IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

BRENDAN J. DEPA,

Appellant,

v. CASE NO. 5D2024-2364

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

# ANSWER BRIEF OF APPELLEE

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## STATEMENT OF THE CASE AND FACTS

Appellee generally accepts Appellant's statement of the case and facts, but would note the following facts in support of its answer brief.

Appellant was charged with aggravated battery on a school board employee. (R. 26.) The battery occurred on February 21, 2023; Appellant was seventeen years old. (R. 26, 836.) After an evidentiary hearing, Appellant was found competent to proceed. (R. 60-62.) Appellant entered an open plea of *nolo contendere* to the offense as charged. (R. 63-64, 248.) At the time he entered the plea, Appellant was eighteen years old. (R. 241.) According to his scoresheet, Appellant's lowest permissible sentence was 34.6 months. (R. 137.)

At the sentencing hearing, the State admitted an evaluation by Dr. Gregory Prichard and a DOC affidavit of care by Dr. Kline. (R. 80-98, 436-37.) The defense admitted seven letters, a manifestation determination review from Flagler District Schools, a positive behavior support intervention plan from Flagler District Schools, and an individual education plan ("IEP"). (R. 100-33, 437-38.)

Dr. Suzonne Kline testified that she was the Chief of Mental Health at the Florida Department of Corrections. (R. 441.) When an inmate is received at a reception center, they undergo an

individualized full comprehensive psychological assessment, after which they are assigned an "S grade," which determines the level of impairment. (R. 444-45.) All inmates have access to mental health services, regardless of S grade. (R. 445.) If an inmate is designated to need treatment, an individual service plan ("ISP") is created. (R. 446.) There are five levels of care in two types of settings, either outpatient or inpatient. (R. 447.) Even if considered outpatient, inmates can be placed in a designated unit with a highly specialized residential setting. (R. 448.) DOC provided both individual and group services. (R. 450.) There is also a secure treatment unit so inmates can receive their services in-house. (R. 451.)

DOC can treat mental disorders, intellectual disabilities, or neurodevelopmental disorders, including autism. (R. 451.) When asked whether DOC could treat Appellant, who had been diagnosed with autism, oppositional defiant disorder, ADHD, intermittent explosive disorder, disruptive mood dysregulation disorder, anxiety, and depression, Dr. Kline asserted that DOC could treat Appellant. (R. 452.) Six to eight months before a sentence ends, they start programming to maximize the inmate's chance of a successful transition. (R. 466.)

The State admitted surveillance video of the battery, and the body camera video. (R. 467-68.) Deputy John Landi testified that he was assigned as the school resource officer at Matanzas High School, and had been there for fourteen years. (R. 469.) The video depicted the victim walking down the hallway and then Appellant running past. (R. 470.) The video later depicted the victim on the floor and Appellant being pulled off of her. (R. 471.) When Deputy Landi arrived at the scene, the victim was not conscious. (R. 472-73.) Appellant was secured in handcuffs. (R. 474.) When Appellant was being escorted, they had to walk past the victim. (R. 475.) On the body camera video, Appellant states, "Stupid bitch. I'm going to fucking kill you. I hope she knows when I come back, she's going to die." (R. 476.) Appellant also spit at the victim. (R. 476.) Once at the stairwell, Appellant told Deputy Landi that if he "comes back, he would murder her." (R. 476.) Appellant never expressed concern or remorse for the victim. (R. 476.)

The victim testified that she was a paraprofessional at Flagler schools, and that she had been assigned to Appellant. (R. 478.) Appellant was assigned to a self-contained EBD room, which was used for children with behavior issues. (R. 481.) When Appellant left

the classroom to attend his one general education class, the victim went with him. (R. 483.) On the day of the battery, there was a substitute teacher for Appellant's general class; while the substitute was taking attendance, Appellant was playing a game system. (R. 486.) The substitute asked the victim to have the console put away, and the victim asked Appellant to put it away; Appellant complied. (R. 486.) The victim informed Appellant's main teacher about the issue. (R. 487.)

