

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

S.B., a child
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1606

[August 19, 2009]

PER CURIAM.

The minor child, S.B., pled no contest to grand theft and criminal mischief. At the disposition hearing in March 2008, defense counsel requested that the court follow the recommendation of the Department of Juvenile Justice (DJJ) and place S.B. on probation. The court adjudicated S.B. delinquent and committed the juvenile to a DJJ moderate risk program. The court indicated that it was departing from DJJ's recommendation due to the "seriousness of offense to community; protection of community requires commitment; offense was aggressive, premeditated and willful; record and previous criminal history; no prospect for adequate protection of public and no likelihood for rehabilitation in a community service program."

We reverse the disposition in this case under the authority of *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). In this case, the trial court's explanation for departing from the DJJ's assessment and recommendation from March 2008 is not in accordance with the required analysis as outlined in *E.A.R.*, which was decided after the disposition hearing. *See also E.E. v. State*, 7 So. 3d 1140 (Fla. 4th DCA 2009).

Reversed and remanded for a new disposition hearing.

STEVENSON, MAY and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,

Indian River County; Robert Pegg, Judge; L.T. Case No. 312008CJ000061.

Philip J. Massa, Regional Counsel, and J. Patrick Reynolds, Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.