COURT OF APPEALS
DECISION
DATED AND FILED

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3108-FT

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

IN THE INTEREST OF AMBER M. L., A PERSON UNDER THE AGE OF 18: STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

AMBER M. L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Crawford County: MICHAEL KIRCHMAN, Judge. *Affirmed.*

DYKMAN, P.J.[1] Amber M.L., a juvenile, appeals from an order finding her delinquent for engaging in disorderly conduct, contrary to § 947.01, STATS. At her May 28, 1997 plea hearing, Amber admitted to committing the

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. This is an expedited appeal under RULE 809.17, STATS.

offense. The court ordered that she spend five days in secure detention at the La Crosse Juvenile Detention Facility and perform fifty hours of community service. The court also placed her under the supervision of Crawford County Human Services for one year. Amber appeals.

First, Amber argues that she was deprived of her right to counsel. The state public defender's office appointed M. Joanne Wolf to represent Amber during the juvenile proceeding. On appeal, Amber presents us with affidavits from the State Bar of Wisconsin indicating that Wolf's membership with the State Bar has been suspended since November 2, 1992, for nonpayment of membership dues and supreme court assessments. Amber argues that her Sixth Amendment right to counsel was violated because she was represented by a suspended attorney.

Generally, a criminal defendant must show that trial counsel's performance was deficient and that the deficient performance prejudiced the defense to establish that he or she was denied the right to counsel guaranteed by the Sixth Amendment. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). "Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated." ***United States v. Cronic***, 466 U.S. 648, 658 (1984).

Here, Amber does not make a showing that her counsel performed deficiently. We cannot determine whether trial counsel performed deficiently without an explanation from trial counsel about the reasons for his or conduct. ***State v. Machner***, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908-09 (Ct. App. 1979). To show that counsel's performance was deficient, the defendant must raise the

issue before the trial court and "preserve the testimony of trial counsel." ***Id.*** at 804, 285 N.W.2d at 908. Amber has not done so.

In her brief, Amber argues that a post-adjudication hearing was not conducted because Ms. Wolf could not be contacted. Amber states that Ms. Wolf did not have a current telephone number or a current address. But these factual assertions are not part of the record. Therefore, we will not consider them. *See* ***Jenkins v. Sabourin***, 104 Wis.2d 309, 313-14, 311 N.W.2d 600, 603 (1981).

In some instances, such as when there has been a complete denial of counsel, it is presumed that the trial was unfair to the defendant and that the defendant's Sixth Amendment rights were violated. ***Cronic***, 466 U.S. at 658-59. However, this presumption of prejudice does not extend to the situation in which a defendant is represented by an attorney whose bar membership has been suspended for failure to pay dues. In ***Jones v. Missouri***, 747 S.W.2d 651, 654 (Mo. Ct. App. 1988), the court recognized that "the decisions [of other jurisdictions] unanimously hold that a convicted defendant is not denied his right to counsel guaranteed by the Constitution merely because an attorney has been suspended from the practice of law for failure to pay bar dues." Similarly, in ***New Jersey v. Green***, 643 A.2d 18, 24 (N.J. Super. Ct. App. Div. 1994), the court "join[ed] the unanimous view of other jurisdictions that a conviction should not be annulled merely because the defendant was represented by an attorney whose license was suspended for financial reasons." Consistently, we conclude that the sole fact that Amber was represented by a suspended attorney does not establish that she was deprived of her right to counsel.

Second, Amber argues that she received a cruel and unusual punishment and was deprived of due process. In support of her argument, she

points out that the dispositional order indicates that she "committed an act which if done by an adult would be punishable by a sentence of 6 months or more," when in fact the maximum punishment for disorderly conduct is a ninety-day sentence. *See* §§ 939.51(3)(b) and 947.01, STATS.

Amber speculates that the trial court intentionally overstated the maximum sentence in order to justify the disposition. The record does not support Amber's assertion, and Amber failed to bring a motion for reconsideration so that the trial court could address the claimed error. We generally do not address issues raised for the first time on appeal. ***Shawn B.N. v. State***, 173 Wis.2d 343, 360-61, 497 N.W.2d 141, 147 (Ct. App. 1992); ***Wirth v. Ehly***, 93 Wis.2d 433, 443, 287 N.W.2d 140, 145 (1980). "The reason for this general rule is to give trial courts the opportunity to correct errors, thus avoiding appeals." ***State v. Van Camp***, 213 Wis.2d 131, 144, 569 N.W.2d 577, 584 (1997). If Amber had thought that the trial court's error affected its disposition, she should have brought a motion for reconsideration before that court.

When setting forth Amber's disposition, the trial court did not mention that the maximum sentence for disorderly conduct is six months. The court's disposition falls within the permitted dispositions set forth in § 938.34, STATS. A disposition following a finding of delinquency is committed to the sound discretion of the trial court. ***State v. James P.***, 180 Wis.2d 677, 682, 510 N.W.2d 730, 732 (Ct. App. 1993). We have no reason to believe that the court erroneously exercised its discretion.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.