



State v. Matthew C. Hinkle [Recommended for Publication]

2018 | Cited 0 times | Court of Appeals of Wisconsin | October 31, 2018

COURT OF APPEALS DECISION DATED AND FILED

October 31, 2018 Sheila T. Reiff Clerk of Court of Appeals 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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP1416-CR Cir. Ct. No. 2015CF418

STATE OF WISCONSIN IN COURT OF APPEALS DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW C. HINKLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. Affirmed.

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 NEUBAUER, C.J. Matthew C. Hinkle appeals from his judgment of conviction and an order denying his postconviction motion arguing that (1) the circuit court exercising adult criminal jurisdiction lacked jurisdiction over him, a nce was ineffective because she failed to No. 2017AP1416-CR

2 We conclude a waiver of jurisdiction by a circuit court exercising juvenile jurisdiction in Milwaukee County in another matter for previous criminal offenses pursuant to WIS. STAT. § 938.18 (2015-16) 1 under WIS. STAT. ch. 938 to the circuit



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court exercising criminal jurisdiction in Fond du Lac County pursuant to WIS. STAT. § 938.183(1)(b).
2 We therefore affirm.

1 All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted. 2 The Juvenile Justice Code, WIS. STAT. ch. 938, addressing juvenile jurisdiction in this regard is more accurately characterized as competency rather than jurisdiction.

See State v. Schroeder, 224 Wis. 2d 706, 719-20, 593 N.W.2d 76 (Ct. App. 1999). Granted by the Wisconsin Constitution, subject matter jurisdiction is plenary and unaffected by statute, such as in State v. Sanders, 2017 WI App 22, ¶12, 375 Wis. 2d 248, 895 N.W.2d 41 (citation omitted); Stern v. WERC, 2006 WI App 193, ¶24, 296 Wis. 2d 306, 722 N.W.2d 594. More ability to undertake a statute, it may be affected or lost if statutory elements or requirements are not met. State v.

Sanders, 2018 WI 51, ¶¶20, 22, 381 Wis. 2d 522, 912 N.W.2d 16 (citation omitted). Having said that, for sake of consistency with the statutory language, this opinion will use the term

We also note the appellate opinions refer to court. These references are not to different types of courts per se, but rather to the laws

governing the filing and adjudication of the case juvenile adjudicating a case under the juvenile justice code, and, as such exercising juvenile jurisdiction,

by a criminal complaint, and, as such exercising criminal jurisdiction. Schroeder, 224 Wis. 2d at

719- juvenile, adult, and criminal courts an No. 2017AP1416-CR

3 BACKGROUND

¶2 In July 2015, Hinkle, who was sixteen years old at the time, stole a car in Milwaukee and drove it to Fond du Lac. Once there, Hinkle led police on a high-speed chase after they tried to arrest him. Hinkle hit other cars and eventually crashed. After fleeing on foot, he was caught with the help of a canine police officer.

¶3 Delinquency petitions against Hinkle were filed in both Milwaukee and Fond du Lac Counties, along with petitions seeking waiver into adult criminal court. Hinkle was also criminally charged in Fond du Lac County with fleeing a traffic officer and three counts of hit-and-run accidents. No one disputes that the adult criminal court of Fond du Lac County had jurisdiction over Hinkle for these traffic charges under WIS. STAT. § 938.17.

¶4 On October 28, 2015, the juvenile court in Milwaukee County, after a hearing, waived its jurisdiction over Hinkle per WIS. STAT. § 938.18, sending the matter to adult criminal court. In a



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criminal complaint, the State refiled the charges in Milwaukee County on November 19. The charges were robbery (use of force), operating a vehicle without consent, and misdemeanor theft.

