

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 24, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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 No. 2009AP2667

Cir. Ct. No. 2009JV101A

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF DAKOTA A.K., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

DAKOTA A.K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
TERENCE T. BOURKE, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Dakota A.K. persists in pursuing the specious argument that he is entitled to a dismissal of a delinquency petition because he was not provided all discovery material before his plea hearing. He argues that the failure to provide discovery within approximately twenty-two business hours² between the filing of a demand for discovery and his plea hearing supports a dismissal of the delinquency petition with prejudice. Dakota's argument lacks any legal authority or logic in support of his thesis and this court is unpersuaded by his argument. Therefore, we affirm.

¶2 On June 23, 2009, a delinquency petition charging Dakota with being party to a crime of burglary and misdemeanor theft on March 14, 2009, was filed. The next day, a notice of hearing was distributed to all interested parties, setting a plea hearing for July 7, 2009, at 3:30 p.m. before a court commissioner. The notice of hearing advised Dakota that if he wished representation by an attorney, he should contact the state public defender (SPD). On July 2, 2009, the SPD appointed Attorney Charles Wingrove to represent Dakota. On the same date, Wingrove filed a demand for discovery and inspection pursuant to WIS. STAT. § 938.293.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version.

² Dakota filed a discovery demand at 11:50 a.m. on Thursday, July 2, 2009. The Sheboygan County Courthouse was closed July 3, 4 and 5 in observation of the Independence Day weekend. It reopened at 8:00 a.m. on July 6, and the plea hearing was scheduled for 3:30 p.m. on July 7. The normal hours of operation of the Sheboygan County Courthouse are 8:00 a.m. to 5:00 p.m. See http://www.co.sheboygan.wi.us/html/cnty_hours_holidays.htm (last visited Mar. 10, 2010). This court calculates that there were five business hours on July 2, nine business hours on July 6, and seven and one-half business hours on July 7, during which the prosecutor could comply with the discovery demand.

¶3 When the court commissioner called the case on July 7, 2009, Wingrove stated he was not prepared to proceed because the prosecutor had not responded to his discovery demand. The prosecutor suggested that the juvenile's request to review discovery before the plea hearing should constitute good cause for a continuance. Wingrove disagreed, arguing that the assertion of a statutory right is not good cause for a continuance.

¶4 The court commissioner polled the parties. The prosecutor would agree to an adjournment only if the court found "good cause based on [Dakota's] request for additional time." Wingrove responded that he was not asking for additional time. The parties briefly discussed a local court rule setting time limits for responses to discovery and the court commissioner concluded:

I can't fathom any prejudice that would affect your client if you proceeded with a plea today. So I can't find at this point that there's good cause to adjourn the initial appearance.

¶5 The court commissioner advised Dakota of his rights under WIS. STAT. ch. 938. The court commissioner directed the prosecutor to turn over his file to Wingrove and directed the juvenile and Wingrove to an adjoining conference room to review what material was available before entering a plea.

¶6 When the parties reconvened, Wingrove said, "So I guess before I can proceed to the end of a plea hearing, I have to object on that grounds '[because] I don't know whether I have an objection or not.'" Despite Wingrove's objection to proceeding, the court commissioner entered a denial of the factual allegations on behalf of Dakota, WIS. STAT. § 938.30(4)(b), and the hearing ended.

¶7 On July 22, 2009, Wingrove, on behalf of Dakota, filed a Motion to Dismiss the Petition for Failure to Comply with Statutory Time Periods. Dakota

argued that the “plea hearing in this matter cannot occur until the juvenile has been provided a copy of the documents he is entitled to under WIS. STAT. § 938.293 and then allowed a reasonable time to prepare.”

¶8 At the motion hearing in juvenile court, Wingrove, summarized the argument on behalf of Dakota:

Well, what I’m saying is that we didn’t have a plea hearing the day we went to the plea hearing because the requisite things required to happen before we go to the plea hearing didn’t happen. We objected to proceeding to the plea hearing because we weren’t given our discovery, and our plea was entered over our objection, and we’re saying that shouldn’t count.³

¶9 The prosecutor argued:

So to accept his position, a defense attorney can just sit in the weeds until the last minute and then file the demand and then say, well, you haven’t met the demand, therefore this case should be dismissed. That’s an absurd position to take.

¶10 Wisely, the circuit court denied the motion:

And my perspective on this is that you got to look at it in common sense perspective. And it certainly would have been okay, Mr. Wingrove, if you asked for an adjournment. I appreciate that Dakota’s got the right for this thing to move along quickly, and we need to have it move along quickly, but it wasn’t done.

