IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2008

M.P., A CHILD,

Appellant,

v. Case No. 5D07-2359

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed August 29, 2008

Appeal from the Circuit Court
for Brevard County,
Lawrence Johnston, Senior Judge.

James S. Purdy, Public Defender, and Edward J. Weiss, Assistant Public Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Mary G. Jolley, Assistant Attorney General, Daytona Beach, for Appellee.

ORFINGER, J.

M.P., a child, appeals the trial court's order finding her in contempt of court and sentencing her to five days in secure detention, three of which were suspended, followed by a consecutive term of fifteen days in secure detention, all of which was

suspended. M.P. contends that the trial court's sentence violates the limitations of section 985.037(2), Florida Statutes (2007). We agree and reverse.[1]

M.P. violated the terms of her juvenile probation order in multiple ways. As a result, the trial court issued four orders to show cause, each alleging a different violation of the same probation order. At the hearing on the orders to show cause, the court consolidated the four orders, and thereafter, treated the matter as if there were two orders to show cause, each alleging two separate violations of the same probation order. M.P. did not dispute the violations; rather she argued that she could only receive a single five-day placement in secure detention pursuant to the limitations set forth in section 985.037(2), governing the punishment of juveniles for contempt of court. That section provides:

> A child may be placed in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. ***A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility not to exceed 5 days for a first offense and not to exceed 15 days for a second or subsequent offense***.

§ 985.037(2), Fla. Stat. (2007)[2] (emphasis added).

We addressed a similar situation in J.D. v. State, 954 So. 2d 93 (Fla. 5th DCA 2007). In J.D., we held that consecutive placements in secure detention for multiple violations of a single behavior order violated the statutory limitations set forth in section 985.037(2). J.D. made clear that multiple violations of a single order are treated

[1] We reject without comment the State's argument that the issue was not preserved.

[2] Prior to January 1, 2007, section 985.037 was numbered 985.216.

differently than "multiple probation violations" as that term was defined in Williams v. State, 594 So. 2d 273, 274 n.3 (Fla. 1992). In Williams, the supreme court defined "multiple probation violations" as "successive violations which follow the reinstatement or modification of probation rather than the violation of several conditions of a single probation order." Id. That is not the situation here. In this case, we deal with several violations of a single probation order and not "multiple probation violations." In the former situation, consecutive placements are not permitted for a first offense, while in the latter, such placements are authorized.

We are not unmindful of the challenges faced daily by judges dealing with uncooperative juveniles. However, the Legislature has expressly limited the use of secure detention to punish recalcitrant juveniles. As the Third District said in B.M. v. Dobuler, 979 So. 2d 308, 312 (Fla. 3d DCA 2008):

> Florida's juvenile justice system is -- for better or worse -- a creature of statute. See §§ 985.01-.807, Fla. Stat. (2007). This arrangement imposes a unique set of limitations on the ability of the circuit judges in this state to control juvenile delinquents. While the circuit judges of this state have a panoply of inherent powers to impose restraints on recalcitrant adult criminal defendants, the power of those same judges to detain a child respondent in a juvenile proceeding conducted pursuant to chapter 985 of the Florida Statutes is strictly limited by law. R.G. [v. State, 817 So. 2d 1019, 1020 (Fla. 3d DCA 2002)].

As we did in J.D., we conclude that M.P.'s consecutive placements in secure detention for multiple violations of a single probation order violate the provisions of section 985.037(2). Accordingly, we affirm the court's adjudication of contempt, but reverse the disposition order and remand for correction of sentence. In the event that M.P. was restored to probation after her release from secure detention, any future

violation would be considered a "second or subsequent offense" and could subject her to a fifteen-day placement in secure detention.

AFFIRMED in part; REVERSED in part; REMANDED for correction of sentence.

LAWSON, J., concurs in result, with opinion.
SAWAYA, J., dissents, with opinion.

LAWSON, J., concurring in result. Case No. 5D07-2359

I agree with Judge Orfinger that our court's panel decision in *J.D. v. State*, 954 So. 2d 93 (Fla. 5th DCA 2007), requires a reversal in this case. Under *J.D.*, a trial court can only impose one contempt sanction for any and all violations of a single court order that occur prior to imposition of the first sanction. In this case, M.P. was accused of violating her probation order in four ways based upon distinct conduct on the following dates: April 24, May 7-11, June 1-2, and June 1 and 4. The first of the two contempt hearings held to address these violations occurred on June 11. Under *J.D.*, the trial judge was limited to a single five-day contempt sanction for all of the alleged violations that occurred before this hearing. If M.P. had violated the terms of her probation again, after the five-day sanction was imposed on June 11, our precedent in J.D. would have then allowed the imposition of a second sanction, not to exceed fifteen days.

