

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 31, 2010

David R. Schanker
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 No. 2009AP3070-FT

Cir. Ct. No. 2008JV195

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF TRELIJAH A. M., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

TRELIJAH A. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Treljah A.M. appeals from a circuit court order lifting a stay for secure detention and ordering him into secure detention for a period of four days. Treljah contends that the circuit court erroneously exercised its discretion when it ordered him to serve the four days of previously stayed secure detention without crediting him for excellent behavior since the disposition or considering the goals of the juvenile justice code. Based on our review of the record, we are satisfied that the circuit court properly exercised its discretion. The original dispositional order included the four days of secure detention, but stayed an additional sixteen days of secure detention. The circuit court’s order for four days’ secure detention was based on a thorough consideration of the goals of the juvenile justice code, both at the time of disposition and at the time the stay was lifted. We affirm.

BACKGROUND

¶2 On August 1, 2008, the State filed a delinquency petition for Treljah under WIS. STAT. ch. 938. The petition alleged one count of misdemeanor battery as a party to the crime, one count of disorderly conduct, and two additional counts of misdemeanor battery. All of the charges stemmed from confrontations with the same individual while at school or on school grounds on June 6, 2008, and June 13, 2008. The petition alleged that on June 13, 2008, Treljah and two other individuals started throwing things at the victim, chased her, “whip[ped] her with ... sticks really hard,” and finally pushed her into the bushes and a mud pile before

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 unless otherwise noted.

stepping on her and kicking her in the stomach. A second petition was filed on September 2, 2008, alleging another count of battery relating to an incident on May 7, 2008, where Treljah joined another individual in striking the victim's legs with track shoes that had metal spikes.

¶3 On February 4, 2009, Treljah admitted to one count of battery as a party to the crime; all other counts were dismissed but read in at the dispositional hearing. Following a lengthy hearing including statements from the social worker and both the victim and her family, the circuit court, Judge Patrick Haughney presiding, entered a disposition ordering one year of department supervision with conditions, ten days in shelter care to be served on the weekends, four days in secure detention, and sixteen days of secure detention to be stayed. Treljah reported to shelter care on three separate weekends in February and March of 2009. However, when Treljah failed to report to the juvenile center on March 27, 2009, a detention hearing was held before the circuit court, Judge Robert Mawdsley presiding, on April 3, 2009. The circuit court order, dated April 3, 2009, ordered Treljah to serve two more weekends in shelter care and stayed the four days in secure detention pending review by Judge Haughney.

¶4 At a restitution hearing on June 22, 2009, Judge Haughney reviewed the court's original disposition and, after hearing about Treljah's progress, nevertheless determined that four days of secure detention was necessary. It stated:

[T]he court recalls the facts of the case. I recall the statement of the victim's family at the time. The court took into account all of the various factors, including although juvenile in nature, what had been the viciousness of this. And the court determined that the appropriate disposition was to have four days of the secure time served....

What the court finds is that this juvenile disposition—and I’m glad to see that you’re doing so well, sir. But it remains the court’s position, based on what has transpired, that four days in secure detention needs to be served.

On June 24, 2009, the circuit court entered an order lifting the April 3, 2009 stay of secure detention. Treljah appeals.

DISCUSSION

¶5 While Treljah points out the unusual procedural history underlying the order challenged,² both parties agree that our review on appeal is one of deference to the circuit court. Therefore, we will sustain the circuit court’s discretionary decision if it examined the relevant facts, applied a proper standard of law, and used a rational process to reach a reasonable conclusion. *State v. Walters*, 2004 WI 18, ¶14, 269 Wis. 2d 142, 675 N.W.2d 778. Our task as the reviewing court is to search the record for reasons to sustain the circuit court’s exercise of discretion. *Hughes v. Hughes*, 223 Wis. 2d 111, 120, 588 N.W.2d 346 (Ct. App. 1998). We will not disturb a circuit court’s findings of fact unless they are “clearly erroneous.” WIS. STAT. § 805.17(2).