³ At the motion hearing, the juvenile insisted that the notification of rights required by WIS. STAT. § 938.243 and the notification of potential civil liability required by § 938.243(1m) were not given during the intake process. The circuit court declined to address these issues holding that they were not raised with any prominence in the written motion. While the juvenile alludes to these complaints in his brief, he does not develop his argument, and we decline to review these issues because they are inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

And you had the opportunity under statute, as I understand it, to go to the DA's Office and look at the file. It would have been available to you. Again, there wasn't much time. Everything was kind of rushed together. You filed this about noon on Thursday, July 2nd. That only leaves about a day-and-a-half before the plea hearing. But there's no reason I've heard you couldn't have gone to the DA's Office and asked to look at the material.

Here we are today arguing about whether or not that was or was not a plea hearing. I think the fact that the information was available to be viewed by you cures any problems. So I don't have a problem with the plea hearing taking place within the time limits.

¶11 Dakota appeals, with Attorney Len Kachinsky as appellate counsel, asserting that the circuit court erred in not dismissing the delinquency petition “because a properly conducted plea hearing was not held within the time limits set forth in” WIS. STAT. § 938.30(1). He acknowledges that he and Wingrove were able to review all of the police reports in the prosecutor's possession, but he posits that because his statement to the police was not in that material, the plea hearing was not properly conducted and was a nullity. He further asserts that the court commissioner could not enter a plea on his behalf under § 938.30(4)(b) because there had not been compliance with his statutory discovery demand. For a remedy, he proposes:

Although the legislature deprived the court of dismissing the matter because of lack of jurisdiction or competency to proceed due to time limit violations, the court could still act within the limits of the sanctions permitted under Sec. 938.315(3) to penalize noncompliance by a party, in this case, the State. This court should remand this matter to the trial court to dismiss the matter either with or without prejudice or provide other appropriate relief

as a means of enforcing the time limits of the juvenile justice system.⁴

¶12 Whether a plea hearing was conducted within the time limits prescribed by WIS. STAT. § 938.30(1) is a question of statutory interpretation that we answer independently. *See State v. Dawn M.*, 189 Wis. 2d 480, 484, 526 N.W.2d 275 (Ct. App. 1994).

¶13 We first dispose of the obvious, there is nothing in the record to support a conclusion that the State has been acting in a dilatory manner. The juvenile received notice of the July 7, 2009 plea hearing on or about June 24, 2009, but counsel was not appointed for him until July 2, 2009, and there is no explanation of why it took the juvenile seven days to secure representation from the SPD. The discovery demand was filed with the prosecutor's office at 11:50 a.m. on July 2, a mere twenty-two business hours before the plea hearing. There is also nothing in the record to support a conclusion that the State has been acting in bad faith. It provided Dakota and Wingrove access to its complete file at the plea hearing and the court commissioner adjourned the plea hearing to permit them to review the prosecutor's file.

¶14 Like the circuit court, we are at a loss to understand why Wingrove did not go to the prosecutor's office during the twenty-two business hours and request a copy of the file. There is nothing in WIS. STAT. § 938.293(1) requiring that the prosecutor deliver the discovery to the juvenile's counsel; likewise there is nothing in the statute prohibiting counsel from picking up the discovery from the

⁴ A juvenile is not entitled to dismissal *with prejudice*, "the general rule is that failure to observe a mandatory time limit only requires dismissal without prejudice." *See State v. May*, 100 Wis. 2d 9, 11, 301 N.W.2d 458, 459 (Ct. App. 1980) (failure to file criminal information within statutory time period entitles defendant to have action dismissed without prejudice).

prosecutor. In fact, the statute only requires that the prosecutor make the police records available to the juvenile, it does not say how. In our experience as trial judges, prosecutors and defense attorneys informally exchanged discovery on a regular basis and avoided hyper-technical arguments, especially when unsupported by legal authority or common sense.

¶15 We now turn to Dakota's principal argument, that the plea hearing was a nullity because he was not given all of the discovery prior to the hearing. And, if the hearing was a nullity, then the delinquency petition must be dismissed because a proper plea hearing was not held within the strict time limits of WIS. STAT. § 938.30(1).

