

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 1, 1996

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. 95-2222

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE INTEREST OF CHRISTOPHER S.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

CHRISTOPHER S.,

Respondent-Appellant.

APPEAL from an order of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

VERGERONT, J.¹ Christopher S., born July 9, 1980, appeals from a dispositional order entered by the La Crosse County Circuit Court. The issue is whether the delinquency petition was timely filed. We conclude that it was timely filed and therefore affirm the order.

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

Pursuant to a dispositional order dated October 14, 1994, Christopher was placed at Rawhide Boys Camp based on a finding that he had taken and driven a vehicle without the owner's consent in violation of §§ 943.23(2) and 939.05, STATS. Pursuant to another dispositional order, he was placed under the supervision of the La Crosse County Department of Human Services until October 14, 1995, for theft, contrary to § 943.20(1)(a), STATS.

On January 12, 1995, Christopher stole a car and ran away from Rawhide Boys Camp. He was taken into custody that day. On the next day he appeared before the trial court and the court ordered that he be held in secure detention. The court found, based on the letter of social worker Jackie Newcomb, that Christopher had demonstrated a pattern of runaway behavior and that it would be unlikely that he would appear at future court proceedings unless he were securely detained.²

A hearing was held on January 23, 1995, on the State's request for sanctions for violating the October 14, 1994 dispositional order. The court imposed a sanction of ten days in secure detention under § 48.355(6), STATS.,³

² Christopher's counsel stated that Christopher had no objection to temporary placement in secure detention. Newcomb's letter indicated that a OMVWOC charge was pending as a result of the incident on January 12.

³ Section 48.355(6), STATS., provides in part:

- (a) If a child who has been adjudged delinquent violates a condition specified in sub. (2)(b)7., the court may impose on the child one of the sanctions specified in par. (d) if, at the dispositional hearing under s. 48.335, the court explained the conditions to the child and informed the child of the possible sanctions under par. (d) for a violation.

....

- (d) The court may order any one of the following sanctions:

1. Placement of the child in a secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule, for not more than 10 days and educational services consistent with his or her current course of study during the period of

beginning on January 23 and ending on February 2. At the sanctions hearing, the attorney for the State stated that a petition had been dictated for a charge of operating a motor vehicle without the owner's consent (OMVWOC), but he did not know where it was. The court set a hearing for January 25 for a plea on the petition that had not yet been filed.

At the hearing on January 25, 1995, the petition had not yet been filed. The State's position was that a new petition was not needed because a petition that had been filed by the State of Minnesota was sufficient. Christopher's attorney objected, contending that Wisconsin needed to file a petition in order for the court to have jurisdiction over the new OMVWOC offense. The court did not rule on this issue and set the matter over.

On February 1, 1995, the State did submit a petition alleging an OMVWOC offense for the January 12 incident. Two days later, Christopher's counsel moved to dismiss the petition as untimely. That motion was denied. This court denied Christopher's petition for leave to appeal that non-final order. Christopher pled no contest to the petition. After a dispositional hearing, the court ordered on March 10, 1995, that he be placed at Lincoln Hills.

Christopher argues on appeal that the petition was untimely because it was not filed within the time limits prescribed by § 48.21(1), STATS., which provides:

(1) HEARING; WHEN HELD. (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or juvenile court commissioner within 24 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed where a

(..continued)
placement.

child is taken into custody under s. 48.19(1)(b) or (d)2., 6. or 7. or where the child is a runaway from another state, in which case a written statement of the reasons for holding a child in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or juvenile court commissioner for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the judge or juvenile court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unwilling or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. In the event of failure to file a petition within the 48-hour extension period provided for in this paragraph, the judge or juvenile court commissioner shall order the child's immediate release from custody.

Christopher acknowledges that under § 48.21(1), STATS., no petition need be filed when a child is taken into custody under § 48.19(1)(d)6, STATS., and he acknowledges that that provision applied to him. Section 48.19(1)(d)6 permits a child to be taken into custody for violating the terms of court-ordered supervision. However, Christopher contends that, because the State intended to file a petition, there were two bases for holding him in custody--violation of the prior dispositional order and the new OMVWOC offense. In such a situation, Christopher contends, the State must comply with the requirement in § 48.21 that the petition be filed at the detention hearing or within forty-eight hours if the court grants an extension, in spite of the

exemption in § 48.21(1) for children in custody because of a violation of the terms of court-ordered supervision. Since the State did not, Christopher requests that the petition be dismissed and the dispositional order entered on March 10, 1995, be vacated.

We agree with Christopher that the State indicated as early as the detention hearing on January 13, 1995, that a petition might be filed for an OMVWOC charge arising out of the January 12 incident. That is also indicated by the social worker's letter discussed at the January 13 hearing. Whether, under these circumstances, § 48.21, STATS., requires that the petition be dismissed because it was not filed at the detention hearing or within a forty-eight hour extension presents an issue of statutory construction, which we review de novo. See *In re Curtis W.*, 192 Wis.2d 719, 724, 531 N.W.2d 633, 634 (Ct. App. 1995).

Under the plain language of § 48.21, STATS., the situation where a child is taken into custody for violating a dispositional order is exempted from the time requirements for filing a petition. We are not persuaded by Christopher's arguments that we should read the time requirements back into the statute simply because the violation of the dispositional order also gives rise to a new charge. The considerations that support allowing only a short, fixed time for holding a child in custody until a petition is filed do not necessarily apply when the child is in custody for the violation of a prior dispositional order. The child in the latter situation, like Christopher, has already been determined delinquent and has, moreover, violated a court order. Christopher argues that if we do not interpret § 48.21 as he urges, children will be able to be held indefinitely in secure detention after they have violated a dispositional order and before a new petition is filed based on that conduct. We need not decide now what length of custody would be unreasonable, or would be a violation of a child's due process rights. See *State ex rel. Jones v. Division Administrator*, 195 Wis.2d 669, 674, 536 N.W.2d 213, 215 (Ct. App. 1995) (due process requires that parole revocation hearing be held within a reasonable time). We conclude that the length of time Christopher was held in secure detention after the detention hearing and before the petition was filed--ten days, excluding the sanction period--was not unreasonable and did not violate Christopher's right to due process.

Christopher argues that case law interpreting § 48.25, STATS., supports his argument. Section 48.25(2)(a) imposes a time limit within which

the district attorney must act on the recommendation of an intake worker to initiate delinquency proceedings and sets out the procedures the district attorney is to follow if unable to file a petition within that time. Section 48.25(2)(a) specifically provides that the court shall dismiss with prejudice petitions that are not filed within the time limitations unless the court finds that good cause is shown. The court in *In re C.A.K.*, 154 Wis.2d 612, 619, 453 N.W.2d 897, 900 (1990), concluded, based on the language of § 48.25(2)(a), that failure to follow those time limits and procedures required dismissal of the petition with prejudice.

In re C.A.K. does not support Christopher's position. As we have held above, the time limits for filing the petition under § 48.21, STATS., do not, by the express terms of the statute, apply in Christopher's situation. Moreover, if the time limits of § 48.21 are applicable and are not complied with, "the judge or juvenile court commissioner shall order the child's immediate release from custody." Section 48.21(1)(b). A violation would not, in any event, result in dismissal of the petition, as it does under § 48.25(2)(a), STATS.

Although we hold that the State was not required by § 48.21, STATS., to file the petition at the detention hearing or within forty-eight hours with court approval, we emphasize that in our view a prompt filing of a petition in these circumstances is the better practice.

By the Court. – Order affirmed.

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