Appellant brought out the gaming system again near the end of class. (R. 488.) The victim asked him to pack everything up and that it was time to head back to the EBD room; Appellant complied. (R. 488.) When they returned to Appellant's main classroom, the main teacher told Appellant that he could not be taking the gaming system out anymore. (R. 489.) Appellant became "riled . . . angry, upset." (R. 489.) Appellant began "screaming nasty names" at the victim, so she grabbed her stuff and attempted to leave the classroom. (R. 490.) Appellant ran up behind her and as she turned around, Appellant spit all over her. (R. 490.) The victim told Appellant that that was an assault. (R. 490.) The victim believed that Appellant retreated for a few seconds, and her last memory was putting her hand on the

doorknob to leave the room. (R. 490.) The victim had five broken ribs (two of them were broken twice), a concussion, permanent hearing loss, permanent vision loss, vestibular problems, rotator cuff issues, and a herniated disc. (R. 492-94.) She had to drop out of her AA program due to the loss of cognitive functions. (R. 494-95.) The victim has since been diagnosed with PTSD. (R. 497.) Photographs of her injuries were admitted into evidence. (R. 73-79.) The victim believed that Appellant "should pay for what he did" because there were "consequences in life to bad actions." (R. 504.) On cross-examination, the victim explained that she had never seen Appellant's IEP, and was unaware of any of Appellant's triggers. (R. 511-16.)

Dr. Gregory Prichard, a licensed psychologist, testified that he reviewed the video of the battery, the arrest reports, the county jail disciplinary records, school records, records from the group home where Appellant stayed ("ECHO"), the competency evaluations, and information from the Department of Children and Families and the Agency for Persons with Disabilities. (R. 525-26.) Dr. Prichard also assessed Appellant at the county jail. (R. 526.) During the initial assessment, Dr. Prichard did not notice any serious symptoms of

mental illness. (R. 528.) Appellant demonstrated good communication and good insight. (R. 527-29.) When Dr. Prichard asked whether he was experiencing any level of hallucinations, Appellant "endorsed experiencing auditory hallucinations." (R. 530.) However, Appellant did not appear to be responding to internal stimuli; there was no objective indication that any hallucination was occurring. (R. 530-31.) There were indications in the records from the group home that Appellant tended to fake hallucinations to draw attention away from something inappropriate he had done. (R. 531-32.)

When asked about the altercation with the victim, Appellant externalized the blame by blaming it on the victim's behavior. (R. 533.) Towards the end of the conversation, Appellant took some responsibility, but indicated that "there were things that both of us could have done differently." (R. 533.) Appellant "kind of stated" as a "curiosity" that the victim did not run from him and other teachers did not try to pull him off of her. (R. 535.) Two days after the altercation, Appellant commented in an IEP meeting that he did not need a paraprofessional, and that there would not have been a problem if the victim had not been there because they did not get

along. (R. 534.)

As to Appellant's diagnoses, Dr. Prichard opined that the oppositional defiant disorder behaviors could stem from Appellant's autism. (R. 538.) Dr. Prichard did not agree with the ADHD diagnosis, as those behaviors were "probably more a manifestation of his autistic spectrum issues." (R. 538.) The intermittent explosive disorder was "an issue" for Appellant, as his rage and anger response was extreme. (R. 539.) The disruptive mood dysregulation disorder applied as well, because Appellant had "a real difficult time moderating his emotions." (R. 540.) Autism spectrum disorder is a spectrum, where a level one requires support, a level two requires substantial support, and a level three requires very substantial support. (R. 541-42.) Appellant was very intelligent and possessed good communication skills; the socialization component was his biggest deficit. (R. 542-43.) Dr. Prichard would place Appellant as a level one. (R. 543.) Appellant's stealing, lying, and inappropriate sexual behavior were not typical autistic traits. (R. 545-46, 548.)

