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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2246**

In the Matter of the Welfare of: B. L. R., Child.

**Filed February 12, 2008
Reversed and remanded
Halbrooks, Judge**

Brown County District Court
File No. 08-JV-05-231

John M. Stuart, State Public Defender, Bridget Kearns Sabo, Assistant Public Defender,
540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant B.L.R.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101; and

James R. Olson, Brown County Attorney, 519 Center Street, P.O. Box 428, New Ulm,
MN 56073 (for respondent state)

Considered and decided by Stoneburner, Presiding Judge; Halbrooks, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant B.L.R. was adjudicated delinquent in an extended jurisdiction juvenile (EJJ) proceeding, but the district court imposed only a juvenile disposition and no stayed adult sentence. Following a subsequent probation-revocation hearing, the district court imposed a stayed adult sentence. Appellant argues that the district court erred by

imposing a stayed adult sentence at the probation-revocation hearing when no stayed adult sentence had been imposed with the EJJ disposition. Appellant further argues that without a stayed adult sentence, only juvenile jurisdiction remains. Because appellant did not consent to an adult sanction under Minn. Stat. § 260B.130, subd. 4(b) (2004), the district court retained juvenile jurisdiction only and could not impose an adult sanction against appellant. Accordingly, we reverse and remand.

FACTS

Appellant was arrested after fleeing officers in a motor vehicle, and a delinquency petition was filed. Respondent State of Minnesota amended the petition to include a felony theft charge and asked the district court to designate appellant's case as EJJ. Appellant did not challenge the EJJ designation. The state subsequently dropped the charges of felony theft, and appellant pleaded guilty to fleeing a police officer in a motor vehicle.

The district court accepted appellant's guilty plea and adjudicated him guilty of fleeing a peace officer, an offense that would not result in a presumptive commitment to prison if it were committed by an adult. Under Minn. Stat. § 260B.130, subd. 4 (2004), a sentence in an EJJ proceeding may include a juvenile disposition and a stayed adult sentence with juvenile jurisdiction extending until the age of 21. When the district court sought to impose this two-part EJJ sentence, appellant refused to consent to a stayed adult sentence. The district court took the matter under advisement and determined that, under the statute, appellant was required to consent before the district court could impose a stayed adult sentence for the offense that appellant committed. The district court

therefore imposed a juvenile disposition and advised appellant that if he violated the terms of his probation, the district court would impose an adult sentence.

Appellant's probation-revocation hearing occurred after he was involved in a traffic accident with indications that he may have been driving under the influence of alcohol. At the hearing, appellant admitted that he had violated his probation by drinking alcohol. The district court concluded that appellant had violated his probation and imposed a stayed adult sentence of one year and one day and a 60-day term in the Brown County Jail. This appeal follows.

D E C I S I O N

This court reviews statutory construction and interpretation of the sentencing guidelines de novo. *State v. Coleman*, 731 N.W.2d 531, 534 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007). Appellant asserts that although he was properly designated EJJ, he did not consent to imposition of a stayed adult sentence. Therefore, he argues, the district court was limited at the time of the probation-revocation hearing to the juvenile disposition that it imposed in appellant's EJJ disposition hearing.

If a minor is properly certified EJJ and is convicted of or pleads guilty to an offense listed in Minn. Stat. § 260B.130, subd. 1(2) (2004), the district court shall: "(1) impose one or more juvenile dispositions under section 260B.198; and (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense." Minn. Stat. § 260B.130, subd. 4(a) (2004).

But if the minor

is convicted of an offense after trial that is not an offense described in subdivision 1, clause (2), the [district] court shall adjudicate the child delinquent and order a disposition under section 260B.198. If the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2), the court may impose a disposition under paragraph (a) *if the child consents*.

Minn. Stat. § 260B.130, subd. 4(b) (2004) (emphasis added); *see also* Minn. R. Juv. Delinq. P. 19.10, subd. 3 (“If an extended jurisdiction juvenile prosecution . . . results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes, section 260B.198.”). The referenced offenses described in subdivision 1, clause (2), include those committed when the juvenile is 16 or 17 years old that have a presumptive disposition of an executed prison sentence. Minn. Stat. § 260B.130, subd. 1(2).

