

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 03-1230-FT
03-1231-FT
03-1232-FT**

**Cir. Ct. Nos. 01JV000021
01JV000022
01JV000023**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF BRIAN M.,
A PERSON UNDER THE AGE OF 17:
STATE OF WISCONSIN,**

PETITIONER-RESPONDENT,

v.

BRIAN M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Brian M. appeals the second extension of a dispositional order requiring him to pay \$4821.25 in restitution. He argues that the order cannot be extended solely to ensure payment of restitution. We affirm the circuit court's extension of the dispositional order.

FACTS

¶2 On June 27, 2000, Brian was found delinquent for negligent handling of burning materials as party to a crime, criminal damage to property, retail theft, obstructing an officer, and five counts of theft. The dispositional order placed Brian under intensive supervision with electronic monitoring. The court also required Brian to attend counseling, stay away from certain friends, attend school, complete his homework, adhere to a curfew, submit to random drug tests, and write a letter of apology to each of his victims. In addition to these and several other provisions, the dispositional order required Brian to pay restitution of \$4821.25. This order was extended for one year on June 25, 2001. While under the extended dispositional order, Brian was placed in secure custody at Ethan Allen School pursuant to a separate dispositional order.

¶3 At Ethan Allen, Brian received counseling and attended academic classes. He also worked in the kitchen to earn money. Brian used the money he earned to pay his \$60 victim/witness surcharge, and to make restitution payments.

¶4 On April 29, 2002, the Department of Corrections, Division of Juvenile Corrections (the Department) requested that the dispositional order set to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

expire on June 27, 2002, be extended to June 27, 2003. At the time of this request, Brian had paid \$130.50 in restitution. The Department's request stated:

If that court order would be allowed to lapse, would [sic] also remove the mandate for Brian to continue to make payments towards this restitution. As a result, it is respectfully recommended that Brian's Dispositional Order which is due to expire on June 27, 2002, be extended for the statutory limit of one (1) year or for whatever time the court deems appropriate. At this time, Brian continues to make payments on this restitution in a limited capacity while in secure care.

¶5 The court held a hearing on the Department's request. Brian argued that a court cannot extend a dispositional order solely to collect restitution; therefore, an extension would be improper. The Department countered that the extension served a rehabilitative purpose, citing lessons that Brian would learn from working, earning money, and paying restitution to his victims. The court agreed with the Department and granted an extension of the order to June 27, 2003. Brian appeals the extension of the dispositional order to June 27, 2003.

DISCUSSION

¶6 The contested extension expired on June 27, 2003, thus rendering a decision on this issue moot for Brian. Generally, moot issues are not considered on appeal. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Exceptions to this principle exist if the issue presented is "likely of repetition and yet evades review." *Id.* (citation omitted). This may occur where the situation is of the type that resolves or expires before completion of the appellate process. *Id.*

¶7 We recognize that short-term dispositional orders will often expire while an appeal is pending; therefore, this recurring issue will likely evade review. *See id.* For this reason, despite the expiration of Brian’s extended order, the issue merits our review.

¶8 Brian challenges the grounds for the extension, stating that no rehabilitative treatment goals would be served. Extension of a dispositional order is a matter of discretion for the circuit court. *Sallie T. v. Milwaukee County DHHS*, 219 Wis. 2d 296, 305, 581 N.W.2d 182 (1998). Discretionary decisions will not be reversed unless the circuit court erroneously exercised its discretion. *Id.* We therefore look to see if the second extension of Brian’s dispositional order was an erroneous exercise of discretion.

¶9 Brian argues that the sole basis for extension of the order was to collect restitution. He further asserts that neither the State nor the court provided any justification for the extension other than the collection of additional money from him. Brian argues that extensions are “unreasonable where the only deficiency is recognized as a mere debt.” *State v. Davis*, 127 Wis. 2d 486, 500, 381 N.W.2d 333 (1986).

¶10 *Davis*, however, is distinguishable from the case at hand. The *Davis* court extended Davis’s probation for the collection of outstanding restitution despite the fact that all other rehabilitative goals had been met. *Id.* In *Davis*, our supreme court stated:

Debt collection per se should not be facilitated by continuing the criminal process of supervision when the rehabilitative purposes have been accomplished and, as in this case, when a reasonable alternative for the payment of restitution has been proposed by the defendant and the probation department.

Id. at 497-98.

¶11 Davis had demonstrated a ten-year history of exemplary behavior. She had complied with all requirements of her probation, maintained steady employment, and raised three children. Her probation agent had repeatedly recommended that her supervision be terminated due to her apparent rehabilitation. *Id.* at 496-97. Nonetheless, the court continued to extend the probation without providing any explanation or rationale. *Id.* at 490-92.

¶12 In contrast, the circuit court in our case found that Brian did not demonstrate exemplary behavior during the term of the dispositional orders. The record contains the court's rationale for extending the dispositional order through June 27, 2003. Specifically, the circuit court stated:

I think it would be in his best interest to be extended ... because this was a continuing pattern of delinquent behavior which resulted in him being placed eventually in corrections. And I don't see that he has complied with all of the recommendations, including making a good faith effort on the restitution. So, I think it is in his best interest to continue on these files for another year.

¶13 The court, without objection from Brian, expressly relied on the report of the social worker at Ethan Allen School regarding Brian's progress over the preceding months. The report details Brian's ongoing counseling and educational needs. It describes a pattern of disrespectful, disruptive behavior resulting in conduct reports, secure room confinement, and security placement. The report also revealed progress Brian has made toward achieving some of the rehabilitative goals, for example, he had paid his victim witness fee of \$60 and \$130.50 toward the restitution amount.

¶14 In *State v. Kuba*, 150 Wis. 2d 618, 620-22, 443 N.W.2d 17 (Ct. App. 1989), this court recognized that there must be a relationship between the restitution and the rehabilitative goals. Brian’s goals, as stated in the record, were as follows: “Show achievement in my educational/vocational program by working to my fullest potential[;] Learn how to identify and express my feelings appropriately and honestly[;] Display a positive attitude and accept personal responsibility for all my actions[;] Develop positive relationships with peers, authority figures and other adults[; and,] Learn about responsible and appropriate sexual behavior.” The record indicates that payment of the restitution was one of the considerations for accomplishing Brian’s goal of accepting personal responsibility. The Department’s report states: “[O]ne of his responsibilities in fulfilling this goal is to continue making payments towards his Court ordered restitution and victim/witness surcharges.”

¶15 The court found, based upon the facts presented, that the restitution was related to Brian’s overall rehabilitation and was one of the “things [that] need to be worked on.”

CONCLUSION

¶16 We conclude that the court expressly linked the restitution to Brian’s comprehensive rehabilitation, and therefore the extension of the order was not an erroneous exercise of discretion by the circuit court. We therefore affirm the order of the circuit court.

By the Court.—Order affirmed.

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

