

IN THE SUPREME COURT OF OHIO

IN RE: C.J.B.,
A minor child.

: Case No.: **08-2278**

: On Appeal from the Summit
County Court of Appeals

: Ninth Appellate District

: C.A. Case No. 24039

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT C.J.B.**

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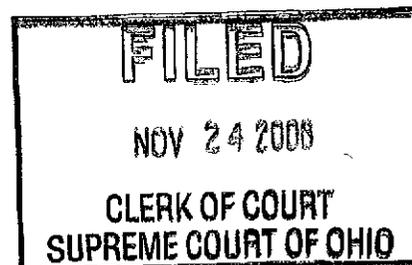


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PROPOSITION OF LAW:

A child’s admission of “True” at a probation revocation proceeding should be permitted only upon strict compliance with constitutional safeguards that can ensure such waiver is knowing, voluntary, and intelligent and thus comports with the due process requirements of Article I, Section 16 of the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.4

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In the matter of: C.J.B., Ninth District Court of Appeals Case No. 24039, Decision and Journal Entry, Oct. 8, 2008 A-1

**EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION**

This Court should take this case and hold it for the decision in *In re L.A.B.*, Case Nos. 2007-0895 and 2007-0912, discretionary appeal granted, 114 Ohio St.3d 1478, 2007-Ohio-3699; certified conflict accepted, 114 Ohio St.3d 1476, 2007-Ohio-3699. Like *L.A.B.*, this case presents this Court with an opportunity to consider the applicability of Juv. R. 29 at probation revocation hearings and a child's right to understand the grounds of the probation revocation before entering an admission. Because C.J.B. is mentally retarded, a careful explanation of the reasons for the revocation was critical.

This case follows the decision in *L.A.B.* in its assessment that the colloquy requirements of Juvenile Rule 29 do not apply to probation revocation hearings. And, although C.J.B. argued that both Juvenile Rule 29 and Juvenile Rule 35(B) require the court to review the basis of the probation revocation prior to acceptance of the plea, the Ninth District rejected this argument. Specifically, the appellate court found that reading the complaint a month earlier to a mentally challenged child was sufficient and that no further colloquy regarding the allegations was required. *In re: C.J.B.*, 9th Dist. No. 24039, 2008-Ohio-5233 at ¶ 13, ¶ 21. "Thus, the colloquy requirements of Rule 29(D) 'do[] not apply to an admission that [a child] violated a condition of probation.' *In re Collins*, 9th Dist. No. 2365-M, 1995 WL 569116 at *2 (Sept. 27, 1995); but see *id.* at *3 (Dickinson, J., dissenting). C.J.B. has argued that his right to due process was violated by the juvenile court's failure to comply with Rule 35(B) of the Rules of Juvenile Procedure but he has supported his arguments largely with case law applying the Rule 29 analysis." *In re C.J.B.* at ¶13. Thus, the Ninth District determined that a disjointed and

incomplete colloquy was sufficient in this case as only Juvenile Rule 29 mandates reviewing the nature of the allegations with a child prior to an admission. Further, because Juvenile Rule 29 “only covers” adjudication and disposition proceedings, this review at a probation revocation proceeding was unnecessary. Like *L.A.B.*, this case stands as dangerous precedent for children who face a loss of liberty at probation revocation proceedings.

There remains uncertainty in the lower courts as to the extent of the colloquy required at probation revocation proceedings. Therefore, this Court should accept review of this case and hold it for its decision in *L.A.B.*, as it is a case of public and great general interest and involves a substantial constitutional question.

STATEMENT OF FACTS

On October 26, 2007, a complaint was filed in the Summit County Juvenile Court, which alleged that C.J.B. had violated the conditions of his probation. Specifically, the complaint alleged that C.J.B. had violated school rules and the terms of house arrest/constant supervision.

Four days later, on October 30, 2007, C.J.B. appeared in juvenile court without counsel. After a brief discussion, it was apparent that C.J.B. had a very limited understanding of what was happening. Specifically, C.J.B. did not understand and wanted to discuss the probation violations contained in the complaint with the magistrate. Additionally, he could not grasp what a subpoena was after a general explanation. At that point, the court suggested counsel for C.J.B., continued the matter, and entered a denial on C.J.B.’s behalf.

On November 19, 2007, C.J.B. appeared with counsel and entered an admission of “True” to the probation violation complaint. The magistrate, however, did not advise or review with C.J.B. the basis for the probation revocation before accepting the admission. Both the prosecutor and the probation officer made recommendations that C.J.B. be committed to the Department of Youth Services (DYS). The magistrate then continued the matter for disposition.