¶5 On November 18 and 19, the juvenile court in Fond du Lac County concluded that, under WIS. STAT. § 938.183(1)(b), the waiver by the Milwaukee County court gave jurisdiction over Hinkle to the adult criminal court of Fond du Lac County. meaning generally that a juvenile is subject to the jurisdiction of the criminal court

when a juvenile court had previously waived its jurisdiction for prior criminal violations. No. 2017AP1416-CR

4 ¶6 When asked if Hinkle was contesting the co much automatic, but he is not agr

¶7 Although the circuit court had orally decided Hinkle was subject to the exclusive original jurisdiction of the criminal court under WIS. STAT. § 938.183(1) and indicated that a formal waiver was no longer necessary, it nonetheless signed a written order waiving juvenile jurisdiction under WIS. STAT. § 938. petition for waiver was not contested. knowing, intelli

¶8 The State filed an amended information in Fond du Lac County. It contained the four traffic charges from the criminal complaint plus the fourteen nontraffic criminal charges that had been previously asserted in the delinquency petition. Hinkle and the State reached a plea agreement, resulting in a number of charges being dismissed but read in. Hinkle entered no contest pleas to the remaining charges. 3

¶9 Hinkle filed a postconviction motion seeking to withdraw his pleas in Fond du Lac County on grounds that the criminal court lacked jurisdiction for the fourteen nontraffic criminal violations, and trial counsel provided ineffective

3 For the charge of operating a vehicle without consent, Hinkle entered an Alford plea. North Carolina v. Alford, 400 U.S. 25 (1970). After Hinkle pled guilty in Fond du Lac County, he reached an agreement with the State in the Milwaukee County criminal proceeding, pleading guilty to one count of robbery (use of force). That proceeding and conviction are not on appeal. No. 2017AP1416-CR

5 assistance by having failed to object on that basis. Hinkle also asserted the written waiver order was flawed and invalid, and therefore Hinkle was not properly waived into criminal court.

¶10 challenge the jurisdiction of the criminal court because she did not believe she had

valid grounds to do so. Hinkle testi waived in Milwaukee County, that it was automatic. I was automatically waived he had known the nontraffic criminal violations were not properly in criminal



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court.

¶11 In denying the motion, the circuit court saw no basis in WIS. STAT. § 938.183(1)(b) that required, as Hinkle contended, the jurisdictional waiver to have occurred in the same county as the criminal court. Because trial counsel correctly interpreted the statute, the court concluded that her assistance was not deficient. Hinkle appeals.

DISCUSSION

Standards of Review and Rules of Statutory Construction

¶12 Interpreting a statute presents a question of law, which we review de novo. *State v. Buchanan*, 2013 WI 31, ¶12, 346 Wis. 2d 735, 828 N.W.2d 847. Claims of ineffective assistance of counsel are mixed questions of fact and law. *State v. Erickson*, 227 Wis. 2d 758, 768, 596 N.W.2d 749 (1999). Under that standard of review, the circuit they are clearly erroneous, but whether counsel was ineffective based on these No. 2017AP1416-CR

6 facts is subject to de novo review. *Id.*; *State v. Balliette*, 2011 WI 79, ¶¶18-19, 336 Wis. 2d 358, 805 N.W.2d 334.

¶13 language is unambiguous, a court applies the plain language to the facts of the

case. See *State v. Hemp*, 2014 WI 129, ¶13, 359 Wis. 2d 320, 856 N.W.2d 811. Courts examine the language in context and read it using common, ordinary, and accepted meaning. *State v. Hanson*, 2012 WI 4, ¶16, 338 Wis. 2d 243, 808 N.W.2d 390. avoid[s] absurd, unreasonable, or implausible results and results that are clearly at odds *Hemp*, 359 Wis. 2d 320, ¶13 (citation omitted). *Hanson*, 338 Wis. 2d 243, ¶17.

The General Law of Jurisdiction over Juvenile Offenders

¶14 In general, a juvenile court has exclusive jurisdiction over any juvenile ten years of age or older alleged to be delinquent. WIS. STAT. § 938.12(1). There are, however, statutory exceptions that allow a juvenile to be charged in criminal court. *Id.*; see WIS. STAT. §§ 938.17, 938.18, 938.183.

¶15 Under WIS. STAT. § 938.17(1), a criminal court generally has exclusive jurisdiction over a juvenile sixteen years of age or older for certain traffic violations. Hinkle was charged, as noted, with four such violations in a criminal complaint in Fond du Lac County. These charges are not at issue.

¶16 Under WIS. STAT. § 938.18, a juvenile court may, upon petition, waive its jurisdiction over a juvenile under certain circumstances, sending the juvenile offender to criminal court. If the defendant challenges the petition for No. 2017AP1416-CR



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7 waiver, an evidentiary hearing is held. Sec. 938.18(3)(b), (4)(b). If there is no challenge, the court must ensure that the no-challenge decision was made knowingly, intelligently, and voluntarily. Sec. 938.18(4)(c). The court bases a waiver determination on criteria specified in § 938.18(5). If the court determines waiver is appropriate, it will sign an order waiving juvenile court jurisdiction, and the matter is referred to the district attorney for appropriate criminal proceedings. Sec. 938.18(6).