As to Appellant's prior history, he had been arrested for being physically aggressive with a peer. (R. 551.) He had been placed in a residential facility after being Baker Acted multiple times because of

his aggression and violence toward family members. (R. 550-51.) He was originally placed at Springbrook, which was a specialized residential environment for autistic children. (R. 552.) While there, Appellant was very aggressive and a report from the Springbrook counselor indicated that Appellant had not made much progress after a year. (R. 552-53.) He was transferred to ECHO, a high risk Agency for Persons with Disabilities group home. (R. 553-54.) At ECHO, Appellant had "a lot of problems with aggression" and there were "a lot of references" to aggressive behavior requiring restraint. (R. 554.)

Dr. Prichard opined that Appellant knew the difference between right and wrong, and that he was capable of controlling his temper, as demonstrated by the school records showing that from August 2021 to December 2021, there had been no aggressive incidents. (R. 555.) In the thirteen months since he had been incarcerated at the county jail, Appellant had been disciplined three times; one report was for aggressive behavior but the other two were for nonaggressive behavior. (R. 556-57.) This demonstrated to Dr. Prichard that Appellant was "controlling his conduct pretty well in that kind of structured environment." (R. 558.)

Dr. Prichard believed that Appellant was dangerous, given his

history. (R. 558.) Dr. Prichard also noted that Appellant was six-foot six and 250 pounds, which "kind of increases his dangerous [sic] a little bit in the sense that if he engages, he's a hard guy to handle." (R. 559.) Dr. Prichard noted that the frequency of aggressive behavior had decreased over time, but that the intensity may be getting worse. (R. 560.)

Leanne Depa, Appellant's mother, testified that Appellant came into her life through foster care, and that he was adopted. (R. 591.) Appellant began attending Matanzas High School in March 2021. (R. 632.) Ms. Depa informed the school that Appellant's triggers included being hungry, noise, being told no, being corrected in front of other people, and electronics. (R. 640.) After the attack, the school determined that the behavior was a manifestation of Appellant's disability. (R. 649.) Ms. Depa did not think prison would be a good fit because Appellant would either be kept in confinement or put in general population. (R. 654.)

On cross-examination, Ms. Depa asserted that she was aware that while at Springbrook, the residential program that specialized in autism, Appellant physically attacked the staff, head-butted the staff, punched the doctor multiple times, and threw chairs. (R. 669-70.)

Ms. Depa was aware that when Appellant first entered ECHO, there were fights, but was unaware that in March 2022, he ripped a door off of a wall and charged at staff, or that in August 2022, he physically attacked a housemate such that he needed care. (R. 671.) Ms. Depa was aware that Appellant had inappropriately groped female staff but was unaware that he had done so three times; Appellant told her that the staff member was "pretty." (R. 671.)

Eugene Lopes testified that he was a retired special education teacher, and that he voluntarily worked with Appellant at the jail to help Appellant get his GED. (R. 690, 695-96, 722.) Mr. Lopes would continue to work with Appellant. (R. 734.) Jerome Powell testified that he was a school community officer and a former unique needs specialist. (R. 741.) He had never met Appellant, but they had spoken on the phone almost every day since November 2023. (R. 745-46.) If the court granted Appellant community-based supervision, Mr. Powell would continue to be involved, and Mr. Powell was willing to adopt him. (R. 746-47.)

