

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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

No. 00-2795-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF JOSHUA J.B.,
A CHILD UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JOSHUA J.B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
STEPHEN A. SIMANEK, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Joshua J.B. appeals from an amended dispositional order placing him in the Serious Juvenile Offender Program (SJOP) pursuant to WIS. STAT. § 938.34(4h). Joshua asserts that the juvenile court erred in denying his postdispositional motion for a new disposition hearing because the original SJOP order was based upon materially inaccurate information. We affirm the SJOP dispositional order.

BACKGROUND

¶2 After a court trial, Joshua was adjudged delinquent for the vaginal manipulation of a three-year-old neighbor girl contrary to WIS. STAT. § 948.02(1) and the matter was set for disposition. Before any disposition, WIS. STAT. § 938.33 requires a designated agency to submit a court report, the contents of which are specified; the report must include, among other things, a recommended plan of rehabilitation or treatment and care for the juvenile. A court report dated November 30, 1999, was filed by Case Manager Lana Morgan, Racine County Human Services Department (RCHS), and a disposition hearing was held on December 8, 1999. The court report recommended, inter alia, that Joshua receive an SJOP disposition. As required for an SJOP recommendation under § 938.33(3r), the dispositional court report stated:

The Racine County Human Services Department feels that a placement in the Serious Juvenile Offender Program would be in Joshua's and the community's best interest. The Serious Juvenile Offender program is designed for those juvenile offenders who need longer-term control, supervision and treatment, and for whom the juvenile correctional system offers the most appropriate range of services.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶3 Joshua was represented at the hearing by Assistant State Public Defenders Michael Zell and Shala Anastasio. Zell, confronted with the RCHS recommendation, told the court that “Joshua does not want to be in detention anymore” and requested additional time to investigate lesser alternatives to the SJOP disposition. The court adjourned the disposition hearing to December 15, 1999.

¶4 On December 15, 1999, RCHS reaffirmed the SJOP placement recommendation, and Racine County Assistant District Attorney Maureen Martinez also recommended that Joshua’s dispositional order be to the SJOP. Zell conceded that Joshua needed long-term treatment, but opined that residential treatment would be more appropriate than SJOP placement. Zell recommended that the court “follow the Human Services Department recommendation for the serious juvenile offender program” but then stay the SJOP placement and place Joshua in a residential treatment facility.

¶5 Consistent with Zell’s concession that the SJOP disposition was warranted in law and fact, the juvenile court determined that secure correctional placement under WIS. STAT. § 938.34(4m) would be “the only other [dispositional] option” for Joshua. *See* § 938.34(4h)(b). The court found that the delinquent act was an offense eligible for SJOP placement, that Joshua was dangerous, that he posed a threat to society, that he needed treatment, and that he would receive intensive programming in the SJOP. Joshua’s request for a § 938.34(16) stay of the SJOP order with residential placement was considered

and rejected by the court.² The court then ordered Joshua's SJOP disposition to the Department of Corrections.

¶6 On June 30, 2000, Joshua moved for a new disposition hearing or, in the alternative, a revision of the SJOP dispositional order. The juvenile court denied the motion. Joshua does not appeal from the denial of his motion for a revision of the SJOP order. Specifically, Joshua contends that he is entitled to a new disposition hearing because the SJOP order was based upon inaccurate information as to the meaning of his mental health diagnosis and his prior placement and services.³

DISCUSSION

¶7 Citing to several adult criminal cases,⁴ Joshua contends that because of inaccurate information presented at the initial disposition hearing, the SJOP placement violated his due process rights. WISCONSIN STAT. § 938.01 addresses WIS. STAT. ch. 938 due process requirements as follows:

² WISCONSIN STAT. § 938.34(16) permits the juvenile court to stay the imposition of the dispositional order and gives the adjudged delinquent a second chance to conform his or her behavior during a period of probation. During this period of probation, the juvenile must comply with certain conditions. Failure to comply with the conditions triggers the commencement of the original dispositional order.

³ Joshua moved for WIS. STAT. § 938.363 revision of the amended dispositional order, contending that he was entitled to the two-year SJOP disposition stated in the original dispositional order, rather than the five-year disposition provided in the amended order. SJOP dispositional orders are not subject to revision under § 938.363. *See* WIS. STAT. § 938.538(5)(c). The denial of the motion for revision of the dispositional order is not before us and this issue has been abandoned.

⁴ Joshua cites to *State v. Borrell*, 167 Wis. 2d 749, 772, 482 N.W.2d 883 (1992) (a defendant has a due process right to a sentence based on true and correct information; a sentence based on incorrect information is invalid), and *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998) (a defendant must show both that the information was inaccurate and that the court relied on this inaccurate information in the sentencing). Joshua also relies on *In re Gault*, 387 U.S. 1, 19-20 (1967) (fundamental due process rights apply in juvenile proceedings).

(2) It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the legislature declares the following to be equally important purposes of this chapter:

....

(d) To provide due process through which each juvenile offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.