¶16 The juvenile code contains numerous short, stringent time deadlines. WIS. STAT. § 938.30(1) (plea hearing shall be conducted within thirty days after filing a petition for a juvenile who is not in secure custody and within ten days for a juvenile who is in secure custody); *State v. Joshua M.W.*, 179 Wis. 2d 335, 344, 507 N.W.2d 141 (Ct. App. 1993) (concluding that a delay by a newly assigned judge conducting the plea hearing beyond ten or thirty days is unreasonable as a matter of law). Our supreme court has stated that one of the objectives of the juvenile justice system is to provide *speedy* adjudication. *State v. Hezzie R.*, 219 Wis. 2d 848, 896, 220 Wis. 2d 360, 580 N.W.2d 660 (1998) ("The juvenile system is premised on the concept that a more informal, simple, and speedy judicial setting will best serve the needs and welfare of juvenile defendants.") (citation omitted).

¶17 In compliance with these stringent time deadlines, the plea hearing for Dakota was set within fourteen days of the filing of the delinquency petition, well within the thirty-day time limit. WIS. STAT. § 938.30(1) (the plea hearing

“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”).

¶18 WISCONSIN STAT. § 938.30(1) does not provide that the juvenile must have discovery in hand before a plea hearing can be held. WISCONSIN STAT. § 938.293(1) speaks to receipt of discovery and the plea hearing. It provides, in part:

LAW ENFORCEMENT REPORTS. Copies of all law enforcement officer reports, including the officer’s memorandum and witnesses’ statements, shall be made available upon request to counsel or guardian ad litem prior to a plea hearing. The reports shall be available through the representative of the public designated under [WIS. STAT.] 938.09.⁵

¶19 Conspicuous by its absence is any consequence—*e.g.*, the court is barred from conducting the plea hearing—if the juvenile does not have the law enforcement reports in hand before the plea hearing. This court has previously noted that, in a delinquency proceeding, it is in the juvenile’s best interest to “be held responsible for the consequences of his [or her] acts and be provided with services in an attempt to prevent a recurrence.” *F.E.W. v. State*, 143 Wis. 2d 856, 861, 422 N.W.2d 893 (Ct. App. 1988). The circumstances presented in this case compel us to conclude that Dakota’s best interest was served by allowing the plea hearing to proceed. Dakota has presented no reason, nor do we see any reason, why his best interest would be served by dismissing the petition with prejudice.

⁵ Contrary to the juvenile’s assertions, WIS. STAT. § 938.293(1) does not encompass reports from social services, schools, etc.; it is limited to police reports. Therefore, the failure of the juvenile to have access to intake reports, etc., prior to the plea hearing is of no consequence. In fact, § 938.293(2) only provides that the juvenile and his designated representatives can inspect and obtain copies of “[a]ll records relating to a juvenile which are relevant to the subject matter of a proceeding,” suggesting the records remain in the custody of social services.

Further, Dakota does not accuse the State of having acted in bad faith, nor does he argue that he was prejudiced in any way. Wingrove entered an appearance on behalf of Dakota reserving all objections and the court commissioner's entry of a denial on Dakota's behalf did not prejudice his rights. Finally, at the plea hearing, the State provided Dakota access to all police reports.

¶20 We feel it necessary to caution the State that in juvenile proceedings it relies upon Sheboygan County Circuit Court Rules at its own peril. First, the rules covering juvenile proceedings, 1401-1409, do not mention responses to discovery demands.⁶ Second, these rules were effective on April 1, 1992, *id.*, and WIS. STAT. ch. 938 was effective on July 1, 1996. 1995 Wis. Act 77, § 9400. Third, local court rules may not conflict with state statutes or uniform judicial administration rules promulgated by the supreme court, *Hunter v. AES Consultants, Ltd.*, 2007 WI App 42, ¶7, 300 Wis. 2d 213, 730 N.W.2d 184, *abrogated on other grounds by Hefty v. Strickhouser*, 2008 WI 96, 312 Wis. 2d 530, 752 N.W.2d 820, meaning that in all matters under ch. 938, the local court rules cannot be used to avoid the stringent time limits.

¶21 The juvenile court astutely and properly denied Dakota's motion to dismiss, grounded on his assertion that the prosecutor's failure to comply with his discovery demand within twenty-two business hours prevented a plea hearing from being held. We affirm because the legislature has directed us to liberally construe the juvenile justice code, WIS. STAT. § 938.01(1), and a dismissal under these facts would have ignored legislative intent:

⁶ See http://www.wisbar.org/AM/Template.cfm?Section=Sheboygan_County1&template=/CM/ContentDisplay.cfm&contentid=39783#pt14 (last visited Mar. 10, 2010).

to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.

Sec. 938.01(2).

By the Court.—Order affirmed.

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

