

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 9, 2003

Cornelia G. Clark
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. 03-1937

**Cir. Ct. Nos. 02JV000308B
02JV000308C
02JV000308D**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF EUGENE G.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

EUGENE G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Eugene G. appeals the trial court's order that both revised his original dispositional order by shortening its length, and then extended

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

the newly-revised order for a year.² He contends that this procedure, requested by the State, was employed to avoid the statutory mandate found in WIS. STAT. § 938.355(4)(b) (2001-02)³ prohibiting the extension of an original dispositional order if the order terminates after a juvenile reaches seventeen years of age. Eugene G. claims *State v. Terry T.*, 2003 WI App 21, 259 Wis. 2d 339, 657 N.W.2d 97, supports his position that this case requires a reversal and his release from custody. This court concludes that the situation in *Terry T.* is distinguishable from this case. Further, although the procedure employed by the trial court was used expressly to avoid the WIS. STAT. § 938.355(4)(b) prohibition, the trial court had the statutory authority to both revise and extend the orders and, based upon the evidence presented, the trial court properly exercised its discretion in doing so. Thus, this court affirms.

I. BACKGROUND.

¶2 On May 10, 2002, a dispositional order was entered finding Eugene G. delinquent for three misdemeanor offenses. Pursuant to WIS. STAT. § 938.34(4m) and (16), the juvenile court ordered Eugene G. to be placed in a secured correctional facility, then stayed that order and placed him on probation. Several months later, Eugene G. was found delinquent again, and for this new delinquent act, he was placed in the custody of the Department of Corrections for one year. The juvenile court also lifted the stay on the earlier order.

² On October 30, 2003, Eugene G. filed a motion to advance the submission of his case. This motion was not granted because no backlog exists of one-judge cases in this district. Eugene G.'s case was assigned on November 4, 2003. Consequently, there was no need to advance submission.

³ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶3 Approximately six months later, the State filed a petition seeking to: (1) revise the order so that it expired before Eugene G.’s seventeenth birthday; and (2) extend the revised order for one year. The reason given for this request was because Eugene G. “remain[ed] in need of custodial treatment.” Eugene G. moved to dismiss or deny the State’s petition. After a hearing, the trial court granted the State’s requests.

¶4 Eugene G. argues that the juvenile court engaged in an unlawful ruse when it revised the earlier order, shortening the length of the order so that it ended shortly before his seventeenth birthday, and then extended this new shortened order for one year. He submits that the trial court’s actions were an express attempt to avoid the prohibition found in WIS. STAT. § 938.355(4)(b) against extending original dispositional orders of juveniles if they terminate after their seventeenth birthdays. He also contends that *Terry T.* prohibits the trial court’s actions.

II. ANALYSIS.

¶5 This court first addresses whether the holding in *Terry T.* prohibits the actions taken by the trial court. In *Terry T.*, the trial court entered an order shortly before the juvenile’s seventeenth birthday that placed him in a secure correctional facility. At the same time, the court also extended that order, which was originally to expire about three months after his seventeenth birthday, until the juvenile’s eighteenth birthday. Thus, the extension was to take effect after the juvenile’s seventeenth birthday. *Terry T.*, 259 Wis. 2d 339, ¶1. On appeal, this court concluded that the trial court’s extension ran afoul of WIS. STAT.

§ 938.355(4)(a) (1999-2000),⁴ as it provided “that this ‘original dispositional order’ [could] not be extended beyond Terry T.’s seventeenth birthday[.]” *Terry T.*, 259 Wis. 2d 339, ¶13. Here, the trial court revised the order to end before Eugene G.’s seventeenth birthday, and then extended the order for one year. Thus, the extension took effect before Eugene G. turned seventeen years of age. Accordingly, *Terry T.* is distinguishable from the instant case.