On December 4, 2007, C.J.B. appeared before the judge for disposition. Again, the prosecutor as well as the probation officer recommended that C.J.B. be committed to DYS. In response, defense counsel explained that C.J.B. is developmentally challenged and that he had expressed remorse for his actions. Additionally, defense counsel called Ms. Alexander of Summit Psychological to address the progress C.J.B. had made in therapy. Lastly, C.J.B.’s mother addressed the court and explained that her son is mentally retarded and is often a follower. She promised the court that she would quit her job so that she could supervise C.J.B. continuously if the court would return him home. The court declined.

For disposition, the court committed C.J.B. to DYS for a minimum period of one year, maximum of his twenty-first birthday. C.J.B. filed a timely appeal and litigated the lack of due process issue before the Ninth District Court of Appeals. *In re: C.J.B.*, 9th Dist. No. 24039, 2008-Ohio-5233.

In its opinion, the Ninth District stated that Juvenile Rule 35 (B), not Juvenile Rule 29, applies to probation revocation proceedings. *Id.* at ¶ 13. The court concluded that the juvenile court did not err by proceeding in C.J.B.’s case without reviewing the nature of the allegations with him before accepting the admission. The Ninth District

further determined that only Juvenile Rule 29 requires this review at the adjudication proceeding and, because C.J.B. was in probation revocation proceedings, no colloquy was required. While the court acknowledged that C.J.B. had “difficult[y] in learning and comprehension,” it determined that the juvenile court’s reading of the complaint to C.J.B. a month earlier was sufficient to later accept his admission under Juvenile Rule 35. *Id.* at ¶ 1, ¶ 2. C.J.B.’s appeal to this Court timely follows.

ARGUMENT

PROPOSITION OF LAW

A child’s admission of “True” at a probation revocation proceeding should be permitted only upon strict compliance with constitutional safeguards that can ensure such waiver is knowing, voluntary, and intelligent and thus comports with the due process requirements of Article I, Section 16 of the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

I. Introduction.

The same basic due process requirements that govern adjudication proceedings apply to probation revocation hearings. It is the trial court’s obligation to question the child and place sufficient information on the record to determine that an admission was knowingly and voluntarily entered into, which, by definition, includes informing the child of the basis of the complaint and determining that the child understands this. It is not the prosecutor’s job to place this on the record nor is it defense counsel’s duty. Both Juvenile Rule 35 and Juvenile Rule 29 clearly place this obligation on the trial court. Indeed, there is nothing inherently difficult about reviewing the nature of the allegations with the child prior to accepting an admission at a probation revocation proceeding.

Although juvenile delinquency proceedings are civil proceedings, “[w]hatever their label, juvenile delinquency laws feature inherently criminal aspects that we cannot

ignore.” *State v. Walls* (2002), 96 Ohio St.3d 437, 446, 2002-Ohio-5059, 775 N.E.2d 829. Therefore, “numerous constitutional safeguards normally reserved for criminal prosecutions are equally applicable to juvenile delinquency proceedings.” *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919 at ¶ 73, citing *Walls* at 446. See also *In re Gault* (1967), 387 U.S. 1, 31-57, 87 S.Ct. 1428; *In re Agler* (1969), 19 Ohio St.2d 70, 78, 249 N.E.2d 808. Specifically, a child in a juvenile delinquency proceeding must apprised of the grounds on which revocation is proposed. Juv. R. 35(B). A court commits reversible error when it fails to comply with this requirement. *In re Royal* (1999), 132 Ohio App.3d 496, 507, 725 N.E.2d 685. See also, *In re Lett*, 7th Dist. No. 01 CA 222, 2002-Ohio-5023 at ¶ 9.

A child’s understanding of the allegations against him at a probation revocation hearing is no less important than at any other stage of the proceedings – especially where the child’s liberty is at stake. It follows then, that a child’s admission at a probation revocation hearing must be as knowing, as intelligent and as voluntary.

II. A juvenile court must afford due process to a child at every stage of the proceedings.

Courts have long recognized that children, who are by their very nature naïve, unsophisticated, less educated, and more dependent upon authority, need special care and help when dealing with the justice system. *Haley v. Ohio* (1948), 332 U.S. 596, 68 S. Ct. 302; *Gallegos v. Colorado* (1962), 370 U.S. 49, 82 S.Ct. 1209. See also *C.S.* at ¶ 82 (“A juvenile typically lacks sufficient maturity and good judgment to make good decisions consistently and sufficiently foresee the consequences of his actions.”). Thus, more explanation, not less, should be afforded to children regarding the nature of the allegations against them. In C.J.B.’s case, no recitation of the basis for the revocation

was provided prior to accepting his admission and committing him to DYS. See *C.J.B.* at ¶ 4.

