COURT OF APPEALS
DECISION
DATED AND FILED

October 27, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1502

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN THE INTEREST OF GARRETT A.B.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

GARRETT A.B.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

FINE, J. Garrett A.B. appeals from the trial court's order lifting a stay of a juvenile dispositional order placing him in a secured correctional facility, and from the trial court's order denying his motion for postconviction relief. He claims that the trial court placed him at the secured correctional facility for longer

than authorized by law, and that his due-process rights were violated because he did not receive a written notice of motion to lift the stay. We affirm.

I.

Garrett was adjudicated a delinquent on his admission to the charge of possession of marijuana with intent to deliver. In determining a proper disposition, the trial court noted that Garrett's most recent crime "was committed within a short period of time after being found delinquent on a similar offense." The trial court's comments indicate that it believed that Garrett was out of control: "The message that that sent to this court was that this juvenile really didn't care about the court orders. That he pretty much did what he pleased and didn't fully appreciate the seriousness of the offenses that were involved." Finding that Garrett was "a danger to the public and in need of the most restrictive custodial treatment," the trial court directed that Garrett be committed for one year to the Department of Correction for placement in a secured correctional facility pursuant to § 938.34(4m), STATS., but proceeded to "stay an order of placement" for one year "pursuant to 938.34(16)."

Section 938.34(16), STATS., provides:

> STAY OF ORDER. After ordering a disposition under this section, [the trial court may] enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original

> dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian and legal custodian, all parties bound by the original dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

In staying the order placing Garrett in a secured correctional facility, the trial court told Garrett the following:

> If there is a violation--and the court will place the juvenile on intensive probation--but if there is any violation of any of the conditions of probation or any new offenses, this Court will lift the stay and order that the juvenile be placed at [a secured correctional facility], and that order will be for a period of one year.

The written order staying the commitment to the department noted that Garrett was being placed on "Intensive Probation" for the year that the commitment order was stayed and that, as a condition of probation, Garrett was directed, among other things, to have "[n]o further law violations rising to probable cause."

Seven months later, Garrett, with his mother and represented by counsel, was back in court, charged with vandalizing a school building with graffiti, in violation of § 943.017(1), STATS. A formal petition notifying the trial court of this new offense was dated and filed November 14, 1997. The petition also recited that Garrett was on probation, and sought imposition of sanctions for the violation of conditions of probation, pursuant to § 938.355(6), STATS. A hearing was held before the Honorable Daniel L. Konkol, who noted that Garrett was under a stay order and that "[o]ne of the conditions of the stay is that there be

no further law violations rising to the level of probable cause." Accordingly, Judge Konkol indicated that he was considering the petition's motion for probation-violation sanctions "as a motion for lifting the stay," and that "the juvenile is put on notice with regard to that." Judge Konkol set the matter down for a hearing on November 20, 1997, before the judge who had issued the stay order, the Honorable M. Joseph Donald.

On November 20, 1997, a hearing was held before Judge Donald. Garrett appeared with his mother and was represented by counsel (not the lawyer who appeared with Garrett on November 14). Garrett's lawyer complained that no written motion seeking to have the stay lifted was filed. There was the following colloquy between the trial court and Garrett's lawyer about the hearing on whether the stay should be lifted:

> THE COURT: ... The issue is whether or not there is a violation of probation.
>
> [Garrett's lawyer]: And that's going to be limited to that, and that violation of probation is the new allegations [the graffiti charge]?
>
> THE COURT: Yes. Let's set a date.

The matter was adjourned until November 25, 1997. At that time, Garrett's lawyer stipulated that, as he phrased it, "there has been a new allegation of a violation of the law that rises to the level of probable cause," and that this was sufficient to empower the trial court to lift the stay. Nevertheless, Garrett's lawyer contended that the trial court should not lift the stay "given the young man's progress in treatment since he has been placed on supervision." After holding a hearing at which Garrett's probation officer and a therapist at St. Mary's Hospital

who had worked with Garrett testified, the trial court lifted the stay, expressing its regret that Garrett had squandered the many opportunities he was given:

> This case, or at least, you have been pending before this court on several matters, and each time, the attorney and your family has always asked this Court to give you a chance, and even on the last case, one of the attempts was that they would have you enrolled at the Wilson Center. That was something that was done outside of the court order or court's jurisdiction; that they felt that strongly about you that they were going to make that effort, and I was impressed by that. I was impressed by the family's commitment and desire to see that something was done and that you did well. And as a result of that, you earned another chance on probation.
>
> But there comes a point in time and even the code provides that the juvenile must be held accountable. This Court, as well as your family, has made every -- has made tremendous efforts to address some of the treatment needs that you have, but this latest offense defies any reason or understanding.
>
> This Court finds that the State has met its burden by a preponderance of the evidence. The juvenile has violated the conditions of his probation and as such, I will lift the stay and find that you are a danger to the public and in need of the most restrictive custodial treatment, under 938.34 (4m), and that placement is to be transferred to the Department with the reception center to be at [a secured correctional facility] for a period of one year consistent with the Court's prior order.