¶17 Under WIS. STAT. § 938.183, the statute at issue here, a criminal court has exclusive original jurisdiction over a juvenile for two general types of circumstances: (1) if the juvenile is alleged to have committed certain serious violations (e.g., intentional homicide) or (2) if the juvenile has a certain criminal history, such as a prior waiver of juvenile jurisdiction. Central to this case is the latter circumstance, which is addressed by the statute as follows:

JUVENILES UNDER ADULT COURT JURISDICTION. Notwithstanding [WIS. STAT. §§] 938.12(1) and 938.18, courts of criminal jurisdiction have exclusive original jurisdiction over .

(b) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation following waiver of jurisdiction under [WIS. STAT. §] 48.18, 1993 Stats., or [WIS. STAT. §] 938.18 by the court assigned to exercise jurisdiction under this chapter and [WIS. STAT.] ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

Sec. 938.183(1). No. 2017AP1416-CR

8 Once the Milwaukee Juvenile Court Waived its Jurisdiction over Hinkle and the Charges were Refiled, the Fond du Lac Criminal Court had Exclusive Original Jurisdiction over him

¶18 According to Hinkle, the juvenile court in Fond du Lac County erred when it determined the waiver by the juvenile court in Milwaukee County satisfied under WIS. STAT. ch. 938. See WIS. STAT. § 938.183(1)(b). He contends that the

stat that previously waived and the current court now considering waiver. the same

juvenile court now considering the new criminal charges. We disagree.

¶19 The language of WIS. STAT. § 938.183(1)(b) is unambiguous and applies here, giving jurisdiction over Hinkle to the criminal court in Fond du Lac County. The jurisdiction under § court referenced in subsec. (1)(b) refers only to the court that previously waived.

It cannot also refer to a current circuit court exercising juvenile jurisdiction and contemplating waiver because the jurisdiction over the juvenile is automatic and starts straightaway in the criminal



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court. 4 When the statutory elements are present, the State files a criminal complaint directly in adult criminal court. A juvenile

4 When criminally charged under WIS. STAT. § 938.183(1), a juvenile is entitled to a WIS. STAT. § 970.032(1); see also State

v. Toliver, 2014 WI 85, ¶¶3, 9, 356 Wis. 2d 642, 851 N.W.2d 251. If the court finds such probable cause, it then determines whether to retain jurisdiction or, upon evidence of certain criteria shown by the juvenile, to transfer jurisdiction to juvenile court. Sec. 970.032(2); see also WIS. STAT. § 971.31(13). Section 938.183 itself acknowledges that a criminal court may decide to transfer jurisdiction to juvenile court. Sec. 938.183(1m)(b). No. 2017AP1416-CR

9 court typically would not see such a case § was in juvenile court in Fond du Lac County was because the jurisdictional waiver

by the juvenile court in Milwaukee County had not yet occurred. Once that waiver occurred and the criminal complaint was filed, the criminal court in Fond du Lac County had original exclusive criminal jurisdiction over Hinkle. 5

¶20 The language of subsec. (1)(b) of WIS. STAT. § 938.183 confirms our

waived jurisdiction. Id. The language here plainly relates to events in to exercise refers to a waiver already made for a prior violation, a violation separate from the current violations being considered for exclusive original criminal court jurisdiction. 6 This reading of the statute also recognizes the use of the definite

5 The State argues Hinkle forfeited his arguments by having failed to object to the fundamental principle that issues raised on appeal must be preserved at the circuit court. State v.

Huebner, 2000 WI 59, ¶¶10-11, 235 Wis. 2d 486, 611 N.W.2d 727. But the rule is one of judicial administration, and we choose not to apply it here. The issue is uncomplicated by any factual dispute and is of sufficient importance to juvenile and criminal case procedure that we deem it worthy to consider and address. 6 We note para. (c) of WIS. STAT. § determine whether a criminal court has exclusive original jurisdiction. Such jurisdiction is

conferred if the juvenile had been subject to original criminal court jurisdiction under this statute for a previous violation and the juvenile had either been convicted or the criminal proceedings are still pending. Id. court that had original jurisdiction for the previous criminal violation. No. 2017AP1416-CR

10 the one that had previously waived its jurisdiction. 7



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¶21 juvenile when the following apply: (1) the juvenile is presently alleged to have

sdition resulted in a conviction or the criminal proceedings remain pending. Id.

