

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE H.S.

No. 2 CA-JV 2014-0119
Filed February 17, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100JV200900731
The Honorable Gilberto V. Figueroa, Judge

AFFIRMED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Patricia R. Pfeiffer, Special Deputy County Attorney, Florence
Counsel for State

James E. Mannato, Pinal County Public Defender
By Amy Wallace-Havens, Deputy Public Defender, Florence
Counsel for Minor

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 In a delinquency petition filed on February 18, 2014, the state alleged H.S. had committed three counts of sexual abuse of a minor fifteen or more years of age and three counts of assault, all involving the same victim, his stepsister. Pursuant to a plea agreement, H.S. admitted having committed one count of assault. The juvenile court adjudicated him delinquent and placed him on juvenile intensive probation (JIPS). On appeal, H.S. argues the court erred by not allowing him “to withdraw from the plea before it was rejected” and by imposing JIPS. We affirm.

¶2 H.S. first claims the juvenile court “essentially reject[ed]” the plea agreement by placing him on JIPS, citing Rule 17.4(e), Ariz. R. Crim. P., and asserting the court was required to permit him to withdraw from the plea before imposing JIPS. This argument lacks any evidentiary support. The record clearly demonstrates the court accepted H.S.’s admission and the plea agreement. It appears, however, that H.S. intends to suggest the court violated the plea agreement by imposing intensive probation. But that argument is contradicted by the record. The plea agreement, in a paragraph initialed by H.S., unambiguously stated that the court might impose JIPS.

¶3 H.S. further argues the juvenile court abused its discretion by imposing JIPS. “The juvenile court has broad discretion to determine an appropriate disposition for a delinquent juvenile” and “[w]e will not alter that disposition absent an abuse of discretion.” *In re Niky R.*, 203 Ariz. 387, ¶ 10, 55 P.3d 81, 84 (App. 2002). H.S. asserts he did not “meet the criteria described in

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A.R.S. § 8-352(B)(5).”¹ We first note that the statutory language H.S. cites is not found in § 8-352, but instead in § 6-302(H)(5) of the Code of Judicial Administration, addressing eligibility for JIPS. That provision states a court shall impose JIPS only for:

- a. Juveniles who would otherwise have been recommended for commitment to the state department of juvenile corrections;
- b. Juveniles who would otherwise have been recommended for placement in an out-of-home institutional or residential setting;
- c. Juveniles who meet the requirements set forth in A.R.S. § 8-352 (B) and (H)(2) of this section; or
- d. Juveniles who are repeat felony juvenile offenders.

Ariz. Code of Jud. Admin. § 6-302(H)(5).

¹ H.S. also speculates the juvenile court was improperly “preoccup[ied]” with his personal history, which prompted “it to impose a higher level of supervision.” This argument is unavailing; he cites no authority suggesting the court is precluded from considering a juvenile’s personal history in evaluating the appropriate disposition, and nothing in the record suggests the court gave any fact undue weight. And, although H.S. correctly notes that both his and the victim’s guardians ad litem recommended standard probation, he does not assert the court was required to follow those recommendations. In any event, we must presume the reports not included in the record support the court’s disposition. See *Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 96, ¶ 21, 158 P.3d 225, 231 (App. 2007).

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¶4 H.S. notes that he has no meaningful delinquent history—only a dismissed allegation of disorderly conduct—and it was “exceedingly unlikely” that he would be committed to the department of juvenile corrections in light of his admission to a misdemeanor offense and that out-of-home placement “was not proposed.” He also notes that he is “not a repeat felony offender.” Thus, he concludes, the court “over-reached” in imposing intensive probation.

¶5 But even assuming, without deciding, that a juvenile court necessarily abuses its discretion if it imposes JIPS without strict compliance with § 6-302(H)(5), Ariz. Code of Jud. Admin., H.S. has not established that the court erred in imposing JIPS here. The transcript of the disposition hearing suggests H.S. may have only been permitted to stay in the family home because the victim no longer lived there. *See generally* A.R.S. § 8-341(A) (court may place delinquent juvenile in out-of-home placement). And the court reviewed several reports not included in the record on appeal, including psychological and psycho-sexual evaluations. Such items are not presumptively included in the record on appeal and their inclusion must be requested by the appellant. *See* Ariz. R. P. Juv. Ct. 104(D), (E); *see also* Ariz. R. P. Juv. Ct. 19(A). We must presume the missing reports support the court’s determination that JIPS was appropriate here. *See Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 96, ¶ 21, 158 P.3d 225, 231 (App. 2007) (“We generally presume items that are necessary for our consideration of the issues but not included in the record support the trial court’s findings and conclusions.”).

¶6 For the foregoing reasons, the juvenile court’s delinquency finding and disposition are affirmed.