

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-3669-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF SHAWN R. H.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHAWN R. H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Fond du Lac County:
PETER L. GRIMM, Judge. *Affirmed.*

BROWN, J. Shawn R. H. contends that the juvenile court misused its discretion when it sentenced him to twenty months in a secured correctional facility following his admission to receiving stolen property contrary to § 943.34(1)(a), STATS. We disagree and affirm.

In May 1997, Shawn was charged with one count of receiving stolen property. The petition alleged that Shawn had broken into his brother's apartment and had stolen several items of property from his brother and his brother's fiancée. The total value of the stolen property was estimated at over one thousand dollars. Shawn was sixteen years old at the time.

Shawn subsequently admitted to receiving stolen property. The court then found that Shawn was both a danger to the public and in need of restrictive custodial treatment and sentenced him to a twenty-month stay in Lincoln Hills School, a secured correctional facility. Shawn filed a postconviction motion to modify his sentence, which the court denied.

Disposition of a juvenile's delinquency adjudication lies within the sound discretion of the court. *See State v. James P.*, 180 Wis.2d 677, 682, 510 N.W.2d 730, 732 (Ct. App. 1993). The exercise of discretion requires the court to apply the relevant law to the facts of record to reach a rational conclusion. *See id.* at 683, 510 N.W.2d at 732.

Under § 938.34(4m), STATS., the court must make three findings before placing a juvenile in a secured correctional facility. First, the juvenile must have been found delinquent of an act which if committed by an adult would be punishable by a sentence of six months or more. *See* § 938.34(4m)(a). Next, the court must determine whether the juvenile is a danger to the public. *See* § 938.34(4m)(b). Finally, the court must find that the juvenile is in need of restrictive custodial treatment. *See id.*

On appeal, Shawn concedes that receiving stolen property was an act which if committed by an adult would be punishable by a sentence of six months

or more. Shawn, however, argues that he neither represents a danger to the public nor is he in need of restrictive custodial treatment.

Shawn asserts that because the crime he committed did not inflict any physical harm, the evidence does not support the court's finding that he is a danger to the public. We observe, however, that nothing in the juvenile code requires a juvenile's disposition to be related to the violation that resulted in delinquency. The court is free, therefore, to consider not only the gravity and nature of the offense, but also the juvenile's entire history when it fashions a dispositional order. See *James P.*, 180 Wis.2d at 683-84, 510 N.W.2d at 732-33.

Here, there is ample evidence in the record supporting the court's finding that Shawn is a danger to the public. As the court noted, Shawn has drug and alcohol problems and a long history of offenses ranging from shoplifting and burglary to intimidating a witness and selling counterfeit drugs. Some of these offenses resulted in formal supervision, from which he ran away. Moreover, Shawn has a history of fashioning and carrying homemade weapons, of repeatedly threatening to injure or kill others, and he even cut his wrists with a razor blade he had hidden in his back pocket while in secured detention after his arrest. The court also observed that Shawn exhibited dangerous behavior during his escape from the acute health unit, a locked facility, by allegedly threatening to kill a housekeeper if she did not get out of his way. Furthermore, Shawn's anger and animosity towards his family have made them fearful of Shawn and afraid for their own personal safety. Thus, the trial court did not misuse its discretion when it found that Shawn was a danger to the public.

Shawn also argues that "no evidence was presented that the treatment needs of the defendant could not have been met in a less restrictive

placement.” We find no support in the record for this argument. The court explained why it concluded that treatment in a less restrictive setting was inappropriate:

Outpatient services have failed for you.... You have cut off bracelets, you have broken electronic monitoring, you have failed [to] report [to] centers, you have missed countless appointments. Your runaway history itself shows why you need to be in one place. Even in the crucial times of this case being pending, you ... ran away from Galow, you ran away from the acute health unit, which is locked. So it's obvious to me that you will not voluntarily stay put for treatment

Thus, the court reviewed Shawn's history of treatment in less restrictive settings and decided that placement in a secured correction facility was the most appropriate means to meet his treatment needs. We refuse to disturb its decision.

By the Court.—Orders affirmed.

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