However, I also agree with the First District's analysis in *K.Q.S. v. State*, 975 So. 2d 536 (Fla. 1st DCA 2008), and with Judge Sawaya's conclusion that the result dictated by *J.D.* is inconsistent with a plain reading of section 985.037, Florida Statutes. Therefore, if not bound by our panel decision in *J.D.*, I would affirm for the reasons expressed in *K.Q.S.*, and by Judge Sawaya.

SAWAYA, J., dissenting.

On November 20, 2006, M.P. was arrested for petit theft (Case No. 06-4035), and she was subsequently arrested on January 4, 2007, for possession of less than twenty grams of cannabis (Case No. 07-620). Pursuant to a plea agreement, M.P. entered a plea of no contest to each of these charges and was placed on probation, which required, among other things, that she abide by a 7:00 p.m. curfew and attend Rainwater School for Girls ("Rainwater"). Based on allegations by M.P.'s mother that she was not abiding by the curfew, on May 31, 2007, a hearing was held and after M.P. admitted that she did not comply with the curfew on at least one occasion, the trial court modified M.P.'s probation to require that M.P. remain on home detention until June 11, 2007.

On June 5, 2007, M.P.'s probation officer filed two affidavits requesting orders to show cause why M.P. should not be held in contempt of court for violating the probation order. The first affidavit requested an order to show cause why M.P. was not in contempt of court for failing to attend Rainwater on April 24, 2007. The second affidavit requested an order to show cause why M.P. was not in contempt of court for failing to attend Rainwater from May 7-11, 2007. Two corresponding orders to show cause were filed the same day, and separate show cause hearings were scheduled for June 11 and 14, 2007.

A show cause hearing was held on June 11, 2007, and M.P. was found in violation of her probation order, as alleged in the first affidavit. Apparently, a hearing was never held as to the second affidavit. In any event, in open court on the same day,

the State filed two additional affidavits and corresponding orders to show cause why M.P. should not be held in contempt of court for violating her probation. The third affidavit requested an order to show cause why M.P. was not in contempt of court for failing to abide by her curfew on the evening of May 30, 2007. The fourth affidavit requested an order to show cause why M.P. was not in contempt of court for failing to attend Rainwater on June 1 and 4, 2007, and by failing to abide by court-ordered home detention on June 1 and 2, 2007. Two corresponding orders to show cause were filed the same day in open court. The show cause hearing on these orders was set for June 21, 2007. The trial court ultimately agreed to consider the violations alleged in the first and second affidavits jointly and consolidated the allegations in the third and fourth affidavits.

A final hearing was held on June 21, 2007, regarding the allegations in the third and fourth affidavits. M.P. admitted she violated the curfew on May 30, 2007, as alleged in the third affidavit and that she did not go to school on June 4, 2007, as alleged in the fourth affidavit. Thereafter, the trial court sentenced M.P. to five days in secure detention, three days suspended, for the violations as alleged in the first affidavit and to fifteen days in secure detention, suspended, for the violations as alleged in the third and fourth affidavits. Apparently the allegations in the second affidavit were not considered; no sentence was imposed for that alleged violation.

The majority holds that the trial court violated section 985.037(2), Florida Statutes (2007), by sentencing M.P. to consecutive sentences of five and fifteen days in secure detention for multiple violations of the probation order. In essence, the majority holds, as M.P. contends, that all of the violations should have been considered

collectively as a first violation, and her sentence should have been limited to five days in secure detention.

Section 985.037(2), governing the punishment of juveniles for contempt of court by placement in a secure facility, provides:

> A child may be placed in a secure facility for purposes of punishment for contempt of court if alternative sanctions are unavailable or inappropriate, or if the child has already been ordered to serve an alternative sanction but failed to comply with the sanction. **A delinquent child who has been held in direct or indirect contempt may be placed in a secure detention facility not to exceed 5 days for a first offense and not to exceed 15 days for a second or subsequent offense**.

§ 985.037(2), Fla. Stat. (2007) (emphasis added). The majority contends that this court's interpretation of section 985.037(2) in J.D. v. State, 954 So. 2d 93 (Fla. 5th DCA 2007), compels reversal. I disagree. I believe that the trial court's sentence is consistent with this statute and our decision in J.D.