Dr. Kimberly Spence testified that she was the clinical director of Autism Support Services for Specialized Treatment and Assessment Resources, and currently worked for the UCF Center for

Autism and Related Disabilities as an autism disorder specialist. (R. 750.) She was contacted by Ms. Depa and saw Appellant the day after he was evaluated by Dr. Prichard. (R. 762.) Dr. Spence believed that Appellant needed an appropriate mental health intervention, provided by a team of people who understood autism and co-occurring mental health disorders. (R. 766.) Dr. Spence disagreed that Appellant was a level one on the autism spectrum, and that he had been properly diagnosed as a level two. (R. 777.) Dr. Spence did not believe that Appellant was assigning blame to the victim, but "just giving the facts of why he believe[d] an incident" occurred. (R. 786.) Dr. Spence did not believe prison was appropriate because she did not believe he would receive the treatment he needed. (R. 797.) Dr. Spence believed that Appellant needed intensive therapy for a period of time. (R. 798.)

On cross-examination, Dr. Spence asserted that she was being paid $250 per hour, and had worked approximately 30 hours. (R. 800-01.) Dr. Spence was aware of the specific incidents of aggression at Springbrook and ECHO, and "theoretically" agreed that ECHO had staff trained on how to interact with Appellant. (R. 805.) Dr. Spence agreed that Appellant's self-reported cruelty to animals was

concerning behavior. (R. 809.) Without proper support, Appellant was dangerous. (R. 811.)

Dr. Julie Harper, a licensed psychologist, testified that she evaluated Appellant in April 2024. (R. 826, 834.) She explained that the brain is not fully formed until a person is twenty-five years old. (R. 837.) Dr. Harper believed that Appellant was a level two on the autism spectrum. (R. 851.) Dr. Harper believed Appellant would be "well-suited" for a juvenile disposition. (R. 862.)

On cross-examination, Dr. Harper asserted that had worked about sixteen hours at $200 per hour and an additional eight hours at $80 per hour. (R. 864.) When asked whether she believed that after two to three years of treatment in the DJJ, society could feel safe upon Appellant's release, Dr. Harper asserted that the question was complicated because the question suggested that treatment would end at that point, but there was no evidence that treatment would end because he could go to a group home. (R. 875.)

Woody Douge, a senior probation officer at DJJ, testified that the DJJ conducted a multidisciplinary staffing for Appellant. (R. 884.) Appellant had never been committed to the DJJ before; his two prior misdemeanor offenses were diverted to the juvenile diversion

program. (R. 889-90.) They concluded that Appellant had not yet exhausted all services available to him in the community, and could be committed to the maximum risk program. (R. 888.) The program could last until Appellant was either 19 or 21 years of age. (R. 892.)

On cross-examination, Mr. Douge admitted that when he made his recommendation, he was unaware of the Springbrook and ECHO records. (R. 898.) Once a defendant turns 21, DJJ has no jurisdiction to require anything of them. (R. 901.) They could make recommendations, but could not require additional treatment. (R. 901.)

Dr. Prichard was recalled, and testified that he had "significant concerns" if Appellant was given juvenile sanctions and thus only treated for two years. (R. 906.) Dr. Prichard also noted that at ECHO, Appellant was living with adult residents (due to his size), and that DJJ would be filled with peers, which was a trigger for Appellant. (R. 907-08, 911.)

During the arguments, the court asked how the defense "square[d]" the testimony that Appellant had a lifelong condition with the limitation of only two years for juvenile sanctions. (R. 931.) Defense counsel answered that framework would be in place at the

tail end of the sentence. (R. 932.) The court noted that the State's strongest argument for adult sanctions was the court's ability to sentence Appellant to up to thirty years of probation so as to require treatment. (R. 939-40.)

In imposing sentence, the court first noted that Appellant had above average intelligence. (R. 948.) The court found that the offense was "senselessly violent," and that Appellant had a history of violence, including two battery charges in 2019 that went through the diversion program. (R. 948-49.) The court found that this was not an isolated event, but one that showed "the progression of the aggression and violence" that Appellant was exerting on those around him. (R. 949.) The court noted that there had been a significant absence of such events since Appellant's incarceration, and noted that "somehow the jail, and that is the structure of the jail, the routine of the jail maybe played some role in eliminating" the violence. (R. 951-52.) The court also accepted the testimony from all three experts that Appellant required lifelong treatment. (R. 953.) For the purposes of assessing the court's obligation of protecting the community, the court found that Appellant "must be considered dangerous for purposes of sentencing with a high probability of

violent conduct in the future," and thus, Appellant was not a candidate for solely community-based sanctions, "at least not at first." (R. 954.) The court described the battery:

> Compounding the senseless physical violence was the screaming of obscenities, spitting on [the victim], both before and during the incident. He pursued her down the hallway, pushed her so violently from behind that she flew through the air and was knocked on unconscious [sic] when she landed in the hallway floor way. He then proceeded to kick her, then jump on top—on top of her, striking her in the head and body more than 15 times. It took several strong men, I counted five, but several to pull him off her.

(R. 954-55.) The court did not have confidence that DJJ could handle this appropriately moving forward, and "frankly, two years . . . is not going to provide sufficient treatment in that regard." (R. 956.) The court found that Appellant qualified as a youthful offender, "but because of the nature of the charge and how this incident actually occurred," that a youthful offender sentence was not appropriate. (R. 957.)

Appellant was sentenced to five years in the DOC, followed by fifteen years of probation. (R. 152, 957.) The court also directed that the DOC conduct a full mental health assessment and develop an

individual service plan. (R. 957.) Once on probation, the court directed that Appellant be placed in an appropriate group home, getting the treatment he needed. (R. 958.)

## SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in declining to impose juvenile or youthful offender sanctions. The court considered the appropriate factors and determined, in its discretion, that an adult sanction was more appropriate for Appellant.

## ARGUMENT

### THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING ADULT SANCTIONS.

In his sole point on appeal, Appellant asserts that the trial court abused its discretion by not imposing juvenile sanctions because the court's findings are not supported by the evidence. The State respectfully disagrees.

A sentencing court has the discretion to impose any sentence between the lowest permissible sentence and the statutory maximum. Winther v. State, 812 So. 2d 527, 529 (Fla. 4th DCA 2002). The judicial discretion in sentencing is not appealable unless there is a procedural error. Id.

In determining whether to impose juvenile sanctions instead of adult sanctions, the court shall consider: (1) the seriousness of the offense and whether the community would be best protected by juvenile or adult sanctions; (2) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if personal injury resulted; (4) the sophistication and maturity of the offender; (5) the

record and previous history of the offender; (6) the prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ; (7) whether DJJ has appropriate programs and services immediately available; and (8) whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions. § 985.565(1)(b), Fla. Stat. (2024). Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings as any basis for its decision to impose adult sanctions. § 985.565(4)(a)(4), Fla. Stat. (2024).

Here, the trial court did not err in declining to impose a juvenile sanction, and instead imposing adult sanctions. First, pursuant to the statute, the sentence is presumed appropriate. Second, the trial court properly considered the listed factors and determined that an adult sentence was more appropriate for Appellant. The nature of the event was extremely violent and aggressive, resulting in the victim suffering five broken ribs (two of them were broken twice), a concussion, permanent hearing loss, permanent vision loss, vestibular problems, rotator cuff issues, and a herniated disc, as well

as mental trauma. This was not an isolated incident. Although Appellant did not have an extensive prior criminal history, he did have two prior misdemeanor batteries. His personal history, however, demonstrated aggressive behavior from an early age, and as noted by Dr. Prichard, the frequency of aggressive behavior had decreased over time, but the intensity may be getting worse. As found by the court, Appellant must be considered dangerous to the public, and because adult sanctions do not terminate when a defendant turns 21, adult sanctions are more appropriate for Appellant.

Similarly, the trial court did not abuse its discretion in finding that a youthful offender sentence was not appropriate. A defendant may be sentenced as a youthful offender if: (1) the defendant is at least eighteen years of age or was transferred for prosecution to the adult criminal division; (2) the defendant has been found guilty or the court has accepted a plea for a crime that is a felony if such crime was committed before the defendant turned 21; and (3) the defendant has not been previously classified as a youthful offender. § 958.04(1), Fla. Stat. (2024). However, the application of the Youthful Offender Act is discretionary. Hutchinson v. State, 396 So. 3d 45, 47 (Fla. 1st

DCA 2024); McKinney v. State, 27 So. 3d 160, 162 (Fla. 1st DCA 2010) (finding that the trial court did not abuse its discretion in declining to sentence the defendant as a youthful offender because the appellate court was "satisfied that the court's decision not to sentence Appellant as a youthful offender was properly based upon a consideration of Appellant's circumstances and the serious nature of his crimes"); Postell v. State, 971 So. 2d 986, 989 (Fla. 5th DCA 2008) (noting that a defendant is not entitled to a youthful offender sentence).

Here, the trial court found that Appellant qualified as a youthful offender. However, it determined, in its discretion, that a youthful offender sentence was not appropriate because of the seriousness of the case.

Appellant argues that the trial court's determination that the DJJ would not handle his case appropriately was contrary to the weight of the evidence presented based on Mr. Douge's testimony and the DJJ recommendation, and argues that there was "no contrary evidence that the DJJ program would not have been sufficient to provide for appropriate punishment and deterrence." (IB, pg. 35.) In making this determination, however, the court stated:

> With regard to the Defense's recommendation with regard to juvenile sanctions, I—that was the first place I looked, quite candidly. And I looked at how they handled this case coming up to this point in time. I have no confidence that they would handle this appropriate moving [sic] forward. So with regard to that, I just don't think that their handling was enough. And frankly, two years, by the testimony of all three expert witnesses, is not going to provide sufficient treatment in that regard.

(R. 956.) Thus, it appears that even if the court did find that DJJ could handle Appellant's case, the court would not have imposed juvenile sanctions because of the time limitation. Although defense counsel argued below that Appellant could continue to receive treatment after he turned 21, there would be no way for the court to enforce said treatment, as DJJ's jurisdiction ended upon a defendant's 21st birthday.

Appellant argues that the court's determination that short term DJJ sanctions would not be sufficient was not supported by the evidence because "there was no expert testimony hat opined that the DJJ high-risk placement until Appellant reached the age of 21 would be insufficient treatment," and that instead, "several, if not all of the experts opined that a structured environment with enforced rules and therapeutic support will mitigate future risks." (IB, pg. 35.) Dr.

Prichard, however, testified that he had "significant concerns" if Appellant was given juvenile sanctions and thus only treated for two years. Additionally, when Dr. Harper was asked whether she believed that after two to three years of treatment in the DJJ, society could feel safe upon Appellant's release, Dr. Harper asserted that the question was complicated because the question suggested that treatment would end at that point, but there was no evidence that Appellant would not continue treatment because he could go to a group home. While Appellant could voluntarily choose to receive treatment after he turned 21 and was released from DJJ, there would be no authority to ensure that he did so.

The trial court did not abuse its discretion in imposing adult sanctions for Appellant's violent and aggressive attack on the victim, especially where the court directed that Appellant receive mental health services both while incarcerated and on probation. Appellant is entitled to no relief.

## CONCLUSION

Based on the arguments and authorities presented herein, Appellee respectfully requests this Honorable Court affirm Appellant's judgment and sentence in all respects.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief of Appellee has been furnished via the Florida Court's E-Filing Portal to counsel for Appellant—Hani Demetrious (200 SE 9th Street, Ft. Lauderdale, Florida 33316) at appeals@robertmalovelaw.com, on May 23, 2025.

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style, in compliance with Rule 9.045(b), and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE crimappdab@myfloridalegal.com as my primary e-mail address and kaylee.tatman@myfloridalegal.com as my secondary address, pursuant to Rule 2.516, in this proceeding.

Respectfully submitted,
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