¶6 As Treljah points out, the purpose of the juvenile code “was to adopt an approach that balances rehabilitation, personal accountability and public protection and which best serves both the offender and society.” *State v. Cesar G.*, 2004 WI 61, ¶36, 272 Wis. 2d 22, 682 N.W.2d 1. “A circuit court should have the flexibility to tailor a juvenile’s dispositional plan to achieve the

² As he points out, the circuit court did not follow statutory procedures in either imposing the stay or lifting it. See WIS. STAT. §§ 938.34(16) and 938.363. However, he cites to *State v. Cesar G.*, 2004 WI 61, ¶37, 272 Wis. 2d 22, 682 N.W.2d 1, for the proposition that the juvenile justice code gives the court “flexibility” to tailor a disposition to meet the goals of the code. We agree.

equally important goals.” *Id.* Treljah’s argument on appeal challenges the circuit court’s decision to lift the stay despite the progress made by Treljah from the date of the dispositional hearing to the date of the restitution hearing. Treljah argues that the court erred in failing to consider whether secure detention would serve the goals of the juvenile justice code at the time the stay was lifted.

¶7 Looking to the original disposition hearing and the circuit court’s original exercise of discretion, the circuit court discussed these factors at length. The trial court began by characterizing the nature of Treljah’s actions—some of which was typical of schoolyard altercations and some of which “went beyond what is ... juvenile behavior.”

[Y]ou went beyond what is even some juvenile bullying, and as bad as juvenile bullying is, yours went to the next level. Yours went to a level where the utilization of track spikes to hit somebody on the legs to cause bleeding, where sticks are used by you or in conjunction with others, and where a stick is hit so hard that it breaks And what you need to appreciate is that when there are several individuals picking on one, it’s a bad thing. But when it reaches the point where we [have] this level of violence, you have crossed the line.... The disposition that I impose today deals with the fact of those track spikes on the leg, deals with the beating on the back, deals with the fact that as a party to the crime you participated with others. It deals with the fact that when violence is being perpetrated on a victim—and keep in mind, this is at a school function, at a track meet. We want individuals to participate in sports. And that this victim not only had to suffer physical violence, but it’s a form of torture. It’s a form of intimidation. It is more than just verbal harassment. It is a horrible thing to have happened to an adult, yet alone to a juvenile who’s in [eighth] grade. And you’re one of the leaders of that.

What you did was horrible.

The circuit court went on to “balance that in terms of what I see with the rest of your life, and that’s what becomes so difficult here.” In balancing, the court noted

all of the positive aspects of Treljah's life, including his school performance, his mother's impact and positive influence, and the fact that he had already gone on and made changes in his life following the June offenses. However, in addressing Treljah's "rehabilitation process," the court expressly determined that Treljah was "going to need to also pay a price for the horrible violent behavior" that occurred and disagreed with the department that time in juvenile detention was not necessary. In rejecting the victim's request for maximum time, the court found that because of Treljah's mother's involvement, this was not "an Ethan Allen situation"; however, the court still felt it necessary to "restrict [Treljah's] liberty for a period of time."

¶8 At the detention hearing, Judge Mawdsley noted Treljah's progress and stayed the four days of secure detention "pending review" by Judge Haughney, who was familiar with the facts of the case and who had tailored the dispositional order. At the June 22, 2009 hearing, Judge Haughney considered the fact that Treljah was "doing so well," but stood by its original dispositional order. Although Treljah faults the circuit court for returning to the basis of its original dispositional order instead of viewing the need for secure detention at the time of the June 22, 2009 hearing, it remains that the four days in secure detention was intended to serve as part of an overall plan to address Treljah's needs and the needs of the public. It is clear from the circuit court's reasoning that the secure detention portion of its dispositional order was intended to impress upon Treljah the seriousness of his conduct and to ensure that he continues to make good choices. We disagree with Treljah's concern that the circuit court's decision to lift the stay of secure detention demonstrated a "retributive purpose." Rather, the record demonstrates the circuit court's intent that the pieces of the dispositional

order operate together to fully address Treljah's needs and the needs of the public, as demonstrated by his conduct.

¶9 Based on the transcript of the original dispositional hearing and the court's reconsideration, we conclude that the circuit court properly exercised its discretion in fashioning a dispositional order intended to meet Treljah's rehabilitative needs, hold him accountable for his conduct, and also to protect the public from such conduct in the future. *See Cesar G.*, 272 Wis. 2d 22, ¶36. We likewise see no error in its determination that all aspects of its dispositional order be satisfied.

CONCLUSION

¶10 We conclude that the circuit court properly exercised its discretion in lifting the stay and ordering Treljah to serve four days in secure detention under its original dispositional order despite Treljah's noted progress during the months following his adjudication for battery as a party to the crime. We therefore affirm the circuit court's order dated June 24, 2009.

By the Court.—Order affirmed.

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

