

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JANUARY 17, 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. 95-2623-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**In the Interest of  
Terrance T.S., A Child  
Under the Age of 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**TERRANCE T.S.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Racine County:  
NANCY E. WHEELER, Judge. *Reversed.*

ANDERSON, P.J. Terrance T.S. appeals from a dispositional order in which he was adjudicated delinquent for being party to the crime of receiving stolen property, contrary to § 943.34(1), STATS., and placed at a secured correctional facility. We conclude that the juvenile court lost competency to proceed because of the failure to meet the mandatory time limits

for holding a plea hearing without good cause for a continuance. Accordingly, we reverse the juvenile court.

In April 1991, Terrance was a participant in a gang and/or drug-related shooting, resulting in the death of a man. Sometime thereafter, he became a resident at the St. Aemelian-Lakeside Treatment Center. Since June 1994, Terrance had been a resident of the Carmelite Home for Boys. The incident underlying this appeal took place while Terrance was at Carmelite.

On December 19, 1994, a petition for determination of status was filed in the interest of Terrance alleging that he was delinquent and charging him with one count of theft and one count of receiving stolen property as party to the crimes. The petition alleged that Terrance was involved with two other juveniles in taking a jar of coins from an employee's car who worked at the home. The three juveniles divided the money. Terrance later surrendered \$2.75 worth of coins.<sup>1</sup>

On December 29, 1994, a plea hearing was scheduled. The State said:

MS. HARRISON: That's where we sent the notice .... We sent it to the Carmelite [sic] Home. It was sent on or about December 16. He's there. If we could -- For some reason he hasn't been brought down. I don't know of any correspondence between Carmelite [sic] and my office.

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<sup>1</sup> Following the incident, Terrance continued to reside at Carmelite and was not placed in secure custody.

THE COMMISSIONER: But you're aware the juvenile is still there?

MS. HARRISON: That's my understanding, correct. If we could just put it over, I'll have him contacted.

THE COMMISSIONER: Fine. Two weeks.

On January 5, 1995, the parties met again and Terrance was not present. The commissioner indicated that Terrance was at Carmelite and that the order to be transported had not been completed. The commissioner stated that Carmelite was afraid to bring him on its own and that the home had requested that the deputies come up. Again, on January 19, 1995, the minutes of the hearing indicate that Terrance was not present because he had not been transported from Carmelite.

On January 26, 1995, a plea hearing was held and Terrance was present. Terrance denied the charges with a reservation of rights. The dispositional hearing was held on February 27, 1995. Terrance admitted to the charge of party to the crime of receiving stolen property and the charge of theft was dismissed. The court ordered that legal custody of Terrance be transferred to the State of Wisconsin and that he be placed in Ethan Allen School. Terrance appeals.

Terrance argues that the trial court lost competency to hear the delinquency petition because "neither the plea hearing nor the dispositional hearing was held within the statutory time limits and any continuance was invalid." He contends that his absence from the hearings was not due to his

own actions, but resulted from the State's failure to make arrangements to have him transported to the hearings.

The State, however, argues that “[t]he plea hearing was adjourned upon a showing of good cause and thus held within the statutorily required time limits.” The State contends that as a matter of law, under § 48.315(1)(f), STATS., good cause was shown for those continuances.

Section 48.30(1), STATS., provides in relevant part:  
Except as provided in this subsection, the hearing to determine the child's plea to a citation or a petition ... or to determine whether any party wishes to contest an allegation that the child is in need of protection or services, shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition or issuance of a citation for a child who is not being held in secure custody ....

The time limits in § 48.30(1) are mandatory. *See Green County Dep't of Human Servs. v. H.N.*, 162 Wis.2d 635, 657, 469 N.W.2d 845, 854 (1991). A failure to comply with the time limits deprives the court of competency in the absence of good cause for a continuance. *Id.*; *see also* § 48.315, STATS.

Section 48.315, STATS., sets forth time periods which shall be excluded in computing time requirements under the Children's Code. Terrance's absences from the hearings fall under § 48.315(1)(f), which provides that “[a]ny period of delay resulting from the absence or unavailability of the child” shall be excluded in computing the time requirements. Subsection (2) of the statute provides:

A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

The Wisconsin Supreme Court has held that “the general requirements of sec. 48.315(2), Stats., control all extensions of time deadlines under the Children's Code. While the enumerated specific circumstances of sec. 48.315(1) are governed by sec. 48.315(2), the statutory list of specific circumstances does not proscribe all other grounds for extending time deadlines.” *M.G. v. La Crosse County Human Seros. Dep't*, 150 Wis.2d 407, 418, 441 N.W.2d 227, 232 (1989).

In the present case, the mandatory time period in which to hold the plea hearing was not met. The petition was filed on December 19, 1994. After several delays, the plea hearing was held on January 26, 1995, exceeding the thirty-day limit. The reason for the delays, however, falls within one of the exceptions of § 48.315(1), STATS. The delays resulted from Terrance's absence or unavailability. We must determine, therefore, whether there was good cause to grant a continuance. Whether the circumstances of this case constitute good cause to grant a continuance is a question of law that we review de novo. *Jason B. v. State*, 176 Wis.2d 400, 407, 500 N.W.2d 384, 387 (Ct. App. 1993).

In determining whether good cause for a continuance exists, we consider: (1) whether the moving party has acted in good faith, (2) whether the opposing party would be prejudiced, and (3) whether the dilatory party took prompt action to remedy the situation. *See id.*

After reviewing the record, we are confident that the State exercised good faith in its actions. However, we conclude that there was no good cause for the continuance based on the fact that the State did not take prompt action to remedy the situation. The State had a responsibility to investigate the reason for Terrance's absence and obtain a court order for his transfer to the subsequently scheduled hearing after he did not appear at the first hearing. This was not done, and Terrance was unavailable for the second and third scheduled plea hearings. The State's failure to obtain Terrance on multiple occasions does not give rise to a good cause determination for the continuances.

Because we conclude that there was no good cause for the continuance of the plea hearing and, therefore, the court lacked competency to proceed, we reverse the juvenile court's dispositional order and order the delinquency petition dismissed. We need not address the exceeded time limit for the dispositional hearing, nor need we address the issue of whether the court erred in placing Terrance at Ethan Allen School.

*By the Court.* – Order reversed.

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