

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 27, 1995

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(1), STATS.

NOTICE

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

Nos. 95-0647
95-1366

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

In the Interest of Shaun M.,
A Person Under the Age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

SHAUN M.,

Respondent-Appellant.

APPEALS from orders of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Reversed and cause remanded with directions.*

ANDERSON, P.J. Shaun M. appeals from the decision of the juvenile court denying his motion to revise the dispositional order placing him in corrections for one year at Ethan Allen. The basis for Shaun's motion before the trial court and on appeal is his contention that the substitute assistant district attorney appearing at the dispositional hearing breached the agreement

between the State and Shaun's family. The gist of the agreement was that if Shaun abandoned his absconder status, the State would recommend Shaun's placement in a residential treatment program rather than corrections.

The State confesses error in a letter filed with this court in lieu of a responsive brief. In the letter the State represents that the "facts and exhibits supplied by the Respondent-Appellant adequately and accurately reflect the circumstances of this case." The State announces that it joined in the motion to revise the dispositional order and confesses error on appeal "based upon an apparent manipulation of substitute Assistant District Attorneys by Social Worker Pam Mueller"

Based upon the State's confession of error and our own independent review of the record, *see Rudolph v. State*, 78 Wis.2d 435, 447, 254 N.W.2d 471, 476 (1977), *cert. denied*, 435 U.S. 944 (1978), we conclude that the State materially breached its agreement, and justice and elementary fairness compel that we reverse the dispositional order of the juvenile court placing Shaun in corrections and remand this matter for a dispositional hearing.¹ At that dispositional hearing both the State and Shaun will fulfill the terms of the

¹ As part of his request for relief from the order of the court, Shaun seeks a different judge to preside over the dispositional hearing upon remand. It is beyond our ability to order that this matter be assigned to a different judge. However, we note that generally in the event of a reversal and a remand for further proceedings, a party may file a request for substitution of judge. *See* MICHAEL S. HEFFERNAN, *APPELLATE PRACTICE AND PROCEDURE IN WISCONSIN*, § 16.5 (2d ed. 1995). It is Shaun's responsibility to determine if under ch. 48, STATS., he may file a request for substitution of the judge assigned to the further proceedings required in this case.

original agreement between the parties and recommend Shaun's placement in a residential treatment center.

By the Court.—Order reversed and cause remanded with directions.

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