Here, the prosecutor requested the EJJ designation. Appellant consented to the EJJ designation and pleaded guilty to a charge not included in Minn. Stat. § 260B.130, subd. 1(2). Because the offense was not one that is included in Minn. Stat. § 260B.130, subd. 1(2), and appellant did not consent to an adult sentence, the district court, agreeing with appellant’s argument, did not impose an adult sentence. *See* Minn. Stat. § 260B.130, subd. 4(b); Minn. R. Juv. Delinq. P. 19.10, subd. 3. The district court instead properly ordered a juvenile disposition.

But after appellant violated probation, the district court issued an order imposing a stayed adult sentence of one year and one day, while retaining appellant’s EJJ status. As

a basis for its imposition of an adult sentence, the district court first looked to Minn. Stat. § 260B.130, subd. 5 (2004), which provides:

When it appears that a person convicted as an extended jurisdiction juvenile has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may . . . revoke the stay and probation and direct that the offender be taken into immediate custody. . . . [I]f the court finds that reasons exist to revoke the stay of execution of sentence, the court shall treat the offender as an adult and order any of the adult sanctions authorized by section 609.14, subdivision 3 Upon revocation, the offender's extended jurisdiction status is terminated and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, is with the adult court.

The district court determined that because “no adult sentence has ever been imposed and there is no adult sentence for the [c]ourt to execute[,] [t]he foregoing statute is therefore not yet applicable.” The district court concluded that “it makes more sense, and is more consistent with the overall legislative scheme underlying EJJ, to ‘backtrack’ and look to Minn. Stat. § 260B.130, subd. 4(a)(2).”

The district court reasoned that it seems illogical that “the [c]ourt may never impose an adult sentence upon that certain class of juveniles, such as [appellant] at the time, at any stage. Such an approach would render the EJJ designation of [appellant] completely meaningless. He would be in the exact same situation as a juvenile who was never designated under the EJJ statute.” The district court was “convinced that imposition of an adult sentence is necessary . . . both to make the EJJ designation meaningful in general and to control [appellant] specifically.”

Appellant disagrees with the reasoning applied by the district court and argues that because the district court could only order a juvenile disposition initially, the district court has only juvenile jurisdiction over his probation revocation. Appellant asserts that if the district court has only juvenile jurisdiction, it cannot impose an adult sentence for his violation of the conditions of his juvenile probation. We agree. Minn. Stat. § 260B.130, subd. 5, bars the district court from imposing an adult sentence in a probation-revocation hearing when no stayed adult sentence was initially imposed.

Juvenile jurisdiction normally terminates on the 19th birthday of a minor. Minn. Stat. § 260B.193, subd. 5(a) (2004). An EJJ designation extends juvenile jurisdiction until the age of 21. *Id.*, subd. 5(b) (2004). Juvenile jurisdiction can be terminated if the offender violates the conditions of his juvenile disposition and the stay of the adult sentence is revoked. Minn. Stat. § 260B.130, subd. 5. But if the district court does not initially impose a stayed adult sentence, juvenile jurisdiction cannot later be terminated because there is no stay of sentence to revoke. *Id.* (“Upon revocation [of the stayed adult sentence], the offender’s extended jurisdiction status is terminated and juvenile court jurisdiction is terminated.”).

If the district court seeks to impose adult sanctions following an alleged violation of an EJJ disposition, Minn. Stat. § 260B.130, subd. 5, enables the district court to revoke probation and allows the offender to challenge the revocation in a summary hearing.

After the hearing, if the court finds that reasons exist to revoke the stay of execution of sentence, the court shall treat the offender as an adult and order any of the adult sanctions authorized by section 609.14, subdivision 3, except that no

credit shall be given for time served in juvenile facility custody prior to a summary hearing.

