

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2003

DEPARTMENT OF CHILDREN  
AND FAMILIES.

Petitioner,

v.

CASE NO. 5D03-1229

W.M.J., A Child,

Respondent.

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Opinion filed July 18, 2003

Petition for Certiorari Review of Order  
from the Circuit Court for Marion County.  
Sandra Edwards-Stephens, Judge.

Ralph J. McMurphy, Department of Children  
and Families, Wildwood, for Petitioner.

Brad King, State Attorney, and Linda Johns Herrick  
Assistant State Attorney, Ocala, for the State of Florida.

No Appearance for Respondent W.M.J., a Child.

SHARP, W., J.

The petitioner, Department of Children and Families, seeks a writ of certiorari to review the order of the trial court which committed an incompetent juvenile to the Department for competency restoration, in a case in which the juvenile's alleged delinquent act would constitute a misdemeanor if committed by an adult. The trial court's order provides:

The child is committed to the Department of Children and Families for

assistance and supervision with the goal of the restoration of the child's competency to proceed.

The trial court rendering this decision may not have had the benefit of our opinion in *Department of Children and Families v. E.M.S.*, 841 So. 2d 621 (Fla. 5th DCA 2003). This case is indistinguishable from *E.M.S.* and *Department of Children and Families v. J.K.*, 752 So. 2d 87 (Fla. 1st DCA 2000). Under the applicable statute, section 985.223(2), Florida Statutes, an incompetent juvenile charged with the equivalent of a misdemeanor offense may not be committed to the Department for restoration of competency treatment or training services.

Accordingly, we grant the Department's petition for writ of certiorari, quash the order under review, and remand for further proceedings.

GRANT Petition for Writ of Certiorari and remand; QUASH Order.

PETERSON and MONACO, JJ., concur.