

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 16, 1996

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.

NOTICE

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

No. 95-3232

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

In the Interest of Arrmond B.,
a Child Under the Age of 18 Years:

State of Wisconsin,

Petitioner-Respondent,

v.

Arrmond B.,

Respondent-Appellant.

APPEAL from orders of the circuit court for Milwaukee County: ROBERT J. MIECH, Reserve Judge, and MEL FLANAGAN, Judge.¹ *Affirmed.*

SCHUDSON, J.² Arrmond B. appeals from the juvenile court's dispositional order and the order denying post-disposition relief. He argues

¹ Reserve Judge Robert J. Miech entered the dispositional order; Judge Mel Flanagan denied the motion for post-dispositional relief.

² This appeal is decided by one judge pursuant to § 752.31(2)(e) and (3), STATS.

that the dispositional order violates his protection against double jeopardy because it requires, as a condition of probation, that he pay restitution previously required by a separate dispositional order. This court affirms.

The facts are undisputed. On September 6, 1994, Arrmond B. was placed on probation for one year and ordered to pay restitution of \$650, for operating a vehicle without the owner's consent, party to a crime. On July 31, 1995, Arrmond B. was placed on intensive probation for possession of a firearm by a felon, with conditions including that he pay the previously-ordered restitution. When the trial court first stated that it would require payment of the restitution by extending the previous dispositional order, defense counsel objected because no petition to extend the dispositional order had been filed. See § 48.365(1m), STATS. The trial court then responded, "Even if that be true, I'm ordering him for this particular situation to pay the 650, so even without the extension, I'm ordering it from this day for one year."

At the hearing on Arrmond B.'s challenge to the probation condition, the trial court commented:

[I]t was certainly within the discretion of the court and in the best interest of the child ... that he make the prior victim whole and that ... is not only ... simply for the purpose of punishment, it was for the purpose of assisting this juvenile to do ... what would be in his best interest, which is to contribute to his community, to make the victims whole, and I believe that there is a therapeutic purpose behind restitution in the prior order and that that therapeutic purpose continues to be in his best interest....

Arrmond B. argues that the restitution order must be vacated because the trial court violated the requirements for extending a dispositional order under § 48.365, STATS. There is no need to address this argument, however, because, as both parties acknowledge, the trial court did not extend the 1994 dispositional order.

Arrmond B. also argues that, under *In Interest of R. L. C.*, 114 Wis.2d 223, 338 N.W.2d 506 (Ct. App. 1983), the July 31, 1995 dispositional order requiring \$650 restitution punished him a second time for the same offense and, therefore, violated his protection against double jeopardy. This court disagrees.

Double jeopardy protections apply to juveniles in delinquency cases. *Breed v. Jones*, 421 U.S. 519 (1975). The double jeopardy protection of the Fifth Amendment to the United States Constitution, as applied to the states through the Due Process clause of the Fourteenth Amendment and Article I, Section 8 of the Wisconsin Constitution, provides protection against, *inter alia*, multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969); *State v. Saucedo*, 168 Wis.2d 486, 492, 485 N.W.2d 1, 3 (1992). Whether double jeopardy rights were violated presents a question of law subject to *de novo* review. *Id.*

Arrmond B. contends that *R. L. C.* controls. In *R. L. C.*, however, the trial court ordered the juvenile to pay previously-ordered \$10 restitution from a probation order that had expired. *R. L. C.* at 224, 338 N.W.2d at 507. This court concluded: "Requiring *R. L. C.* to now make restitution under a lapsed order amounts to being punished twice for the same offense." *Id.* at 226, 338 N.W.2d at 508. By contrast, Arrmond B.'s September 6, 1994 one year dispositional order of probation had not lapsed when, on July 31, 1995, the trial court entered its dispositional order. Therefore, *R. L. C.* does not control.

As this court recently reiterated:

Disposition of a child's delinquency adjudication lies in the sound discretion of the court. A presumption of reasonableness supports a children's court disposition. A court has broad discretion in imposing conditions of probation, and is limited only by the exercise of reasonableness and propriety....

Courts liberally construe the Children's Code to accomplish its objectives. Section 48.01(2) provides:

(2) This chapter shall be liberally construed to effect the objectives contained in this section. The best interest of the child shall always be of paramount consideration...

These objectives include, *inter alia*: “to provide for the care, protection and wholesome physical and mental development” of the child

The Children's Code does not explicitly or implicitly require a child's disposition to be related to the violation that resulted in the delinquency.

In Interest of James P., 180 Wis.2d 677, 682-683, 510 N.W.2d 730, 732 (Ct. App. 1993) (citations and parenthetical omitted). Thus, this court must consider whether the trial court's condition of restitution was within “the exercise of reasonableness and propriety.” *Id.* at 683, 510 N.W.2d at 732.

Section 48.34(2), STATS., provides that among the potential dispositional alternatives for a juvenile is probation supervision “under conditions prescribed by the judge including reasonable rules for the child's conduct ... designed for the physical, mental and moral well-being and behavior of the child.” In this case, the trial court reasonably concluded that Arrmond B.'s best interests would be served by fulfilling his responsibility, both moral and legal, to pay restitution to his victim.

By the Court. – Orders affirmed.

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