

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 9, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0579

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE INTEREST OF TARA B.,
A PERSON UNDER THE AGE OF 18:
STATE OF WISCONSIN,**

Petitioner-Respondent,

v.

TARA B.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dane County:
ROBERT R. PEKOWSKY, Judge. *Reversed.*

SUNDBY, J. On February 27, 1996, this court entered an order granting Tara B.'s motion for stay of the dispositional order affecting her and releasing her from custody. The court¹ stated that Tara had shown a substantial likelihood of success of showing that the trial court lost competency to proceed

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. "We" and "our" refer to the court.

on the State's second amended petition because the State did not grant her a plea hearing within the time required by § 48.30(1), STATS. The State now concedes that the trial court lost competency to proceed on the second amended petition. It argues, however, that the trial court should have dismissed the second amended petition without prejudice. The State correctly argues that the proper remedy for failure to hold a plea hearing within the time limits is dismissal without prejudice. See *In re R.H.*, 147 Wis.2d 22, 32, 433 N.W.2d 16, 20 (Ct. App. 1988), *aff'd*, 150 Wis.2d 432, 441 N.W.2d 233 (1989). The State further correctly argues that the question of the validity of the trial court's dispositional order is moot.

Tara argues that this court's statement in *R.H.* that the general rule is that failure to comply with mandatory time limits is properly remedied by dismissal without prejudice was merely dicta. We agree but note that our statement in *R.H.* was based on precedent. The court also concludes that *In re Jason B.*, 176 Wis.2d 400, 500 N.W.2d 384 (Ct. App. 1993), does not answer the question Tara now presents, *i.e.*, whether the State should be allowed to refile a delinquency petition alleging the same acts of delinquency as were alleged in the State's second amended petition.

We agree with Tara that it is not in her best interest that this matter be prolonged any further. However, any ruling which this court would make as to the appropriateness of Tara's disposition would be prejudging a case not before the court. The State may choose not to file a further petition or may file a petition based on other delinquent acts. As far as the present case is concerned, the slate is clean.

This court cannot rule on whether a new delinquency petition should be dismissed with prejudice because that petition is not now before the court. To rule now would be to render an advisory opinion. It is undoubtedly true that these protracted proceedings have not been in Tara's best interest, but it must be acknowledged that she elected to move to dismiss the State's petition on competency grounds when she could have proceeded on the merits of the disposition. It would be in Tara's best interest if the parties agreed upon a disposition which will eliminate the need for further judicial proceedings in this matter.

By the Court. – Order reversed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.