In J.D., while the child was awaiting trial for burglary of a dwelling and grand theft, the trial court released him into parental custody and issued a standard behavior order. The trial court subsequently issued an order to show cause why J.D. should not be held in contempt of court for violating the behavior order. J.D. admitted to the violation and the trial court sentenced him to five days' secure detention, three days suspended. Shortly thereafter, the trial court issued a second order to show cause for five additional violations of the behavior order. Following a hearing, the trial court sentenced J.D. to the three days' secure detention that had been previously suspended for the first order to show cause, consecutive to fifteen days for the first new violation, and fifteen days for the second new violation. The trial court also issued three

additional fifteen-day sentences, suspended, for each of the remaining three violations. Id. at 94.

The issue before this court in J.D. was whether the trial court erred in imposing consecutive fifteen-day sentences for each of the several violations of J.D.'s behavior order contained in the second order to show cause. This court concluded that the sentence violated the limitations on secure detention of a juvenile for contempt of court as enumerated in section 985.037(2), Florida Statutes (2007) (at that time, section 985.216, Florida Statutes (2006)). In considering the second order to show cause, the trial court was limited by section 985.037(2) to sentence J.D. to fifteen days' secure detention, consecutive to the three days suspended from the first order, for a total of eighteen days' secure detention. This court held that the trial court erred in treating each of the violations alleged in the second order individually instead of viewing them collectively as J.D.'s second violation. J.D., 954 So. 2d at 95.

Here, similar to J.D., the trial court held a hearing on June 11 regarding the violation contained in the first affidavit filed on June 5 and found that M.P. violated that particular condition of probation. The trial court held another hearing on June 21 regarding the separate violations that occurred subsequent to the violation that was the subject of the June 5 affidavit. After hearing the admissions by M.P., the trial court found that M.P. did violate her probation as alleged in the third and fourth affidavits. Then the trial court proceeded to sentencing. As to the first offense, the trial court sentenced M.P. to five days' secure detention with three days suspended, which is consistent with the provisions of section 985.037(7) requiring that placement in secure detention may not "exceed five days for the first offense . . . ." As to the subsequent

offenses, the trial court sentenced M.P. to fifteen days' secure detention with all fifteen days suspended, which is consistent with the provisions of section 985.037(2) requiring that placement in secure detention may not "exceed 15 days for a second or subsequent offense." This sentence is also consistent with our decision in J.D., which prohibits stacking of sentences for the second or subsequent offenses arising out of violations of the same probation order. Because the sentence imposed on M.P. is consistent with both the statute and our holding in J.D., I believe that affirmance is required.

Moreover, based on the facts and circumstances of the instant case, I find nothing in the provisions of the statute or in J.D. that require these violations, which occurred at different times and were the subject of different evidentiary hearings, to be treated as a single violation as the majority seems to contend. Indeed, this court in J.D. cited to the decision in W.B.T. v. Esteves, 825 So. 2d 1055 (Fla. 4th DCA 2002), and quoted from that decision as follows: "'[A] court cannot, at one detention hearing, order secure detention for consecutive twenty-one day periods even though there are multiple delinquent acts charged.'" J.D., 954 So. 2d at 95 (quoting W.B.T., 825 So. 2d at 1057) (emphasis added). I also note that this court in J.D. quoted that portion of the decision in Williams v. State, 594 So. 2d 273, 275 n.3 (Fla. 1992), wherein the supreme court defined "multiple probation violations" as referring to "successive violations which follow the reinstatement or modification of probation rather than the violation of several conditions of a single probation order." J.D., 954 So. 2d at 95. If we follow the reasoning of this court in J.D., the sentence imposed on M.P. is appropriate because

separate hearings were held and, contrary to the assertion in the majority opinion, one of the violations occurred after M.P.'s probation was modified.[1]

I note that the First District Court in K.Q.S. v. State, 975 So. 2d 536 (Fla. 1st DCA), review granted, 984 So. 2d 519 (Fla. 2008), rendered an opinion stating that this court's decision in J.D. is inconsistent with the plain meaning of the provisions in section 985.037(2). Of the two views expressed in K.Q.S. and J.D. regarding the proper interpretation of the statute, like Judge Lawson, I believe that K.Q.S. adopts the better view. In any event, because I believe that my interpretation and application of this court's decision in J.D. is proper under the circumstances, I respectfully dissent.

[1]Admittedly, I have given the opinion in J.D. a very strict and literal interpretation, similar to what this court may have attempted to do in S.P. v. State, 33 Fla. L. Weekly D1660 (Fla. 5th DCA June 27, 2008).