¶22 The criminal complaint was filed in Milwaukee County and the juvenile court of Fond du Lac County made its jurisdictional decision on November 19, 2015. On that date: (1) Hinkle was a juvenile presently alleged to have committed a criminal violation, (2) a juvenile court had waived its jurisdiction over Hinkle for previous criminal violations, and (3) the criminal proceedings on those violations were pending. Because the statutory elements

7 implies that the county in which the juvenile or criminal court is situated matters. See WIS. STAT.

§ 938.02(2m). The definition is consistent with our interpretation and lends no support to : court assigned to exercise jurisdiction under this chapter and

[WIS. STAT.] ch. 48 or, when used with reference to a juvenile who is subject to [WIS. STAT. §] 938.183, a court of criminal jurisdiction or, when used with reference to a juvenile who is subject to [WIS. STAT. §] 938.17(2), a municipal court. Sec. 938.02(2m). No. 2017AP1416-CR

11 criminal jurisdiction ha[d] exclusive original jur 8 Id.

¶23 Because the language of the statute as applied to these facts is unambiguous, consideration of the legislative history is unnecessary. We note nonetheless that the history supports our interpretation. See State v. Moreno- Acosta, 2014 WI App 122, ¶14, 359 Wis. 2d 233, 857 N.W.2d 908 (courts may WISCONSIN STAT. ch. 938 arose from the recommendations of the Juvenile Justice Study Committee, created by the legislature in 1994 in response to rising juvenile crime. See State v. Kleser report, Juvenile Justice Study Committee, Juvenile Justice: A Wisconsin Blueprint

for Change 14-15 (January 1

8 Hinkle argues written order waiving him into adult court was invalid. He notes the order was issued under WIS. STAT. § 938.18 even though the court did not conduct an evidentiary hearing and the court had orally announced that jurisdiction of the criminal court was based on WIS. STAT. § 938.183. He also notes the order incorrectly stated that he did not contest waiver. Given our decision, these arguments are no longer pertinent. The criminal court had exclusive original jurisdiction over Hinkle under WIS. STAT. § 938.183(1), and therefore no waiver petition, hearing, determination, or written order under WIS. STAT. § 938.18 was necessary. See State v. Nieves, 2017 WI 69, ¶17, 376 Wis. 2d 300, 897 N.W.2d 363 (concluding and decision as announced at the November 19 hearing were correct, and generally when an oral

decision is clear and reflects the intent of the court, it controls over an error in a written order. See



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State v. Perry, 136 Wis. 2d 92, 114, 401 N.W.2d 748 (1987). No. 2017AP1416-CR

12 once adult court jurisdiction has been exercised regarding a juvenile, subsequent violations should not require new waiver h 9

¶24 To prove an ineffective assistance of counsel claim, Hinkle must

performance prejudiced his defense. See *Strickland v. Washington*, 466 U.S. 668, for is her failure to oppose the jurisdiction of the criminal court in Fond du Lac County.

correct. Deciding not to dispute a correct court ruling is legal assistance that is neither deficient nor prejudicial. See *State v. Ziebart*, 2003 WI App 258, ¶14, 268

By the Court. Judgment and order affirmed.

Recommended for publication in the official reports.

9 Without addressing the full statutory analysis set forth herein (*supra* ¶¶19-21), the Dissent objects largely on policy grounds to decision to give exclusive original jurisdiction over a juvenile to a criminal court under WIS. STAT. § 938.183(1). But the policy points made by the Dissent including whether a juvenile court should have discretion to determine the appropriate jurisdiction are best directed to and considered by the legislature. See *A. & A.P. v. Racine Cty.*, 119 Wis. 2d 349, 354- to ame not the

Keeping to waiver for a previous violation under § 938.183(1) is inapplicable in another county. No. 2017AP1416-CR(D)