¶8 Joshua's reliance on the adult criminal law and procedures is misplaced. Our supreme court has held that "[p]lacement in a juvenile facility is not criminal punishment and does not convert the [Juvenile Justice Code] into a criminal code." *State v. Hezzie R.*, 219 Wis. 2d 848, 885, 580 N.W.2d 660 (1998). Joshua further contends that his fundamental due process rights under *In re Gault* were violated in the initial disposition procedure. However, the *In re Gault* due process rights are limited to the right to counsel, the right to remain silent, the right to confront and cross-examine witnesses, the right to written notice and the right to sworn testimony. *Hezzie R.*, 219 Wis. 2d at 891-92. Because none of the defined *In re Gault* due process rights are at issue in Joshua's appeal, we conclude that his appeal addresses the statutory due process rights and fairness provided under WIS. STAT. ch. 938 of the Juvenile Justice Code.

¶9 WISCONSIN STAT. ch. 938 includes a legislative purpose to "respond to a juvenile offender's needs for care and treatment, consistent with the prevention of delinquency, each juvenile's best interest and protection of the public, *by allowing the judge to utilize the most effective dispositional option.*" WIS. STAT. § 938.01(2)(f) (emphasis added). The juvenile court may choose from several statutory dispositions as provided under WIS. STAT. § 938.34. Disposition

of a child's delinquency adjudication lies in the sound discretion of the court. *State v. James P.*, 180 Wis. 2d 677, 682, 510 N.W.2d 730 (Ct. App. 1993). A presumption of reasonableness supports a children's court disposition. *Id.* The exercise of discretion requires judicial application of relevant law to the facts of record to reach a rational conclusion. *Id.* at 683.

¶10 At a disposition hearing, any party may present relevant testimony and make alternative recommendations. WIS. STAT. § 938.335. In deciding the delinquency disposition, "the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of adjudication." WIS. STAT. § 938.34. The court "shall decide on a placement and treatment finding based on evidence submitted to the court." Section 938.355(1). However, Joshua conceded at the original disposition hearing that the evidence submitted to the court supported the SJOP placement order, contending only that the order should be stayed by the court under § 938.34(16).

¶11 Joshua filed postdispositional motions and was granted a hearing. At the August 14, 2000 hearing, Joshua was allowed to present evidence and argument to challenge the accuracy of the original dispositional evidence and the merits of the SJOP dispositional order.

¶12 Treatment Specialist Brandie Tetzlaff testified that Joshua "had been sort of stabilized and was doing very well" at Ethan Allen School, that he was cooperating with psychiatric and psychological treatment and was on Ritalin, and that he had taken responsibility for the delinquent act and had written a letter of responsibility for the act. Tetzlaff further indicated that Joshua's treatment needs

were assessed when he arrived at Ethan Allen and that he was receiving services based upon those needs.

¶13 Sharon Patrick, a social worker employed by the State Public Defender's Office, testified that she had "reviewed records in this case" provided to her by appellate defense counsel concerning the "evidence of extensive efforts to help Josh and [whether] he had been in and out of treatment facilities, hospitals and programs." Patrick agreed that Joshua had been placed in a treatment facility for evaluation and not treatment, and that he was in a detention center for a number of days.

¶14 The court reviewed portions of the dispositional transcript, the trial testimony and the Juvenile Justice Code, and then denied Joshua's motion for relief from the SJOP order based upon the Tetzlaff and Patrick testimony. The court found that while there may be "disagreements as to the amount of help, the amount of services, the number, quality of services that have been provided in the past," Joshua's prior treatment and placement history supported the SJOP placement order. We conclude that the motion procedure was fair and responsive to Joshua's concerns and that the juvenile court's exercise of discretion was not erroneous.

¶15 Contending also that the SJOP disposition was based on inaccurate information as to the meaning of his medical diagnosis, Joshua submitted an undated "comment on diagnostic considerations" from Forensic Psychiatrist Lynn Maskel at the motion hearing. Maskel had reviewed documents provided by appellate defense counsel, including the October 20, 1999 report of Dr. Joseph T. Bergs, the psychiatrist appointed to examine Joshua. Bergs had interviewed

Joshua and other informational sources prior to preparing the written diagnosis and impressions relied upon by the court at the SJOP disposition hearing. After consideration of the Maskel report, the court affirmed its prior assessment of Joshua's medical diagnosis and concluded that it had not misinterpreted the medical diagnosis. Again, we conclude that the procedure was fair and responsive to Joshua's concerns and that the court's exercise of discretion was not erroneous.

CONCLUSION

¶16 Joshua's continued contention that he is entitled to a new disposition hearing based upon the same evidence that was presented to and rejected by the juvenile court at the postdisposition hearing has no support in WIS. STAT. ch. 938, and Joshua does not cite to any such support. Because Joshua was allowed to call witnesses, present evidence and argue the merits of the earlier SJOP disposition at his postdisposition hearing, the juvenile court's denial of Joshua's motion for a further hearing was not an erroneous exercise of discretion.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