Id. (emphasis added).¹ This requires the district court to impose adult sanctions, but only after revoking a previous stay of execution. This makes sense when, as discussed above, juvenile jurisdiction is not terminated unless the stay of an adult sentence is revoked. Without the stay of an adult sentence to revoke, juvenile jurisdiction is not terminated, and a district court cannot impose new adult sanctions.

The district court, in its order imposing new adult sanctions following appellant's admitted probation violation, made its conclusion based on its view of the statutory purpose underlying EJJ and imposed a sentence based on Minn. Stat. § 260B.130, subd. 4(a)(2). But we conclude that the statutory language is clear.

The state did not submit a brief in this matter. But in *In re Welfare of T.C.J.*, this court examined Minn. Stat. § 260B.130, subd. 4 (2004), in light of a challenge to the distinction between the sentencing procedures in subdivision 4(a) and 4(b) as an unconstitutional violation of equal protection under the law. 689 N.W.2d 787, 793-96 (Minn. App. 2004). Prior to *T.C.J.*, Minn. Stat. § 260B.130, subd. 4, mandated a juvenile disposition and stayed adult sentence unless the juvenile was convicted of or pleaded guilty to an offense for which the sentencing guidelines did not presume a commitment to prison *and* where the prosecutor had designated the case EJJ in the delinquency petition.

¹ We note that the clause in Minn. Stat. § 260B.130, subd. 5, stating that a person convicted as an EJJ whose adult sentence is executed shall receive no credit for time served in a juvenile facility was found unconstitutional in *State v. Garcia*, 683 N.W.2d 294 (Minn. 2004), as a violation of equal protection. We do not rely on this particular clause in reaching our conclusions here and thus *Garcia* has no bearing on our holding.

See id. at 794-95. For those cases where the juvenile was convicted of or pleaded guilty to an offense enumerated in Minn. Stat. § 260B.130, subd. 1(2), and the juvenile was not designated EJJ by the prosecutor, the court was required to impose the two-part sentence. *See id.*

But in *T.C.J.*, we clarified that subdivision 4(b) requires a district court to only order a juvenile disposition when the EJJ-designated juvenile is convicted of an offense that does not presume a commitment to prison. *See id.* This distinction between the sentence mandated in subdivision 4(a) and the one described in 4(b) is “sensible and fair because it recognizes that the absence of guilt for the offense that increased the degree of seriousness in the child’s prosecution should correspondently permit the punishment for the nontriggering offenses to revert to the juvenile system.” *Id.* at 795. The non-bifurcated sentence “appl[ies] to all EJJ prosecutions but for the phrase ‘after designation by the prosecutor in the delinquency petition’ in subpart (b).” *Id.* It is this language in Minn. Stat. § 260B.130, subd. 4(b), that we held to be unconstitutional because it treats more harshly a juvenile designated EJJ by the court than a juvenile designated EJJ by the prosecution. *Id.* at 793-96; *see also In re Welfare of D.D.R.*, 713 N.W.2d 891, 910 (Minn. App. 2006) (Lansing, J., concurring in part, dissenting in part) (interpreting *T.C.J.* identically).

In light of *T.C.J.*, we conclude that subdivision 4(a) applies only to those offenses enumerated in Minn. Stat. § 260B.130, subd. 1(2). Removal of the offending language in subdivision 4(b) establishes that the distinction between the two-part sentence from subdivision 4(a) is triggered by the severity of the offense and not by the method used to

designate the juvenile EJJ. Adult sanctions are available only when the EJJ-designated minor has committed one of the offenses described in Minn. Stat. § 260B.130, subd. 1(2), or the minor consents to adult sanctions. Here, appellant did not plead guilty to one of the offenses described in section 260B.130, subd. 1(2), and did not consent to a stayed adult sentence. Even after appellant's admitted probation violation, juvenile jurisdiction was not terminated. While the district court may still impose new juvenile dispositions pursuant to Minn. Stat. § 260B.198 (2004), it has no authority to impose new adult sanctions.

Reversed and remanded.