

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 26, 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, 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. 95-1450-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF WADE L.,
A PERSON UNDER THE AGE OF EIGHTEEN:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

WADE L.,

Respondent-Appellant.

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

SULLIVAN, J. Wade L., a juvenile, appeals from a dispositional order adjudging him delinquent for robbery—threat of force, as a party to a crime. On appeal, he argues that the trial court deprived him of due process by: (1) failing to provide defense counsel with a copy of the delinquency petition until the hearing, thereby denying Wade L. both of notice of the charges against him and of effective assistance of counsel; (2) failing to allow defense counsel to present argument at the defense hearing; (3) finding probable cause to detain

Wade L. based upon insufficient evidence; (4) placing Wade L. in secure detention based upon an inadequate record; and (5) failing to provide Wade L. with a meaningful detention hearing within the statutory time limit. This court concludes that Wade L. waived any challenges to these alleged errors. Consequently, the order is affirmed.¹

On December 1, 1994, City of Milwaukee police officers arrested Wade L. for his alleged involvement in two related purse-snatching incidents. The next day a juvenile detention hearing was held at which the State filed a delinquency petition with the court. Wade L. received a copy of the petition at that time as well. Based upon the petition, the juvenile court found probable cause to detain Wade L. in secure detention on each of the three charged counts: operating a vehicle without owners consent, theft from person, and robbery – threat of force.

At the detention hearing, with the Honorable Russell W. Stamper presiding, the following exchange took place:

THE COURT: Court finds probable cause as to each count and hereby informs the juvenile of his constitutional rights, which include the right to remain silent, the right to confront and cross-examine witnesses against him, right to subpoena and present witnesses in his own behalf, right to counsel, to jury trial and to require proof beyond a reasonable doubt.

I'll hear the agent on placement.

[INTAKE SPECIALIST]: Your Honor, we're recommending the In-house Monitoring Program.

THE COURT: State.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS. Further, this case was placed on the expedited appeals calendar. *See* RULE 809.17, STATS.

[ASST. DISTRICT ATTORNEY]: Secure detention because of the nature of the defense.

THE COURT: Defense.

[COUNSEL]: Your Honor, I have just been handed the petition.

THE COURT: Sir, what is your recommendation on placement?

[COUNSEL]: I'm recommending home.

THE COURT: All right. Detention because of the seriousness and of the risk that he poses of physical harm to others.

THE CLERK: This is a Branch --

[COUNSEL]: Your Honor, we really haven't had an opportunity -- Well, number one, I haven't had an --

THE COURT: Same placement. Give us a date, Madam Clerk, please.

THE CLERK: December 8th, two o'clock, Branch 9 case, initial appearance.

[COUNSEL]: I -- Well, I just wish to make --

THE COURT: Is that date acceptable, sir?

[COUNSEL]: Your Honor --

THE COURT: All right. We will stay with that date. Next case.

[COUNSEL]: It's necessary for me to make a record at this time in order to preserve my right to any appeal.

THE COURT: Call the next one in.

[COUNSEL]: I would like to -- I have not had an opportunity to look over the petition.

THE COURT: Take it with you.

[COUNSEL]: This is -- I mean this is the --

THE COURT: Next case. Off the record.

On December 8, 1994, Wade L. received his plea hearing, where he entered a not guilty plea. On December 21, however, he pleaded guilty to the robbery – threat-of-force charge and the juvenile court adjudged him delinquent on January 10, 1995. On January 24, 1995, in his notice of intent to pursue postconviction relief, he first raised the alleged errors arising out of the December 2, 1994, detention hearing. He appeals from the delinquency order.

All of the issues raised by Wade L. on appeal implicate the procedures and protections set forth in Chapter 48, STATS. Section 48.21, STATS., which governs the procedure of detention hearings, provides in relevant part:

(2) PROCEEDINGS CONCERNING RUNAWAY OR DELINQUENT CHILDREN. Proceedings concerning a child who comes within the jurisdiction of the court ... shall be conducted according to this subsection.

....

(b) A copy of the petition shall be given to the child at or prior to the time of the hearing. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian and to the child in accordance with s. 48.20 (8).

(c) Prior to the commencement of the hearing, the child shall be informed by the judge or juvenile court commissioner of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 48.18 if applicable, the right to counsel under s. 48.23 regardless of ability to

pay if the child is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the judge or juvenile court commissioner, the right to confront and cross-examine witnesses and the right to present witnesses.

Challenges alleging a violation of due process rights raise an issue of law that we review *de novo*. See *State ex rel. Grant v. Department of Corrections*, 192 Wis.2d 298, 303, 531 N.W.2d 367, 369 (Ct. App. 1995). Additionally, § 48.297(2), STATS., requires that any “[d]efenses and objections based upon defects in the institution of the proceedings, lack of probable cause on the face of the petition, [and] insufficiency of the petition” must be raised within ten days after the plea hearing, or they are deemed waived. Section 48.297(2), STATS.

All of Wade L.'s arguments implicating errors in the institution of the proceedings fall within the ambit of § 48.297. Wade L. did not object to these errors within ten days of his December 8, 1994, plea hearing; accordingly, he waived the right to challenge any due process errors arising out of the detention hearing. Section 48.297, STATS. Any other challenges not implicating errors in the institution of the proceedings were waived upon Wade L.'s guilty plea. See *State v. Kraemer*, 156 Wis.2d 761, 765, 457 N.W.2d 562, 563 (Ct. App. 1990). Further, this court will not exercise its power of discretionary reversal on these issues. See § 752.35, STATS. The juvenile court meaningfully complied with the requirements of § 48.21, and this court is satisfied that the real controversy in this case has been fully tried.

By the Court. – Order affirmed.

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