

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0032-15T4

STATE IN THE INTEREST OF D.L.,
a juvenile.

Submitted January 31, 2017 – Decided February 17, 2017

Before Judges Yannotti and Fasciale.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket Nos. FJ-02-503-15 and FJ-02-547-15.

Joseph E. Krakora, Public Defender, attorney
for appellant D.L. (Louis H. Miron, Designated
Counsel, on the brief).

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent State of New Jersey
(Catherine A. Foddai, Senior Assistant
Prosecutor, of counsel and on the brief;
Matthew Fitzpatrick, Assistant Prosecutor, on
the brief).

PER CURIAM

D.L., a seventeen-year-old juvenile at the time the offenses
were committed, appeals from two July 29, 2015 juvenile delinquency
adjudications for acts that, if committed by an adult, would
constitute a disorderly persons offense of intent to use drug

paraphernalia, N.J.S.A. 2C:36-2; and a disorderly persons offense of possession of less than fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4). We affirm.

We discern the following facts from the record. On September 4, 2014, Bergen County juvenile complaint FJ-02-503-15 charged juvenile D.L. with acts of delinquency that, if committed by an adult, would constitute a disorderly persons offense of intent to use drug paraphernalia (a digital scale), N.J.S.A. 2C:36-2; and a disorderly persons offense of possession of less than fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4). On September 14, 2014, Bergen County juvenile complaint FJ-02-547-15 charged D.L. with acts of delinquency that, if committed by an adult, would constitute a disorderly persons offense of intent to use drug paraphernalia (a grinder used to separate marijuana), N.J.S.A. 2C:36-2; and a disorderly persons offense of possession of less than fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4).

On October 3, 2014, D.L. appeared with his mother before a hearing officer and entered guilty pleas to the charges. D.L. stated under oath that on September 3, 2014, at about 11:00 p.m., he was in East Rutherford in possession of less than fifty grams of marijuana and a digital scale. D.L. used the scale to measure the marijuana. D.L. also stated that on September 14, 2014, at about 12:45 a.m., he was in Rutherford in possession of less than

fifty grams of marijuana and a grinder, which he had used to separate the marijuana.

The hearing officer amended the two possession of marijuana charges to conduct that, if committed by an adult, would constitute the disorderly persons offense of wandering or remaining in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance, N.J.S.A. 2C:33-2.1. The hearing officer dismissed the two paraphernalia charges. The detective and officer involved did not object to the amended and dismissed charges.

The hearing officer informed D.L. that he would recommend that the juvenile judge sentence him to a nine-month period of adjustment with the charges ultimately being dismissed if D.L. had no new charges and attended a substance abuse evaluation during that time. D.L. would also be required to comply with any recommendations from the substance abuse evaluation. The hearing officer informed D.L. that if he did not comply with the conditions, the possession of marijuana charges would be reinstated.

On June 30, 2015, D.L. was charged with failing to attend and complete an outpatient substance abuse program. On July 29, 2015, the judge converted the two periods of adjustment to adjudications of delinquency and imposed a sixty-dollar fine. D.L. was

represented by counsel at the July 29, 2015 hearing. D.L.'s counsel argued that it was improper for D.L. to give a factual basis before the hearing officer without counsel. The judge disagreed, stating that a juvenile may enter dispositions before hearing officers without counsel, and cited In the Interest of L.R., a Juvenile, 382 N.J. Super. 605 (App. Div. 2006), certif. denied, 189 N.J. 642 (2007).

On appeal, D.L. argues his right to counsel under the United States and New Jersey constitutions was violated when he appeared before a judicial hearing officer unrepresented by counsel, entered guilty pleas, and gave a factual basis. He also contends that the hearing officer made recommendations concerning D.L. to the juvenile judge, based on the guilty plea.

The Due Process Clause of the Fourteenth Amendment "requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel" In re Gault, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451, 18 L. Ed. 2d 527, 554 (1967) (emphasis added). New Jersey codified this requirement, stating "[a] juvenile shall have the right, as provided by the Rules of Court, to be represented by counsel at every critical stage in the proceeding which, in the opinion of the court may

result in the institutional commitment of the juvenile." N.J.S.A. 2A:4A-39(a) (emphasis added). Also, Rule 5:3-4(a) requires counsel "if the matter may result in the institutional commitment or other consequence of magnitude[.]"

Here, D.L. did not have counsel at his appearance before the hearing officer. The hearing officer made clear that D.L. would have the opportunity for a judge to review his matter if he disagreed with the hearing officer's recommendation. The hearing officer's recommendations are "without effect unless approved by the court and incorporated in an appropriate order or judgment of the court." R. 5:25-2. Furthermore, a hearing officer "may not order the confinement of a juvenile, place a juvenile on probation, or remove a juvenile from his family as a disposition." N.J.S.A. 2A:4A-74(d)(4); see also L.R., supra, 382 N.J. Super. at 620 n. 5.

Therefore, D.L. was never at risk of institutional commitment or other "consequence of magnitude" at the proceeding before the hearing officer and was not entitled to counsel. D.L. was properly represented by counsel when he later appeared before the judge and his periods of adjustment were converted to adjudications.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION