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IN RE INTEREST OF JUSTIN V., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. JUSTIN V., APPELLANT.

797 N.W.2d 755

Filed May 3, 2011. No. A-10-566.

1. **Justiciable Issues.** Justiciability issues that do not involve a factual dispute present a question of law.
2. **Moot Question: Jurisdiction: Appeal and Error.** Because mootness is a justiciability doctrine that operates to prevent courts from exercising jurisdiction, an appellate court reviews mootness determinations under the same standard of review as other jurisdictional questions.
3. **Judgments: Jurisdiction: Appeal and Error.** When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the decisions made by the lower courts.
4. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.
5. **Statutes: Appeal and Error.** To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below.
6. **Juvenile Courts: Minors: Right to Counsel: Waiver: Appeal and Error.** The juvenile court's determination as to whether a juvenile's waiver of counsel was voluntary, knowing, and intelligent is reviewed de novo on the record for an abuse of discretion.
7. **Pleas: Appeal and Error.** The right to withdraw a plea previously entered is not absolute, and, in the absence of an abuse of discretion on the part of the trial court, refusal to allow a defendant's withdrawal of a plea will not be disturbed on appeal.
8. **Standing: Moot Question.** Standing is judged at the time the action is begun, and thereafter, the analysis is under the rubric of mootness.
9. **Moot Question: Words and Phrases.** A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.
10. **Courts: Jurisdiction.** Although not a constitutional prerequisite for jurisdiction, an actual case or controversy is necessary for the exercise of judicial power.
11. **Courts: Judgments.** In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory.
12. **Moot Question.** As a general rule, a moot case is subject to summary dismissal.

13. **Criminal Law: Convictions: Proof: Moot Question.** A criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.
14. **Juvenile Courts: Minors: Right to Counsel: Waiver.** Whether a juvenile has knowingly, voluntarily, and intelligently waived the right to counsel is to be determined from the totality of the circumstances.
15. ____: ____: ____: ____. The circumstances considered in a totality of the circumstances analysis of a juvenile's waiver of counsel include the age, intelligence, and education of the juvenile; the juvenile's background and experience generally, and more specifically, in the court system; the presence of the juvenile's parents; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the intricacy of the offense.
16. **Juvenile Courts: Minors: Right to Counsel: Waiver: Proof.** Where a juvenile waives his or her right to counsel, the burden lies with the State, by a preponderance of the evidence, to show that the waiver was knowingly, intelligently, and voluntarily made.
17. **Juvenile Courts: Minors: Confessions: Waiver.** Courts should take special care in scrutinizing a purported confession or waiver by a child.
18. **Juvenile Courts: Minors: Right to Counsel: Waiver.** In explaining to a juvenile his or her right to counsel, courts should take care to employ language that the juvenile can understand and should take the time necessary to conduct a sufficient inquiry into the juvenile's understanding of the right to counsel and waiver thereof.
19. **Pleas: Appeal and Error.** Prior to sentencing, the withdrawal of a plea forming the basis of a conviction is addressed to the discretion of the trial court, and its ruling will not be disturbed on appeal absent an abuse of that discretion.
20. **Pleas.** After the entry of a plea of guilty or no contest, but before sentencing, a court, in its discretion, may allow a defendant to withdraw his or her plea for any fair and just reason, provided that the prosecution has not been or would not be substantially prejudiced by its reliance on the plea entered.
21. **Pleas: Proof.** The burden is on the defendant to establish by clear and convincing evidence the grounds for withdrawal of a plea.

Appeal from the Separate Juvenile Court of Lancaster County: REGGIE L. RYDER, Judge. Affirmed.

Carlos A. Monzón, of Monzón Law, P.C., L.L.O., for appellant.

Gary E. Lacey, Lancaster County Attorney, Alicia B. Henderson, and Meagan Deichert, Senior Certified Law Student, for appellee.

IRWIN, MOORE, and CASSEL, Judges.

MOORE, Judge.

INTRODUCTION

Justin V. appeals from an order of the separate juvenile court of Lancaster County denying his request to withdraw his initial admission to a charge of criminal mischief. Justin asserts that he did not make a knowing waiver of his right to counsel and that he had a fair and just reason for withdrawing his admission to the charge in this case. Because the juvenile court did not abuse its discretion in determining that Justin's waiver of counsel was knowing, voluntary, and intelligent or in denying Justin's motion to withdraw his admission, we affirm.

BACKGROUND

On July 10, 2009, the State filed a petition in the juvenile court, charging Justin with criminal mischief, a Class II misdemeanor, in violation of Neb. Rev. Stat. § 28-519(4) (Reissue 2008). Specifically, the State alleged that Justin was within the meaning of Neb. Rev. Stat. § 43-247(1) (Reissue 2008) in that on June 13, he had intentionally or maliciously damaged property belonging to a particular entity, causing a pecuniary loss of more than $200 but less than $500.

On August 13, 2009, Justin, then 17 years old, appeared before the juvenile court on the criminal mischief charge. His mother was present with him at the hearing. The court began by asking Justin if he had received a copy of the charge and understood what the charge was. Justin confirmed that a copy had been sent to him and that he knew what the charge was.

Next, the juvenile court explained Justin's various rights. The court explained Justin's right to be represented by an attorney during the course of the proceedings. The court informed Justin that he could hire and consult with a private attorney; that if his family could not afford an attorney, Justin could request an attorney and the court would appoint one at no cost; or that Justin could waive this right and proceed without an attorney. The court then explained Justin's right to a speedy adjudication hearing, the State's burden of proof, and Justin's right to cross-examine witnesses. At this point, the court asked Justin if he had any questions, and Justin replied that he did not.

The juvenile court also explained Justin's right to testify, to put on his own defense, and to remain silent. The court again informed Justin that the State, rather than Justin, had the burden of proof with respect to the charge. The court warned Justin that if he chose to say something during the hearing, it could be used by the State against him. The court clarified by stating that if Justin said something in court about the charge that he had not previously said, he was "stuck with it." The court then explained that Justin had the right to a prompt or quick hearing. The court told Justin that if he were placed at a juvenile detention center, he would have the right to request a hearing at any time to determine if he could be released to return home. The court also explained Justin's right to appeal the court's decisions. The court then asked Justin if he understood his rights and whether he had any questions. Justin indicated that he understood his rights and did not have any questions.

Next, the juvenile court explained the potential consequences if Justin admitted to the charge or the State proved that it was true at trial. The court told Justin that he could be placed on probation or with the Department of Health and Human Services, Office of Juvenile Services, and that there would be specific terms and conditions he would have to follow as part of either option. With regard to placement, the court explained that it could allow Justin to remain with his family, but that if the court determined at some point that it was necessary and in Justin's best interests, the court had the option to consider various out-of-home placements and even to consider placement at the Youth Rehabilitation and Treatment Center in Kearney, Nebraska. The court told Justin that it would need to find out more information about him before determining the best option. The court further explained the possible terms and conditions that Justin might have to follow if the charge were found to be true, such as paying restitution or performing community service. The court also informed Justin that the longest amount of time the case could remain pending would be until Justin turned 19, but that the case could end sooner if the court determined that Justin did not need to be under the court's jurisdiction that

long. The court told Justin that if the charge were found not to be true, it would be dismissed. The court asked Justin if he understood what could happen if the court found the charge to be true and whether he had any questions. Justin replied that he understood what could happen and that he did not have any questions.

The court inquired whether Justin's mother understood Justin's rights and potential consequences and whether she had any questions. Justin's mother replied that she understood and that she did not have any questions.

The juvenile court then further discussed Justin's right to an attorney. The court again explained that Justin could hire a private attorney, have a court-appointed attorney if the family could not afford one, or choose to proceed without an attorney. The court asked if Justin understood and if he had any questions. Justin responded that he understood and did not have any questions. The court asked Justin if he knew what he wanted to do about an attorney or if he wanted to talk to his mother before letting the court know his decision. The following dialog then took place: "[Justin]: Talk to her about it. THE COURT: Okay. Why don't you go ahead and do that. [Justin]: Proceed. THE COURT: Which way? [Justin's mother]: Proceed with no attorney. [Justin]: No attorney." The court advised Justin that the decision to proceed without an attorney was his to make and asked if he understood or had questions. Justin indicated that he understood and did not have any questions. He again informed the court that he wanted to proceed without an attorney. In response to the next series of questions from the court, Justin informed the court that no one had forced him to give up his right to an attorney or threatened him to persuade him to do so and that he was doing so of his own free will and as his own voluntary act. Justin's mother confirmed for the court that she agreed with Justin's decision to waive his right to an attorney. The court then found that Justin had waived his right to an attorney freely, voluntarily, and intelligently.

After being informed that Justin was not eligible for diversion, the juvenile court read Justin the specifics of the criminal mischief charge. Justin stated that he understood the charge.

The court informed Justin that he could deny the charge, which would lead to a hearing where the State would have to call witnesses and present evidence. The court explained that if the State did not prove the charge, the case would be over, but that if the charge were proved at trial, the court would then have to decide what would happen. The court informed Justin that he also had the option to admit the charge, which the court described as being "like pleading guilty" and admitting to the court that he had done what was alleged. The court explained that if Justin admitted the charge, there would not be a trial. In response to the court's questioning, Justin stated that he understood the two ways he could respond to the charge and that he did not have any questions. The court asked Justin if he would admit or deny the charge, and Justin replied that he would admit the charge.

After Justin's admission of the charge, he informed the court of his age and the court proceeded to question him further about the admission. In response to this questioning, Justin told the court that he admitted and understood the charge, that his admission was made of his own free will and was his own voluntary act, that no one had forced him to admit the charge or threatened him to persuade him to do so, that no one had made him any promises in exchange for his admission, and that he was not under the influence of any drugs or alcohol. Justin also told the court that he understood that there would not be a trial; that no witnesses would testify or evidence be presented by the State to prove the charge; that he was giving up his right to see, hear, and cross-examine such witnesses; that he was giving up the right to testify, put on a defense, or bring his own witnesses; and that he was giving up his right to remain silent.

In response to further questioning by the juvenile court, Justin stated that he understood the court would have to decide which disposition would be in Justin's best interests and that he did not have any questions. Justin again told the court that it was his decision to admit the charge and informed the court that he was admitting the charge because it was true. Justin's mother informed the court that she had no objection to the court's accepting Justin's admission. The court then found that

Justin's admission was entered freely, voluntarily, and intelligently with the consent of his parent.

The juvenile court informed Justin that the State would read the factual basis, or what it believed the evidence would be if there were a trial, and asked Justin to listen carefully. The State then read the factual basis, which stated that on June 13, 2009, Justin and two other named juveniles were identified as throwing rocks at a particular building in Hickman, Nebraska; that witnesses observed a glass window in the building break; and that Justin and the other juveniles were contacted and admitted to throwing the rocks, but that they denied that the damage was a result of their throwing the rocks. All three juveniles were cited for criminal mischief and turned over to their parents. The estimated damage to the broken window was $388. In response to further questioning by the court, Justin acknowledged that he had heard what the State had said and that it was still his decision to admit the charge.

The juvenile court found that there was a factual basis to support Justin's admission to the charge, accepted Justin's admission, and adjudicated Justin as a juvenile under § 43-247(1). The court explained what would happen next, which would include options of probation or placement with the Department of Health and Human Services at a group or foster home, "an institution," or "even Kearney." The court encouraged Justin to stay out of trouble with the law, to follow the rules at home, to attend school, and to refrain from using drugs and alcohol between the date of the admission and the next hearing, as those were the types of issues that the court would consider in its decision process. Both Justin and his mother informed the court that they did not have any questions at that point in the hearing.

The case was set for a dispositional hearing on September 29, 2009. The case was continued, and on October 29, the juvenile court placed Justin in the juvenile detention center for allegations that he violated his conditional release. On November 3, the court held a detention hearing and authorized Justin to be released to the custody of his mother and appointed an attorney for Justin. On January 13, 2010, Justin was accepted into drug court. On January 20, an order for immediate custody

was issued because Justin falsified a urine test by switching his urine with someone else's. Justin used marijuana on January 27, the day he was released from the juvenile detention center. Justin was released to attend residential treatment on February 16, but he was "kicked out" 8 days later for unruly, threatening, and intimidating behavior.

On April 2, 2010, Justin appeared in court with his mother, stepfather, and attorney for his disposition hearing. Justin's attorney made an oral motion, asking that Justin be allowed to withdraw his plea and that the matter be set for an evidentiary hearing. The juvenile court continued the hearing to give Justin an opportunity to present evidence on the motion.

The juvenile court heard Justin's motion to withdraw his plea on April 12, 2010. Justin's mother testified that on April 1 and 8, she spoke with one of the individuals who had been with Justin when the rocks were thrown. She also spoke with another of the involved juveniles on April 8. Justin's mother spoke with a third individual approximately a week after the rock-throwing incident. She testified that based on these conversations, she believed that Justin did not throw any rocks and should be allowed to withdraw his plea. Justin's mother testified that she was present with Justin in court on at least a dozen occasions between August 13, 2009, and April 12, 2010. Justin's mother acknowledged that she was able to speak to Justin about the incident on the day it happened, when law enforcement came to their residence to issue Justin a ticket for the criminal mischief.

The juvenile court then asked Justin's mother a series of clarifying questions. Justin's mother had testified that she did not have a chance to talk to Justin about waiving his right to an attorney. In response to the court's questions, she agreed that she was present in court for the explanation of Justin's rights and the potential consequences of the proceedings. She confirmed that she had been asked whether she agreed and that she had agreed, at the time, with Justin's waiver of his right to an attorney. Justin's mother stated that she agreed to the waiver only because she did not have the funds for a private attorney, but agreed that Justin had been advised that an attorney would be provided at no cost if the family could

not afford one. Justin's mother said she had believed the court would appoint an attorney based upon her earning capacity. When asked why she did not ask the court to appoint an attorney for Justin at that time, she replied, "I really don't know." She also agreed that she had not objected to the court's accepting Justin's admission at the time of the August 2009 hearing.

Justin also testified at the April 12, 2010, hearing. He stated that his admission was voluntary; however, he testified that he did not believe he entered his plea knowingly because it was his first time in court and he did not really understand what the judge was saying.

The hearing on Justin's motion to set aside his plea resumed on May 6, 2010, and a dispositional hearing was also held. One of the other juveniles involved in the rock-throwing incident testified that the third juvenile was the one who threw the rock that broke the window and that Justin never picked up a rock.

After reviewing the evidence on Justin's motion, the juvenile court determined that it had clearly explained Justin's rights to him at the time of the August 2009 hearing in accordance with statutory requirements. The court observed that Justin had been appointed an attorney in November 2009 and that in the intervening 5 months, he did not make a request to set aside his admission. The court noted that Justin had numerous hearings in drug court and that it was not until he was removed from drug court and the matter was set for disposition in the juvenile court that he made the request to set aside his admission. The court determined that Justin had entered into his plea freely, voluntarily, and intelligently and denied Justin's motion to withdraw his admission.

During the dispositional portion of the hearing, the court discussed Justin's actions, behavior, and attitude during the period after August 13, 2009, including his noncompliance at home, his behaviors at school, his use of marijuana, and his unwillingness to accept responsibility. The court determined that it would be in Justin's best interests to be committed to the Office of Juvenile Services at the Youth Rehabilitation and

Treatment Center in Kearney until he is discharged or paroled. Justin subsequently perfected his appeal to this court.

ASSIGNMENT OF ERROR

Justin asserts that the juvenile court erred in denying his motion to withdraw his admission where the admission resulted from an unknowing and uncounseled waiver of his right to counsel.

STANDARD OF REVIEW

[1-3] Justiciability issues that do not involve a factual dispute present a question of law. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010). Because mootness is a justiciability doctrine that operates to prevent courts from exercising jurisdiction, an appellate court reviews mootness determinations under the same standard of review as other jurisdictional questions. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009). When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires an appellate court to reach a conclusion independent of the decisions made by the lower courts. *Id.*

[4,5] An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Jorge O.*, 280 Neb. 411, 786 N.W.2d 343 (2010). To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below. *Id.*

[6] The juvenile court's determination as to whether a juvenile's waiver of counsel was voluntary, knowing, and intelligent is reviewed de novo on the record for an abuse of discretion. *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007).

[7] The right to withdraw a plea previously entered is not absolute, and, in the absence of an abuse of discretion on the part of the trial court, refusal to allow a defendant's withdrawal of a plea will not be disturbed on appeal. *State v. Williams*, 276 Neb. 716, 757 N.W.2d 187 (2008).

ANALYSIS

Mootness.

On January 14, 2011, the State filed a motion for summary dismissal, alleging that this case is moot because, as of December 1, 2010, Justin is no longer a ward of the State, his case has been closed, and he is no longer considered a parolee or is not on parole. In response, Justin argues that he continues to be aggrieved and injured by the disposition and order of confinement entered by the juvenile court and asserts that we should consider this case under the public interest exception to the mootness doctrine because other rights and liabilities may be affected by the determination of this case. We reserved ruling on the State's motion until after oral argument and now proceed to consider the parties' arguments concerning mootness.

[8] In support of its motion, the State relies on *In re Interest of William G.*, 256 Neb. 788, 592 N.W.2d 499 (1999). In that case, the Nebraska Supreme Court dismissed an appeal from an order of the juvenile court, finding that the appellant no longer had standing to appeal because after the notice of appeal was filed, he was discharged from the Youth Rehabilitation and Treatment Center and he no longer had any further contact with the Office of Juvenile Services. However, since its decision in *In re Interest of William G.*, the Nebraska Supreme Court has determined that standing is judged at the time the action is begun and that thereafter, the analysis is under the rubric of mootness. See *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006). Accordingly, we find that *In re Interest of William G.* is not controlling in the instant case; rather, our analysis must be under the rubric of mootness.

[9-12] A case becomes moot when the issues initially presented in the litigation cease to exist, when the litigants lack a legally cognizable interest in the outcome of litigation, or when the litigants seek to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive. *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009). Although not a constitutional prerequisite for jurisdiction, an actual case or controversy is

necessary for the exercise of judicial power. *Id.* In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory. *Id.* As a general rule, a moot case is subject to summary dismissal. *Id.*

Justin is no longer a ward of the State, his case has been closed, and he is no longer considered a parolee or is not on parole. Thus, Justin's case has become moot, a conclusion that Justin does not dispute. However, Justin argues that an exception to the mootness doctrine should be applied in this case because he will continue to be aggrieved by the decision.

[13] We turn to an examination of the collateral consequences exception to the mootness doctrine which has been applied in the context of criminal proceedings in Nebraska. In *State v. Patterson*, 237 Neb. 198, 465 N.W.2d 743 (1991), the Nebraska Supreme Court found that the appeal was not moot, even though the appellant had completed his sentence, because the felony conviction subjected him to collateral consequences, including the loss of voting rights in state elections, possible use of the felony conviction to impeach his credibility, and possible consideration of the felony conviction in imposing a sentence for any subsequent offense. The court in *Patterson* relied, in part, on *Sibron v. New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968), which held that a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.

Although Nebraska has not applied the collateral consequences exception found in the criminal arena to a juvenile matter, other states have done so. In *Carillo v. State*, 480 S.W.2d 612 (Tex. 1972), the Texas Supreme Court was presented with a situation very similar to the case at hand. In *Carillo*, the juvenile appealed from an order finding him to be delinquent and committing him to the Texas Youth Council. After the appeal was filed, the juvenile was released from probation and also reached the age of majority. The State of Texas suggested that the case therefore had become moot. The Texas Supreme Court disagreed, finding that the case was not moot, relying in part upon *Sibron v. New York, supra*.

The court reasoned that a juvenile would have no way to exonerate himself if his appeal were mooted due to the expiration of a relatively short sentence, the lifting of probation, or the juvenile's attaining the age of majority. The court also noted that an adjudication of delinquency could affect admission to a profession, the armed services, or private employment, and it noted other legal consequences of adjudication, including consideration upon setting punishment for future criminal or juvenile cases and publication of the record if the juvenile were later charged with a felony. See, also, *In re S.J.C.*, 304 S.W.3d 563 (Tex. App. 2010) (Texas Court of Appeals found mother's appeal from finding that she contributed to child's delinquency reviewable under collateral consequences exception to mootness doctrine after child completed probation due to various legal consequences, including requirement that mother attend counseling, pay fees and restitution, and provide probation department with child's school records); *In re S.J.K.*, 114 Ohio St. 3d 23, 867 N.E.2d 408 (2007) (Ohio Supreme Court found juvenile's appeal from adjudication as juvenile traffic offender not moot following voluntary payment of fine because imposition of points on license was statutorily imposed penalty sufficient to create collateral disability); *In re P.*, 42 A.D.2d 908, 347 N.Y.S.2d 735 (1973) (New York Supreme Court, Appellate Division, found juvenile's appeal from adjudication not moot following his discharge from probation due to possibility of collateral legal consequences).

We conclude that the collateral consequences exception to the mootness doctrine should be applied in this case. Justin asserts that he will be subject to various collateral consequences as a result of his juvenile record. We agree. Courts in Nebraska routinely consider a defendant's juvenile court record when sentencing in adult criminal cases. See, e.g., *State v. Erickson*, 281 Neb. 31, 793 N.W.2d 155 (2011); *State v. Hamilton*, 277 Neb. 593, 763 N.W.2d 731 (2009); *State v. Albers*, 276 Neb. 942, 758 N.W.2d 411 (2008); *State v. Hall*, 237 Neb. 169, 465 N.W.2d 150 (1991); *State v. Parks*, 8 Neb. App. 491, 596 N.W.2d 712 (1999). Justin may also have a duty to divulge a juvenile disposition order on various

admissions and applications, such as the Nebraska bar examination application questionnaire. See, e.g., http://nebar.com/associations/8143/files/NSBC-ExamApp072007.pdf (last visited Apr. 22, 2011) (requiring reporting of citations, arrests, charges, or convictions as adult or juvenile for violation of any law except moving traffic violations which are reported elsewhere). We also note that the military considers an applicant's juvenile record when determining fitness to enter into the armed services or suitability for participation in special programs. See 32 C.F.R. § 96.1 et seq. (2010) (concerning acquisition and use of criminal history record information by military services). We conclude that Justin may be subject to collateral consequences such that his appeal is not moot.

We are mindful of the Nebraska statutes that allow for the sealing of juvenile records upon the satisfactory completion of probation or another treatment or rehabilitation program and which prohibit questioning a person, with respect to any arrest for which the record is sealed, in connection with applications for employment, a license, or other rights or privileges. See Neb. Rev. Stat. §§ 43-2,108.01 to 43-2,108.05 (Cum. Supp. 2010). These statutes provide, however, that a sealed record is still accessible to law enforcement officers, prosecutors, and sentencing judges in the investigation of crimes and in the prosecution and sentencing of criminal defendants. § 43-2,108.05(3). There is no evidence in our record with respect to whether Justin satisfactorily completed his treatment or rehabilitation program or whether his record has been sealed.

Having concluded that Justin's appeal is not moot, we now turn to the merits of Justin's appeal.

Did Juvenile Court Err in Denying Motion to Withdraw Admission?

Justin asserts that the juvenile court erred in denying his motion to withdraw his admission where the admission resulted from an unknowing and uncounseled waiver of his right to counsel. In considering Justin's assignment of error, we first consider whether he knowingly, voluntarily, and intelligently waived his right to counsel. Then we consider whether Justin's

newfound claim of innocence is a fair and just reason to withdraw his admission.

Waiver of Counsel.

The first step in examining Justin's waiver of his right to counsel is to determine whether he was fully advised of his rights. The juvenile court is required to advise a juvenile of his or her right to counsel. Neb. Rev. Stat. § 43-272(1) (Reissue 2008) provides in part:

> When any juvenile shall be brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel. The court shall inform such juvenile and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel.

Additionally, under Neb. Rev. Stat. § 43-279(1) (Reissue 2008), the juvenile court shall inform a juvenile:

> (a) Of the nature of the proceedings and the possible consequences or dispositions . . . ;
>
> (b) Of such juvenile's right to counsel . . . ;
>
> (c) Of the privilege against self-incrimination by advising the juvenile, parent, guardian, or custodian that the juvenile may remain silent concerning the charges against the juvenile and that anything said may be used against the juvenile;
>
> (d) Of the right to confront anyone who testifies against the juvenile and to cross-examine any persons who appear against the juvenile;
>
> (e) Of the right of the juvenile to testify and to compel other witnesses to attend and testify in his or her own behalf;
>
> (f) Of the right of the juvenile to a speedy adjudication hearing; and
>
> (g) Of the right to appeal and have a transcript for such purpose.

It is clear from the record that the juvenile court explained Justin's rights as required by §§ 43-272 and 43-279. The court

provided a very detailed explanation of Justin's rights and the potential consequences or dispositions, stopping at numerous points during the hearing to inquire whether Justin understood the explanation or had any questions. There is no question that the court's advisement met the statutory requirements.

[14-18] Next, we consider whether Justin knowingly waived his right to counsel. Whether a juvenile has knowingly, voluntarily, and intelligently waived the right to counsel is to be determined from the totality of the circumstances. *In re Interest of Dalton S.*, 273 Neb. 504, 730 N.W.2d 816 (2007). The circumstances considered in a totality of the circumstances analysis of a juvenile's waiver of counsel include the age, intelligence, and education of the juvenile; the juvenile's background and experience generally, and more specifically, in the court system; the presence of the juvenile's parents; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the intricacy of the offense. *Id.* Where a juvenile waives his or her right to counsel, the burden lies with the State, by a preponderance of the evidence, to show that the waiver was knowingly, intelligently, and voluntarily made. *Id.* Courts should take special care in scrutinizing a purported confession or waiver by a child. *Id.* In explaining to a juvenile his or her right to counsel, courts should take care to employ language that the juvenile can understand and should take the time necessary to conduct a sufficient inquiry into the juvenile's understanding of the right to counsel and waiver thereof. *Id.*

The juvenile in *In re Interest of Dalton S., supra*, was 9 years old and mildly mentally handicapped. He was charged with disorderly conduct for hitting another child and knocking over chairs at school. He was not experienced in the court system, but his mother was present at the hearing and able to speak freely with him. The court used plain language in explaining the right to counsel. After the admission hearing, the juvenile was appointed a guardian ad litem, who represented his interests throughout the remaining proceedings, and by the time of the dispositional hearings, when the issues grew more complex, he was represented by both a guardian ad litem and retained counsel. Under the totality of the circumstances in

that case, the Nebraska Supreme Court found no violation of the juvenile's right to counsel.

In this case, the totality of the circumstances also points to a knowing, voluntary, and intelligent waiver of counsel. Justin was 17 years old. Justin was charged with criminal mischief for throwing rocks and causing damage to a building, which is not a complicated offense. Although he was not experienced in the court system, his mother was present with him at the hearing. The juvenile court used plain language in explaining Justin's rights, often pausing to provide additional clarification. The court gave Justin the opportunity to speak with his mother prior to making his decision about counsel. Justin's mother stated that she agreed with the decision to proceed without an attorney. We also note that Justin was appointed an attorney in November 2009 and continued to be represented by counsel through the remaining proceedings prior to appeal. The district court did not abuse its discretion in finding that Justin made a knowing, voluntary, and intelligent waiver of his right to counsel.

Withdrawal of Admission.

There is no case law in Nebraska setting forth standards for appropriate grounds for withdrawing an admission in a juvenile case. The State asserts that the standard for withdrawing pleas in adult criminal cases is appropriate for use in juvenile court, since it balances the interests of justice and fairness to a defendant against the potential prejudice to the State by the withdrawal of the plea.

Our review of case law from other jurisdictions, although not exhaustive, reveals several cases which apply the adult criminal standard for withdrawal of pleas in cases analyzing a juvenile's request to withdraw an admission. See, *In re P.L.B.*, 40 Kan. App. 2d 182, 190 P.3d 274 (2008); *In re J.E.H.*, 689 A.2d 528 (D.C. 1996); *People in Interest of J.F.C.*, 660 P.2d 7 (Colo. App. 1982). But see *In Interest of Bradford*, 705 A.2d 443 (Pa. Super. 1997) (finding adult criminal rules and guidelines inapplicable and applying best interests of child standard to review of decision refusing to permit juvenile to withdraw admission of delinquency). In *In re P.L.B., supra*, the Kansas

Court of Appeals considered an appeal from the denial of a juvenile's motion to withdraw his plea and to set aside his juvenile adjudication. Because there was no provision in the juvenile justice code for plea withdrawal, the court looked to the withdrawal provisions of the criminal code for the appropriate standard. *Id.* In *People in Interest of J.F.C., supra*, the Colorado Court of Appeals observed that delinquency proceedings were to be conducted in accordance with Colorado's criminal procedure rules, except as otherwise provided by statute or Colorado's juvenile procedure rules. The court analogized to the adult criminal rules concerning withdrawal of guilty pleas. *Id.* Finally, we note that some states have actual juvenile procedure rules incorporating standards for withdrawing pleas. See, Fla. R. Juv. P. 8.075(e) (court may permit withdrawal of guilty plea for good cause any time prior to beginning of disposition hearing); Minn. R. Juv. Del. P. 17.06, subdivision 3 (child may withdraw plea of guilty before disposition for any just reason and after disposition if necessary to correct manifest injustice). Because neither the Nebraska Juvenile Code nor prior case law has determined the standard for a juvenile's withdrawal of an admission to a crime, we conclude that it is appropriate to adopt the criminal standard for withdrawal of a plea in the context of a request to withdraw an admission in a juvenile proceeding.

[19-21] Prior to sentencing, the withdrawal of a plea forming the basis of a conviction is addressed to the discretion of the trial court, and its ruling will not be disturbed on appeal absent an abuse of that discretion. *State v. Williams*, 276 Neb. 716, 757 N.W.2d 187 (2008). After the entry of a plea of guilty or no contest, but before sentencing, a court, in its discretion, may allow a defendant to withdraw his or her plea for any fair and just reason, provided that the prosecution has not been or would not be substantially prejudiced by its reliance on the plea entered. *Id.* The burden is on the defendant to establish by clear and convincing evidence the grounds for withdrawal of a plea. *Id.* The right to withdraw a plea previously entered is not absolute, and, in the absence of an abuse of discretion on the part of the trial court, refusal to allow a defendant's withdrawal of a plea will not be disturbed on appeal. *Id.*

Justin argues that he had a fair and just reason to withdraw his admission because he pled after an unknowing waiver of his right to counsel and because he now states that he was innocent of the crime. We have already found that Justin knowingly, voluntarily, and intelligently waived his right to counsel, so the question is whether Justin's newfound claim of innocence is a fair and just reason to withdraw his admission.

At the August 2009 hearing, Justin told the juvenile court that it was his decision to admit the charge and informed the court that he was admitting the charge because it was true. After hearing the factual basis for the criminal mischief charge, Justin told the court that it was still his decision to admit the charge. In support of Justin's assertion that he did not commit the crime, his mother testified that she now believes that Justin did not throw any rocks and should be allowed to withdraw his plea. Another of the juveniles involved in the incident testified that Justin never picked up a rock on the evening in question. Justin also testified that he did not throw a rock. We note, as did the juvenile court, that Justin did not seek to withdraw his admission until after being removed from drug court, at which time he had had appointed counsel for 5 months. We agree with Justin's assertion that courts should be attentive to the capacity of juveniles to comprehend how and why they are being held accountable for their behavior, but there is nothing in the record to show that Justin was incapable of such understanding. He was a 17-year-old high school student being asked to account for throwing rocks and damaging a window. Justin has not shown a fair and just reason for withdrawal of his plea. The juvenile court did not abuse its discretion in denying Justin's motion.

CONCLUSION

The district court did not abuse its discretion in finding that Justin made a knowing, voluntary, and intelligent waiver of his right to counsel or in denying Justin's motion to withdraw his admission.

AFFIRMED.