

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 15, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**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.

**Appeal No. 2010AP2175**

**Cir. Ct. No. 2008JV534**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**IN THE INTEREST OF EMANUEL M., A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**EMANUEL M.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Milwaukee County:  
STEPHANIE ROTHSTEIN, Judge. *Affirmed.*

¶1 KESSLER, J.<sup>1</sup> Emanuel M. appeals an order denying postdisposition relief. Emanuel contends that the juvenile court erred when it (1) placed Emanuel in the Serious Juvenile Offender Program (SJOP) because the court found that a disposition other than placement in a juvenile correctional facility was appropriate; and (2) imposed and stayed the SJOP disposition and then placed Emanuel in the community. Because we find that the juvenile court made the necessary findings to place Emanuel in the SJOP and that the court did not enter a separate, non-correctional disposition when it stayed the SJOP, we affirm.

### BACKGROUND

¶2 On March 26, 2008, Emanuel was charged in a delinquency petition with two counts of armed robbery, party to a crime, and one count of attempted armed robbery, party to a crime. On April 28, 2008, Emanuel entered admissions to all three charges and was adjudicated delinquent on all three counts.

¶3 A disposition hearing was held immediately after Emanuel was found delinquent. After making findings as to the seriousness of Emanuel's offense and after reading a victim impact statement, the juvenile court placed Emanuel in the SJOP for five years, but stayed the disposition. The court placed Emanuel on probation for one year and placed him in a Type 2 residential care center, operated by FOCUS, a Milwaukee County juvenile justice program.

¶4 On December 30, 2008, Emanuel's probation officer filed a motion to lift the stay, alleging that Emanuel violated multiple conditions of the court order. The violations were detailed at a hearing on the motion on April 8, 2009.

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

The juvenile court found that Emanuel violated the conditions of his probation, lifted the stay, and imposed the original disposition.

¶5 Emanuel filed a postdisposition motion challenging the original disposition and the process used by the juvenile court in lifting the stay. The court denied the motion, stating that the proper factors had been considered in imposing the SJOP disposition and that the court was permitted, under WIS. STAT. § 938.34(16), to stay the execution of the disposition contingent on Emanuel's compliance with any conditions specified in the order. This appeal follows.

### **DISCUSSION**

¶6 Emanuel argues that the juvenile court erred when it placed him in the SJOP because the court found a disposition other than placement in a juvenile correctional facility to be appropriate, contrary to WIS. STAT. § 938.34(4h). Emanuel also argues that the juvenile court was in error for placing him in the community after staying the SJOP disposition, making a reversal of the original disposition necessary.

¶7 Both of Emanuel's arguments, in essence, center on his assertion that the juvenile court was in error for ordering an SJOP disposition and for staying that disposition to place him in a non-correctional placement program. Emanuel contends that because under WIS. STAT. § 938.34(4h) a court can only place a juvenile in the SJOP if it finds that the only other appropriate disposition is placement in a juvenile correctional facility, the court erred by staying the SJOP disposition to place Emanuel in a non-correctional facility. We disagree.

¶8 WISCONSIN STAT. § 938.538 implements the SJOP and states that the SJOP exists for "juveniles who have been adjudicated delinquent and ordered

to participate in the program under s. 938.34(4h).” *Id.* “WISCONSIN STAT. § 938.34(4h) is found in the statute authorizing the juvenile court to make original dispositions for juveniles found delinquent.” *State v. Terry T.*, 2002 WI App 81, ¶13, 251 Wis. 2d 462, 643 N.W.2d 175. The first requirement for placement of a juvenile in the SJOP is that the juvenile be fourteen years old or older, and that he or she be adjudicated delinquent for committing or conspiring to commit certain offenses. WIS. STAT. § 938.34(4h). Among the offenses referenced in the statute are armed robbery and attempted armed robbery. *Id.* The juvenile court must also find that “the only other disposition that [would be] appropriate for the juvenile is placement in a juvenile correctional facility under sub. (4m).” *Id.* WISCONSIN STAT. § 938.34(4m) states that correctional placement is appropriate if a juvenile has been found delinquent for the commission of an act punishable by a sentence of six months or more if committed by an adult, and if the juvenile is found to be a danger to the public and in need of restrictive custodial treatment. *Id.*