The Court: You are on probation for a felony of the first degree. If you admit to probation violation, the worst possible penalty that you could receive would be a revocation of your probation. That is your probation could be canceled. You could be committed to the Department of Youth Services for a minimum period of one year. The longest that you could be held there would be until you turn 21. Do you understand?

C.J.B.: Yes, ma'am.

The Court: Do you have any questions about your rights or about anything that we've said?

C.J.B.: No ma'am.

The Court: At this time, to the probation violation, do you admit or deny?

C.J.B.: I admit.

The Court: Has anyone forced you or threatened you to get you to admit to the violation?

C.J.B.: No, ma'am.

The Court: Did anyone promise you anything to get you to admit it?

C.J.B.: No. ma'am.

The Court: And do you understand that by admitting to the violation, you are giving up your right to have a hearing?

C.J.B.: Yes, ma'am.

The Court: I do find that Carey has knowingly, voluntarily and intelligently waived his right to a hearing. By admitting the probation violation, he is a delinquent child. Carey, why do you have so much trouble behaving yourself at school?

C.J.B.: I'm going to be truthful with you. I don't think that much.

Without doubt, due process requires the court to apprise the child of the specific conditions of probation that were allegedly violated. *In re: Ian Douglas Kirby* (February 29, 2008), 5th Dist. Case Nos. 06-CA-6; 06-CA-91, 2008-Ohio-876 (Even where counsel

waived reading of the complaint, trial court committed reversible error in not apprising child of the alleged probation violations before accepting the admission in violation of Juv. R. 35(B)). This requirement is minimal in nature and the failure to meet it constitutes reversible error. See *Royal* at 507.

In the instant case, C.J.B. had difficulty understanding the nature of the probation violation at his first court appearance. Indeed, C.J.B. required the court's assistance to even enter a denial to the allegations. It was critical for the trial court to apprise C.J.B. at the later probation revocation hearing of the revocation grounds so that he was aware of the substance of the complaint against him.

The passage of time in C.J.B.'s case is also significant. While the juvenile court read the complaint at the initial appearance, it did not do so the following month at the probation revocation hearing. The grounds on which probation revocation was based should have been reiterated before accepting his admission. This is especially true given the long break in court proceedings combined with C.J.B.'s very limited mental functioning.

The case of *In re Gault* held that juveniles facing possible commitment must be afforded the protections of the Due Process Clause of the Fourteenth Amendment. Juvenile Rule 35(B) also recognizes a juvenile's due process rights through its requirements. *Royal*, 132 Ohio App.3d at 507. Due process is not limited to Juvenile Rule 29. Intelligent, knowing and voluntary pleas are required at all stages of the proceedings. In C.J.B.'s case the court erred when it failed to apprise him of the grounds on which the probation revocation was based prior to accepting his admission.

C.J.B.'s case is not the first in which the Ninth District Court of Appeals has found that little due process is required probation revocation proceedings. Specifically, that court has also found that at the probation revocation stage there is no need to engage a child in a colloquy regarding the waiver of counsel. See *In re L.A.B.*, 2007-Ohio-3699, 877 N.E.2d 993; *In re P.F.*, 2008-Ohio-5273; 894 N.E.2d 1243. Therefore, C.J.B. asks this Court to accept jurisdiction in this case and reverse the decision of the Ninth District so that C.J.B. may be afforded due process of law.

CONCLUSION

This case involves a substantial constitutional question, as well as questions of public or great general interest; therefore, this Court should grant jurisdiction in this case and hold it for the pending decision in the case of *In re L.A.B.*, 2007-0895; 2007-0912.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

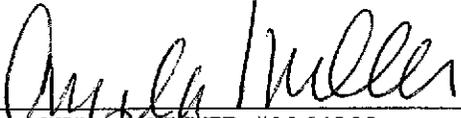

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION was forwarded by U.S. mail to Sheri B. Walsh, Summit County Prosecutor, Summit County Prosecutor's Office, 53 University Avenue – 7th Floor, Safety Bldg., Akron, Ohio 44308, this 24th day of November, 2008.


