I don't...I...

5 THE COURT: means when they're at the DOC.

6 MR. MORGAN: Right.

7 THE COURT: And if, if it was restitution over the theft, um...

8 MR. MORGAN: I'm not sure how much it was but I, I'm fine if you, I just  
9 wanted to...

10 THE COURT: Okay...

11 MR. MORGAN: ...let you know.

12 THE COURT: I'll, I'll note that. I'm, I don't, I guess, I don't see any point in  
13 it right now, so.

14 MR. MORGAN: That's fine.

15 THE COURT: Thank you. Um, anything else from the child today, Mr.  
16 Barrett?

17 MR. BARRETT: No, your Honor, not today.

18 CHILD: Thanks for believing me!

19 MOTHER: (Inaudible.)

20 CHILD: I appreciate that.

21 THE COURT: You gave me a lot of reasons to. There, there's no other  
22 choice. You can't continue to do it when you're on probation and you're given chance after  
23 chance and you keep it up. That's the last thing I want to do. I don't do this very often. But,  
24 just the fact that today is the first time that you've shown up and said anything like that,  
25 that's not enough to, to change it. You've had months to do that. And not even the littlest

1 bit.

2 CHILD: Please let me go.

3 THE COURT: I'm sorry?

4 CHILD: Please!

5 THE COURT: I'm sorry that, that, it's too little, too late. I hope you are! And  
6 that's fine. You can go to DOC and you can learn from, some things there. And once you  
7 get out, it's up to you if you ever see me again. Completely up to you.

8 CHILD: How long am I...?

9 THE COURT: I'm not gonna re (sp), I'm not gonna have jurisdiction once,  
10 once you're released from DOC. I don't decide how long you're at the DOC. So, if you feel  
11 you've been wronged by me, you can prove it to the DOC and they'll, they'll change it and  
12 they'll let you out and you can make the decision whether or not you're ever in this room  
13 again. Okay? That's all for today.

14  
15 AND THAT WAS ALL THE PROCEEDINGS

16 HAD IN THIS CAUSE.

17

18

19

20

21

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23

24

25

1 STATE OF INDIANA ) RUSH SUPERIOR COURT  
2 )  
3 COUNTY OF RUSH ) CAUSE NO'S: 70D01-1812-JD-94 &  
4 ) 70D01-1805-JD-31

5  
6 STATE OF INDIANA,

7 vs.  
8  
9

10 M [REDACTED] A. C [REDACTED]

11 Defendant.

12 REPORTER'S CERTIFICATE

13 I, Tonya L. Muckerheide, Reporter of the Rush Superior Court, Rush County, State  
14 of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly  
15 appointed and sworn to report the evidence of causes tried therein.

16 That I prepared the foregoing transcript from the machine recordings, and certify  
17 that the transcript is a true and correct transcript of the Initial hearings, Fact-Finding  
18 hearings, Modification and Dispositional hearings held in these causes.

19 IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official  
20 Seal, this 2<sup>nd</sup> day of May, 2019.

21 \_\_\_\_\_/s/\_\_\_\_\_

22 Tonya L. Muckerheide

23 Official Court Reporter

24 Rush Superior Court

25 Rush County, Indiana