

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

D.B., a Child,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-2038

[June 10, 2009]

HAZOURI, J.

When D.B. was fifteen she was charged with possession of ecstasy with intent to sell, possession of ecstasy, and trafficking in ecstasy. D.B. pled no contest to possession of ecstasy with intent to sell. The State, in turn, entered a *nolle prosequi* for the other two charges. In its Pre-Disposition Report, the Florida Department of Juvenile Justice noted D.B.'s lack of previous supervision history with the DJJ, D.B.'s score as a low risk re-offender, and D.B.'s supportive home and educational environment. Based on this information, the DJJ recommended that D.B. be placed on juvenile probation. The trial court departed from the DJJ's recommendation, imposing a moderate risk residential program. In doing so, it cited the seriousness of the offense and the protection of the community from such crimes.

After the trial court entered its order, however, the Florida Supreme Court decided *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009). In that decision, the supreme court "announced a new, more rigorous analysis in which a trial court must engage before departing from DJJ's recommendation." *M.J.S. v. State*, 6 So. 3d 1268, 1269 (Fla. 1st DCA 2009).

In this case, the trial court's explanation for departing from the DJJ's assessment and recommendation is not in accordance with the required analysis set forth by the supreme court in *E.A.R.* We, therefore, "reverse and remand to provide the trial court an opportunity to enter an order in compliance with *E.A.R.*, or, if the court cannot, impose the probation recommended by the DJJ." *Id.*

Reversed and Remanded.

GERBER, J., concurs.

FARMER, J., concurs in result only.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Robert L. Pegg, Judge; L.T. Case No. 312008CJ000079A.

Carey Haughwout, Public Defender, and Anthony Calvello, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.