¶25 REILLY, P.J. (dissenting). It is undisputed that Fond du Lac County circuit court had exclusive jurisdiction over Hinkle per WIS. STAT. § 938.12(1) on November 18- statutory obligation under WIS. STAT. §§ 938.01(2)(c) and 938.18(5) to decide

whether Hinkle and the public would be best served by having Hinkle remain in the juvenile system or be waived into adult court. The majority errs by removing the discretion of a judge to individually assess a juvenile on the grou

¶26 Whether to waive a child into adult court is a discretionary act under WIS. STAT. § 938.18(5). 1 § court determines on the record that there is clear and convincing evidence that is contrary to the best interests of the juvenile or of the public to hear the case, the Sec. 938.18(6). This statutory procedure is fact-intensive requiring

consideration of the individualized needs of the juvenile, the services that are



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1 Waiver requires the circuit court judge to assess (1) the personality of the juvenile; (2) the prior record of the juvenile; (3) the type and seriousness of the offense; and suitability of facilities, services and procedures available for treatment of the juvenile and

protection of the public within the juvenile justice system, and, where applicable, the mental ; f trial and disposition of the entire offense in one court court. WIS. STAT. § 938.18(5). No. 2017AP1416-CR(D)

2 -size-fits all criteria violates the core purpose of the -the-

¶27 I also differ with my colleagues on the meaning of WIS. STAT. §

[a] juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a the court assigned to exercise jurisdiction under this chapter and [WIS. STAT.] ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

the court assigned to exercise jurisdiction Fond du Lac County juvenile court, not Milwaukee County juvenile court. I agree

WIS. STAT.

§ 9 he disposition of a juvenile, and any record of evidence given in a hearing in court, is not admissible as evidence against the juvenile in any case or proceeding in any other any court assigned to exercise jurisdiction under this chapter and [WIS. STAT.]

WIS. STAT. § 938.396(2g)(gm) also any court assigned to exercise jurisdiction the court assigned to exercise jurisdiction

related to a juvenile. (Emphasis added.)

¶28 I am not opining on whether Hinkle should or should not have been waived. I dissent solely to the removal of discretion regarding waiver. Each county runs its own juvenile system, whereas the state runs the adult correctional No. 2017AP1416-CR(D)

3 system. 2 Fond du Lac County may place more emphasis on its juvenile justice system and may allocate significantly more resources per child/per capita than Milwaukee County in its juvenile services. The problems at the state-run facilities such as Lincoln Hills School and Copper Lake School are well known. By he adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system public. See WIS. STAT.



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§ 938.18(5), (6).

¶29 services program to a child who has been waived into adult court the child is

under supervision of the Department of Corrections. Unfortunately, the root cause of many delinquent acts by juvenile offenders is found within their own homes: poverty, truancy, lack of education, lack of nourishment, absentee parents, drug abuse, etc. The Department of Corrections is not equipped to focus on the home or provide services within the home. Juvenile courts are where we have the

2 -

ordered placement. This differs from adult corrections, for which the majority of correctional services and incarceration costs are fund WISCONSIN LEGISLATIVE COUNCIL, HIGH-RISK JUVENILE OFFENDERS 15 (July 2, 2008). The Wisconsin Legislature, in 1979, enacted legislation requiring counties to pay for a portion of juvenile corrections services. Id. are financially responsible for the majority of delinquent-related services Id. The exceptions are for the care of those juveniles adjudicated as a serious juvenile offender and those juveniles who have been waived into adult court and sentenced to state prison but are placed in a juvenile facility. WISCONSIN LEGISLATIVE FISCAL BUREAU, JUVENILE JUSTICE AND YOUTH AIDS PROGRAM 28 (Jan. 2017). Counties may supplement their funding for juvenile- her state aids to counties, county tax Id. at 28-29. No. 2017AP1416-CR(D)

4 child a chance in life. 3 Lincoln Hills or Copper Lake do not.

¶30 As judges, we each have a duty to evaluate the person appearing difficult decisions, but making difficult decisions is what we are called upon to do.

When we remove discretion from circuit court judges, we move from a judicial system that examines the person to a business model that makes our jobs easier by -size-fits-

3 Experts note that the tendency to commit crimes is age-specific, typically peaking in the late teen years and declining thereafter young age do not indicate future criminality, but rather suggest that rehabilitation can be effective, and longer sentences for juvenile offenders have little impa A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders is Not a Panacea, 2 ROGER WILLIAMS U. L. REV. 277, 285 (1997).