¶6 Eugene G. complains that the trial court’s actions were done with the intent of avoiding WIS. STAT. § 938.355(4)(b). While this appears to be true, nothing in the legislative history suggests that the legislature is opposed to

⁴ WISCONSIN STAT. § 938.355(4)(a) (1999-2000) provides:

(a) Except as provided under par. (b) or s. 938.368, all orders under this section shall terminate at the end of one year unless the court specifies a shorter period of time. Except if s. 938.368 applies, extensions or revisions shall terminate at the end of one year unless the court specifies a shorter period of time. No extension under s. 938.365 of an original dispositional order may be granted for a juvenile who is subject to an order under s. 938.34(4d), (4h), (4m) or (4n) if the juvenile is 17 years of age or older when the original dispositional order terminates. Any order made before the juvenile reaches the age of majority shall be effective for a time up to one year after its entry unless the court specifies a shorter period of time.

This section has been revised in the 2001-02 version of the Wisconsin Statutes. The pertinent language has been moved to subsection (b) and provides:

(b) ... Except as provided in s. 938.368, an extension of an order under s. 938.34 (4d), (4h), (4m) or (4n) made before the juvenile reaches 17 years of age shall terminate at the end of one year after its entry unless the court specifies a shorter period of time or the court terminates the order sooner. No extension under s. 938.365 of an original dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may be granted for a juvenile who is 17 years of age or older when the original dispositional order terminates.

WIS. STAT. § 938.355(4)(b) (amended Feb. 1, 2003).

seventeen-year-olds remaining in placement settings until their eighteenth birthdays.⁵ The only prohibition is that no extension occur after the seventeenth birthday. Moreover, the trial court had the authority to make the orders it did. WISCONSIN STAT. § 938.363(1) permits the trial court to revise a juvenile dispositional order that does not involve a change in placement if new information “affects the advisability of the court’s disposition[al]” order:

(a) A juvenile ... or the district attorney ... may request a revision in the order that does not involve a change in placement.... The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court’s disposition.... The court shall hold a hearing ... if the request or court proposal indicates that new information is available that affects the advisability of the court’s dispositional order....

(b) ... No revision may extend the effective period of the original order.

Here, the trial court held a hearing on the State’s proposal. At the hearing, the trial court heard evidence that raised concerns about the length of time it would take to rehabilitate Eugene G. Submitted evidence indicated that Eugene G. made such a poor adjustment in his initial placement that he had to be transferred to the Mendota Juvenile Treatment Center. Also, a social worker testified that Eugene G. received thirty major conduct reports since the initial order was entered. Given his poor behavior and the lack of progress he made in correcting

⁵ Indeed, WIS. STAT. § 938.355(4)(b) even indicates:

(b) Except as provided in s. 938.368, an order under s. 938.34(4d) or (4m) made before the juvenile reaches 18 years of age may apply for up to 2 years after its entry or until the juvenile’s 18th birthday, whichever is earlier, unless the court specifies a shorter period of time or the court terminates the order sooner.

his serious problems, had the order not been revised and extended, Eugene G. would not have completed his treatment program. Clearly then, the trial court had information unknown at the time of the original dispositional order that affected the advisability of the original order.

¶7 The trial court also properly extended the order. Extension of a juvenile dispositional order is authorized under WIS. STAT. § 938.365 if a hearing is held and evidence is presented showing that the juvenile remains in need of custodial treatment. *See* WIS. STAT. § 938.365(2) and (2g). As noted, the trial court heard evidence that since the original dispositional order was entered, Eugene G. had made little progress in meeting the goals placed on him, and remained in need of custodial treatment.

¶8 The trial court considered the two requests of the State—the revision and the extension—in tandem and in conjunction with the stated goals of the juvenile justice code. The trial court found that by granting both of the State’s requests, the goals of the juvenile justice code were met:

Given the legislative intent and purposes of the juvenile justice code, which are stated in section 938.01(2), including particular (c), which states:

“To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community.”

And also (f) which reads “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.”

I think the request of the State is consistent in the court’s view with those explicit purposes of the juvenile code.

Further, the trial court concluded that the State's two requests were not only consistent with the goals of the juvenile code, but also that the orders were in Eugene G.'s best interest. While the trial court's actions were taken to avoid the possible future application of WIS. STAT. § 938.355(4)(b), the trial court's order was both lawful and a proper exercise of its discretion. Thus, this court affirms.

By the Court.—Order affirmed.

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