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COUNSEL FOR C.J.B.

IN THE SUPREME COURT OF OHIO

IN RE: C.J.B.,
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: C.A. Case No. 24039

**APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT C.J.B.**

STATE OF OHIO
COUNTY OF SUMMIT
IN RE: C.J.B.

COURT OF APPEALS
JAMES H. HARRISON
)ss:
OCT-8 AM 7:54
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 24039

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DL06-04-001762

DECISION AND JOURNAL ENTRY

Dated: October 8, 2008

DICKINSON, Judge.

INTRODUCTION

{¶1} C.J.B. has appealed from a dispositional order of the Summit County Court of Common Pleas, Juvenile Division, that committed him to the custody of the Department of Youth Services after he admitted violating his probation. He has argued that the magistrate failed to properly advise him of the grounds for revocation and failed to make a finding that he had violated a condition of probation of which he had been notified as required by Rule 35(B) of the Ohio Rules of Juvenile Procedure. He did not file objections to the magistrate's decision, but has argued on appeal that the juvenile court committed plain error and his lawyer was ineffective. This Court affirms because the juvenile court substantially complied with Rule 35(B) in revoking C.J.B.'s probation. The trial court, therefore, did not commit plain error, and any deficiency in C.J.B.'s lawyer's performance could not have prejudiced him.

have any questions about his rights and admitted the violation. The magistrate adjudicated him delinquent.

{¶5} At the November hearing, the magistrate noted, “[b]y admitting the probation violation, [C.J.B.] is a delinquent child.” She filed a magistrate’s decision two days after the hearing in which she found that “[C.J.B.] violated his probation by writing a sexually explicit note to another student” and that “[h]e has been tardy to class and has missed other classes with his whereabouts unknown.”

{¶6} C.J.B. did not object to the magistrate’s decision. The juvenile court “approved and accepted” it. In December, the juvenile court held a dispositional hearing, revoked C.J.B.’s probation, and committed him to the Department of Youth Services for a minimum of one year to a maximum term to age twenty-one.

{¶7} C.J.B. has appealed, arguing that the juvenile court violated his right to due process by failing to properly advise him of the grounds for revocation of his probation and failing to make a finding that he had violated a condition of probation of which he had been properly notified as required by Rule 35(B) of the Ohio Rules of Juvenile Procedure. He has argued that the failure of the juvenile court to follow the mandates of Rule 35(B) was plain error and has requested that this Court reverse and remand his case for a new probation revocation hearing. Alternatively, he has argued that his trial counsel was ineffective for failing to object to the magistrate’s decisions that led to the revocation of his probation.

FAILURE TO OBJECT

{¶8} This Court must first address the fact that C.J.B. did not raise these arguments in the trial court by objecting to the magistrate’s decisions that culminated in the trial court’s probation violation decision. A juvenile who fails to timely object to a magistrate’s findings or

the magistrate had read the grounds in open court at the October hearing, and C.J.B. indicated at that hearing that he understood the grounds for the motion.

{¶12} Rule 29 of the Ohio Rules of Juvenile Procedure governs adjudicatory hearings for children. Part (D) of that rule requires a court to personally address the child before accepting an admission to the charges. Juv. R. 29(D). The court is required to first determine the child understands the “nature of the allegations and the consequences of the admission” as well as the fact that by admitting the allegations he is waiving his right to a hearing on the violation. *Id.* “An admission in a juvenile proceeding pursuant to Juv.R. 29(D) is analogous to a guilty plea made by an adult pursuant to Crim.R. 11(C).” *Hall*, 2002 WL 388905 at *1. Thus, the rule requires the juvenile court to “make careful inquiries in order to insure that the admission . . . is entered voluntarily, intelligently and knowingly.” *Id.* “If the juvenile court fails to substantially comply with Juv.R. 29(D), the adjudication must be reversed so that the minor ‘may plead anew.’” *Id.* (quoting *In re Christopher R.*, 101 Ohio App. 3d 245, 248 (1995)).

{¶13} This Court has held, however, that Rule 29 does not apply to probation revocation hearings. *In re L.A.B.*, 9th Dist. No. 23309, 2007-Ohio-1479, at ¶7, discretionary appeal allowed, 114 Ohio St. 3d 1478, 2007-Ohio-3699. Thus, the colloquy requirements of Rule 29(D) “do[] not apply to an admission that [a child] violated a condition of probation.” *In re Collins*, 9th Dist. No. 2365-M, 1995 WL 569116 at *2 (Sept. 27, 1995); but see *id.* at *3 (Dickinson, J., dissenting). C.J.B. has argued that his right to due process was violated by the juvenile court’s failure to comply with Rule 35(B) of the Rules of Juvenile Procedure, but he has supported his arguments largely with case law applying the Rule 29 analysis.