¶9 Contrary to Emanuel’s assertion, the juvenile court, at the disposition hearing, made the requisite findings pursuant to WIS. STAT. § 938.34(4h) to order Emanuel’s placement in the SJOP. Emanuel was fourteen years old when he was charged and pled guilty to all three charges. He was adjudicated delinquent. At his disposition hearing, the juvenile court made a finding that the only other appropriate disposition was a juvenile correctional facility. The court made various references to “Wales,” the location of a secured juvenile correctional facility for boys, the Ethan Allen School. Specifically, the court described the seriousness of Emanuel’s crimes and after reading a victim impact statement, stated that “the serious nature of the crime [and] the need to protect the community alone would justify me sending you to Wales.” Among the other references to Wales, the court also asked Emanuel “why shouldn’t I send

you to Wales now?” By mentioning Wales multiple times, the court clearly found that a juvenile correctional facility was the only other appropriate disposition. *See State v. Echols*, 175 Wis. 2d 653, 672, 499 N.W.2d 631 (1993) (“An implicit finding of fact is sufficient when the facts of record support the decision of the trial court.”).

¶10 The juvenile court also made the appropriate findings under WIS. STAT. § 938.34(4m). The court specifically addressed the impact of each of Emanuel’s charges on each of the victims and determined that there was a need to protect the community and that custodial treatment was necessary.

¶11 That the court stayed the disposition does not negate the fact that the relevant findings were made. Although Emanuel acknowledges the court’s ability to stay the SJOP disposition under WIS. STAT. § 938.34(16), he argues that his placement in FOCUS means that the court found appropriate a disposition other than a juvenile correctional facility, a violation of the SJOP’s statutory requirements. He is mistaken.

¶12 WISCONSIN STAT. § 938.34(16) permits a juvenile court to stay the disposition of an order, “contingent on the juvenile’s satisfactory compliance with *any conditions* that are specified in the dispositional order and explained to the juvenile by the court.” *Id.* (emphasis added). This gives the delinquent juvenile an opportunity to conform his or her behavior during a probationary period. As our supreme court explained in *State v. Cesar G.*, 2004 WI 61, ¶32, 272 Wis. 2d 22, 682 N.W.2d 1, one of the goals of the Juvenile Justice Code is to “‘allow [ ] the judge to utilize the most effective dispositional plan’ in order 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.’” (Citation

omitted; brackets in *Cesar G.*). “A statutory scheme designed to give circuit courts flexibility to tailor dispositional orders to the circumstances of a particular case would give a circuit court discretion to stay all or some portions of a dispositional order,” including the SJOP. *Id.*, ¶33.

¶13 The juvenile court did not impose Emanuel’s placement in FOCUS as a non-correctional disposition. Rather, the record is clear that the court placed Emanuel on probation and imposed FOCUS as a condition of staying the SJOP disposition.<sup>2</sup> The court also made it clear that if the terms of the condition were violated, Emanuel’s original disposition would be imposed:

Considering all the factors I have to, I’m going to transfer your custody to the Department of Corrections for a period of five years under the Serious Juvenile Offender Program. I’m going to stay that. That means that you don’t have to go, but so help me God, you screw up on this break that I’m going to give you, you are going not for one year, not for two years, but three years. Do you understand me?

¶14 The juvenile court made findings as to the seriousness of the offense, warned Emanuel’s mother and sister that he “is that close to going away to Wales,” and accordingly, found that a juvenile correctional facility was the only other appropriate disposition other than the SJOP. The juvenile court, determining that the SJOP was the most appropriate disposition and that a juvenile correctional facility was the only other appropriate disposition, took into account the seriousness of Emanuel’s offenses, the danger he posed to the public, as well as the facts that Emanuel had a supportive family and no prior criminal record. In

---

<sup>2</sup> The fact that placement in FOCUS, a Type 2 residential care center, is also an authorized disposition under WIS. STAT. § 938.34 does not prevent the placement from also being a condition of a stay of another part of the dispositional order, namely, the SJOP disposition. *See State v. Cesar G.*, 2004 WI 61, ¶¶25, 28-29, 272 Wis. 2d 22, 682 N.W.2d 1.

accordance with the goal of the Juvenile Justice Code, the court stayed the disposition to give Emanuel an opportunity to correct his behavior through FOCUS, and therefore was not in error.

### CONCLUSION

¶15 For all the foregoing reasons, we affirm the juvenile court.

*By the Court.*—Order affirmed.

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

