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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2098**

State of Minnesota,  
Respondent,

vs.

Cody Martin Timmer,  
Appellant.

**Filed September 9, 2013  
Reversed and remanded  
Stauber, Judge**

Koochiching County District Court  
File No. 36CR12204

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Jeffrey Scott Naglosky, Koochiching County Attorney, International Falls, Minnesota  
(for respondent)

John Steven Lind, Duluth, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

On appeal from the district court's revocation of his extended jurisdiction juvenile (EJJ) probation and imposition of an executed 144-month prison sentence for first-degree criminal sexual conduct, appellant argues that (1) because an adult sentence was not

imposed and stayed as part of his EJJ disposition, the district court erred by later imposing and executing the 144-month sentence in adult court; (2) the district court abused its discretion by revoking his EJJ probation because the court failed to address the *Austin* factors; and (3) the district court erred by sentencing him when he was not present and thus denying his right to allocution. Because Minn. Stat. § 260B.130, subd. 4(a) (2010), mandates that the district court impose a juvenile disposition and a stayed adult criminal sentence if an EJJ prosecution results in a guilty plea, and because the district court here did not impose and stay an adult sentence as part of appellant's EJJ disposition, we reverse and remand.

## **FACTS**

In February 2011, a juvenile petition was filed charging 17-year-old appellant Cody Martin Timmer with two counts of criminal sexual conduct in the first degree. The petition alleged that appellant engaged in sexual penetration with a 12-year-old female, and that appellant was more than 36 months older than the victim. The petition was subsequently amended to designate the matter as an EJJ prosecution.

Appellant pleaded guilty to one count of first-degree criminal sexual conduct and was convicted as an EJJ. With the prosecutor's consent, the district court ordered a stay of adjudication instead of imposing a stayed adult criminal sentence. Appellant was placed on EJJ probation until the age of 21 with conditions of probation including completion of a residential sex-offender program and that he have no unsupervised contact with any girls under the age of 18 unless approved by probation.

On February 7, 2012, appellant appeared for a probation-violation hearing and admitted that he violated probation by failing to report unsupervised contact with an underage female and by failing to report to his probation agent as directed. Pursuant to an agreement between the parties, the district court revoked appellant's EJJ probation, converted the matter to an adult file, continued the stay of adjudication, and placed appellant on probation until age 21. The district court further ordered that "[a]ll conditions of [appellant's] EJJ probation are adopted by and incorporated into his adult probation."

Less than two months later, appellant's probation agent filed a report alleging that appellant violated the terms of his probation. Following a contested probation-violation hearing, the district court found that appellant violated the terms of probation by having unsupervised contact with an underage female, consuming alcohol, and failing to satisfactorily participate in out-patient sex-offender treatment. The district court then revoked appellant's adult probation and, pursuant to a written order, imposed and executed the presumptive sentence of 144 months in prison. This appeal followed.

## **D E C I S I O N**

The juvenile court has "original and exclusive" jurisdiction over a child who is alleged to have committed a criminal offense before the age of 18. Minn. Stat. § 260B.101, subd. 1 (2010). The juvenile court's jurisdiction over such a child may be extended until the child's 21st birthday if the child is convicted as an EJJ. Minn. Stat. § 260B.193, subd. 5(b) (2010); *In re Welfare of D.M.D.*, 607 N.W.2d 432, 434 (Minn. 2000). The interpretation of statutes pertaining to the juvenile system presents a question of law that we review de novo. *State v. J.E.S.*, 763 N.W.2d 64, 67 (Minn. App. 2009).

The intent of the EJJ designation is to give juveniles one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to reoffend.” *State v. Garcia*, 683 N.W.2d 294, 300 (Minn. 2004) (quotation omitted). Minn. Stat. § 260B.130 (2010) unambiguously sets forth the process governing EJJ prosecutions, dispositions, and revocations. First, the proceeding must be designated an EJJ prosecution. *See* Minn. Stat. § 260B.130, subd. 1 (setting forth the three ways in which a proceeding may be designated as an EJJ prosecution). Second, if an EJJ prosecution results in a “guilty plea or finding of guilt,” 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).

Third, “[w]hen it appears that a person convicted as an [EJJ] has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, without notice, revoke the stay and probation and direct that the offender be taken into immediate custody.” Minn. Stat. § 260B.130, subd. 5(a). “[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.” Minn. Stat. § 260B.130, subd. 5(c). “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.” Minn. Stat. § 260B.130, subd. 5(d).

Appellant does not challenge the designation of the underlying proceeding as an EJJ prosecution or his conviction as an EJJ offender. Instead, appellant's challenge concerns the district court's revocation of his EJJ probation and its later execution of an adult prison sentence. Specifically, appellant argues that although Minn. Stat. § 260B.130, subd. 5, allows the district court to revoke EJJ probation and impose adult sanctions if reasons exist to revoke the offender's stay of execution of sentence, the adult "sanctions can only be imposed after revoking a previous stay of execution." Appellant argues that because the district court previously imposed a stay of adjudication instead of a stay of execution of sentence, there was no stay of execution to revoke and, therefore, the execution of his 144-month adult prison sentence was erroneous.