II.

Garrett does not challenge the trial court's exercise of its discretion in deciding to lift the stay. Rather, he contends that the one-year placement at a secured correctional facility had to run from the time the original placement order was entered but stayed, and not from when the stay was lifted. Additionally, he argues that his due-process rights were violated because no written motion seeking to have the stay lifted was filed or served. The contentions are without merit.

A. *Duration of placement*.

An analysis of Garrett's argument as to how long his placement at the secured correctional facility should last requires that we apply § 938.34(16), STATS. Interpretation of statutes presents legal issues that we resolve *de novo.* ***Truttschel v. Martin***, 208 Wis.2d 361, 364–365, 560 N.W.2d 315, 317 (Ct. App. 1997). Our analysis also requires that we interpret the trial court's dispositional order. This, too, presents a legal issue that we review *de novo. See* ***Wright v. Wright***, 92 Wis.2d 246, 255, 284 N.W.2d 894, 899 (1979) (judgments construed in same manner as "other written instruments"), *cert. denied*, 445 U.S. 951.

The statute here is plain: upon a violation of a condition the trial court may order that "the original dispositional order ... be imposed." The original dispositional order was that Garrett be placed at a secured correctional facility for a one-year period. That is what the trial court told Garrett at the original dispositional hearing. The trial court's written order, which was dated April 7, 1997, and filed April 8, 1997, recited: "Court finds Garrett [B.] delinquent and orders the supervision of said child be provided by the Department of Corrections, Division of Juvenile Corrections, Ethan Allen School for a period of one (1) year/to expire on 4/7/98. **Stayed**." (Uppercasing omitted, bolding and underlining in original.) Although Garrett contends that the "4/7/98" expiration date kicks in once the stay is lifted, and, therefore, that the duration of his commitment should run from November 25, 1997, the date the stay was lifted, until April 7, 1998, that interpretation is contrary to not only what the trial court told Garrett would be the result if he violated "any of the conditions of probation" or if he committed "any new offenses," but also the statute's command that a lifting of the stay results in imposition of "the original dispositional order," which the trial court specifically

declared was commitment for a one-year period. Thus, the "4/7/98" date inserted in the written order conflicts with the trial court's oral pronouncement and must give way. *See* ***State v. Perry***, 136 Wis.2d 92, 113–114, 401 N.W.2d 748, 757–758 (1987) (where trial court's clear oral order conflicts with written reification, the oral order controls). The trial court ruled correctly that the one-year period started when the stay was lifted.

B. *Written notice.*

There is no doubt but that due process requires effective notice before either property or liberty may be taken. ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306, 314–315 (1950); ***State ex rel. Thompson v. Riveland***, 109 Wis.2d 580, 584–585, 326 N.W.2d 768, 771 (1982). Section 938.34(16), STATS., recognizes this and provides that "[i]f the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver." There was both effective, actual notice here and an adversarial hearing. The petition filed on November 14, 1997, notified the trial court that Garrett had violated a condition of the stay order. Although the petition was filed by an assistant district attorney and not by the department of corrections, the petition gave both the trial court and Garrett sufficient due-process notice of the alleged violation and its specifics. In a colloquy with Garrett's lawyer, the trial court ruled that the only issue to be considered at the hearing on whether the stay should be lifted was the graffiti charge encompassed by the petition. Garrett was neither sandbagged nor

surprised. Indeed, as noted, he stipulated to the probation violation. This complies with due process. *See* ***Thompson***, 109 Wis.2d at 584–585, 326 N.W.2d at 771.

The essence of Garrett's complaint underlying this appeal is that he should be given yet another chance to violate the law. Thus, his brief on appeal complains: "At no time did the [trial] court inform Garrett that 100 percent compliance was necessary to avoid commitment to" a secured correctional facility. This is simply not true. The trial court specifically told Garrett that "if there is any violation of any of the conditions of probation or any new offenses, this Court will lift the stay and order that the juvenile be placed at [a secured correctional facility], and that order will be for a period of one year." Moreover, as the trial court aptly noted, the time for chances must, at some point, end. If Garrett has not *yet* learned that lesson, as the tenor of his brief on this appeal reveals, he, his family, and, unfortunately, the community will continue to suffer from his crimes. As the trial court tried to impress upon Garrett, the time for Garrett's assumption of responsibility has long since passed—indeed, Garrett's next crime, if he should be so foolish to commit one, may result in his being sent to a *prison*, not to a juvenile facility.

By the Court.—Orders affirmed.

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