{¶14} In this case, the magistrate confirmed at the initial hearing, in October 2007, that C.J.B. and his mother had received copies of the probation violation complaint by mail. The

The magistrate asked him why he has so much trouble behaving himself at school. C.J.B. described at length how he copies his friends' behavior, why he passes notes in class, and why he is sometimes tardy or skips classes entirely.

{¶17} At the dispositional hearing before the juvenile court in December 2007, C.J.B. spoke to the court.

[C.J.B.]: . . . I know I been in trouble and all, but it's just . . . girls pass me notes and other boys pass me notes saying what you want to do like next period. I be like anything besides going to the next class, but I'm thinking in my head anyway, I know I'm in trouble . . . but I might not get caught. . . . I know [the other kids] ain't on probation, I know they won't get in as much trouble as I'm in right now."

{¶18} C.J.B. has argued that "the grounds on which probation revocation was based should have been reiterated before accepting [the] admission." This Court does not believe Rule 35 required a reiteration of the grounds for revocation in this case. Rule 29(D)(1) forbids a juvenile court from accepting an admission without first personally addressing the child and determining that he understands "the nature of the allegations and the consequences of the admission." Rule 35, however, does not contain that prohibition.

{¶19} Rule 35 provides that a court may not revoke a child's probation without first holding a hearing at which the child is "apprised of the grounds on which revocation is proposed." The allegations were quite specific and the court read those allegations to C.J.B. in open court. C.J.B. demonstrated that he had listened and understood the allegations, except "the touching the teacher part." Counsel was then appointed for him.

{¶20} The juvenile court met the basic requirements of Rule 35(B). It did not revoke C.J.B.'s probation until after he had been present at a hearing at which the court addressed him directly and read the detailed allegations of the probation violation from the complaint.

this Court's duty to root it out." *Cardone v. Cardone*, 9th Dist. No. 18349, 1998 WL 224934 at *8 (May 6, 1998).

{¶25} The juvenile court opened the dispositional hearing on the probation violation in December 2007 by stating that the hearing was being held because "[t]his matter had previously been before [a magistrate] on a probation violation that [C.J.B.] admitted to" Additionally, the magistrate's decision of November 21, 2007, and the juvenile court's order of December 11, 2007, reflect that the court specifically found that C.J.B. violated his probation. He has not suggested that he was not properly notified of the conditions of his probation in conjunction with the dispositional hearing on the rape charge in September 2006. To the extent that C.J.B.'s first assignment of error is related to his statement that the trial court failed to specifically find that he had violated a condition of probation of which he had been properly notified, it is overruled.

INEFFECTIVE ASSISTANCE OF COUNSEL

{¶26} C.J.B.'s second assignment of error is that his counsel was ineffective for failing to object to the magistrate's decision at the adjudication phase. To succeed on this assignment, C.J.B. would have to demonstrate that his lawyer's performance was deficient and that he was prejudiced by that deficiency. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "To warrant reversal, '[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *State v. Bradley*, 42 Ohio St. 3d 136, 142 (1989) (quoting *Strickland*, 466 U.S. at 694).

{¶27} This Court has determined that the juvenile court substantially complied with Rule 35(B) of the Ohio Rules of Juvenile Procedure in revoking C.J.B.'s probation. Therefore,

Costs taxed to Appellant.



CLAIR E. DICKINSON
FOR THE COURT

SLABY, P. J.
WHITMORE, J.
CONCUR

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SHERRI BEVAN WALSH, Prosecuting Attorney, and PHILIP D. BOGDANOFF, Assistant Prosecuting Attorney, for Appellee.

STATE OF OHIO)
COURT OF APPEALS
COUNTY OF SUMMIT)
MIL. D. HOBRYGAN

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JAN 29 AM 10:40

IN RE:

C.A. No. 24039

C. J. B. SUMMIT COUNTY
CLERK OF COURTS

MAGISTRATE'S ORDER

The appellant has moved the court to waive the payment of the deposit against costs. The appellant has complied with Loc.R. 2(C) and has demonstrated that he is unable to pay the deposit. The motion is granted and the filing deposit is waived.



C. Michael Walsh
Magistrate

2 pab/1-28-08