Appellant's argument raises questions regarding the validity of the district court's EJJ disposition. Under the plain language of Minn. Stat. § 260B.130, subd. 4(a), the district court "shall" impose a stayed adult prison sentence as part of its disposition in an EJJ proceeding. It is well settled that "shall" is mandatory. Minn. Stat. § 645.44, subd. 16 (2012). Therefore, the district court erred by failing to impose a stayed adult prison sentence as part of appellant's EJJ disposition. The question, however, is whether the district court's error is a basis to reverse the ensuing revocation of appellant's EJJ probation.

The statutory grounds for revocation in an EJJ proceeding are clear: revocation must be based on either a violation of the conditions of "the stayed sentence" or commission of a new offense. Minn. Stat. § 260B.130, subd. 5(a). The conditions of the stayed sentence are defined by the disposition order. *See* Minn. Stat. § 260B.130, subd.

4(a)(2) (stating that the adult criminal sentence is “stayed on the condition that the offender not violate the provisions of the disposition order”). Here, appellant was not alleged to have committed a new offense. Moreover, he could not violate the conditions of a “stayed sentence,” because the district court never imposed a stayed sentence. Thus, under the plain language of section 260B.130, subdivision 5, there does not appear to have been a statutory basis for the district court to revoke appellant’s EJJ probation.

We acknowledge that such a conclusion appears to put form over substance in that appellant does not dispute that he violated conditions of his EJJ probation. But an EJJ is, by definition, a juvenile offender who has been given a juvenile disposition under Minn. Stat. § 260B.198 (2010), *and* a stayed adult criminal sentence. Minn. R. Juv. Delinq. P. 19.01, subd. 2(A). The stayed adult sentence is what distinguishes an EJJ offender from other juvenile offenders. *Compare* Minn. Stat. § 260B.198 (setting forth permissible dispositional options for juvenile delinquents) *with* Minn. Stat. § 260B.130, subd. 4 (mandating a stayed adult sentence for EJJ offenders, in addition to any of the dispositional options available for delinquent offenders). Moreover, the EJJ revocation process under Minn. Stat. § 260B.130, subd. 5, repeatedly references a stayed sentence, demonstrating that the process is significantly dependent on the imposition of a stayed adult sentence. Consequently, the imposition of a stayed adult sentence is both a mandatory component of an EJJ disposition and an integral part of EJJ probation. Because the imposition of a stayed adult criminal sentence is a critical element under the EJJ statutory framework, we are unwilling to accept a stay of adjudication—which is not authorized under section 260B.130 and which is traditionally used to avoid both

conviction and sentencing—as a substitute for a stayed adult sentence on an EJJ conviction. *See Smith v. State*, 615 N.W.2d 849, 851 (Minn. App. 2000) (stating that “a stay of adjudication cannot result in a conviction unless a defendant violates the conditions of probation”), *review denied* (Minn. Sept. 26, 2000).

We recognize that as a result of our reasoning, appellant receives more than “one last chance at success in the juvenile system.” *Garcia*, 683 N.W.2d at 300 (quotation omitted). But we conclude that strict adherence to the unambiguous statutory requirements that govern EJJ prosecutions should prevail. *See Vang v. State*, 788 N.W.2d 111, 116-18 (Minn. 2010) (holding that juvenile defendant’s adult convictions and sentence were void due to lack of subject-matter jurisdiction because the proper statutory procedure for adult certification was not followed). We therefore hold that the district court erred by failing to impose a stayed adult sentence as part of its EJJ disposition and that in the absence of a stayed adult sentence—or an allegation that appellant committed a new offense—there was no statutory basis to revoke appellant’s EJJ probation. Thus, the district court’s revocation of appellant’s EJJ probation and termination of juvenile court jurisdiction were invalid and ineffective. Moreover, under the plain language of section 260B.130, subdivision 5(d), the district court could not exercise ongoing adult court jurisdiction over appellant without first revoking appellant’s EJJ probation and terminating juvenile court jurisdiction, which it failed to properly accomplish. Thus, the district court did not acquire ongoing adult court jurisdiction over appellant and its ultimate imposition of an executed prison sentence was void for lack of jurisdiction. *See*

*Vang*, 788 N.W.2d at 117 (stating that a sentencing order is void when issued without subject-matter jurisdiction).

For those reasons, we reverse the district court's order revoking appellant's EJJ probation, revoking appellant's adult probation, and imposing an executed prison sentence. Because appellant has not attained the age of 21 and remains under the district court's jurisdiction as an EJJ, we remand for entry of a disposition order under section 260B.130, subdivision 4. *See* Minn. Stat. § 260B.193, subd. 5(b) ("The jurisdiction of the court over an [EJJ], with respect to the offense for which the individual was convicted as an [EJJ], extends until the offender becomes 21 years of age, unless the court terminates jurisdiction before that date."). And because our holding is dispositive, we do not address appellant's other arguments for reversal.

**Reversed and remanded.**