

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Petitioner Below, Respondent**

vs) **No. 11-0709** (Clay County 08-JS-8)

FILED

March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

J.C., Respondent Below, Petitioner

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Clay County, wherein the circuit court ordered that petitioner, a juvenile status offender, was to be placed on probation until the age of twenty-one. Petitioner's appeal was timely perfected by counsel, Kevin W. Hughart, with Petitioner's appendix accompanying the petition. The State, by Thomas W. Rodd, has responded, confessing error.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds prejudicial error. A memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

As more fully explained herein, the Court is of the opinion that the circuit court erred in ordering the petitioner be placed on probation until the age of twenty-one. Because of this Court's prior direction to circuit courts that juvenile status offenders not be placed on probation beyond the age of eighteen, the decision of the Court is set forth in a memorandum decision rather than an opinion. As noted below, this Court has stated that statutory principles support probation orders that extend only to the age of eighteen for juvenile status offenders. Accordingly, this case satisfies the "limited circumstance" requirement of Rule 21(d) and it is appropriate for the Court to issue a memorandum decision rather than an opinion.

By order dated January 31, 2011, petitioner was placed on probation until the age of twenty-one. The matter below began when the State, on behalf of the petitioner's mother, filed a petition alleging petitioner to be a juvenile status offender within the meaning of West Virginia Code § 49-1-4 due to his habitual and continual refusal to respond to the lawful supervision by his parents, guardians or legal custodians such that he was substantially endangering his health, safety or welfare. A review of the record indicates that the petitioner engaged in the following behavior: using profanity towards his mother in a threatening and degrading manner; causing himself to be suspended from school at least three times for failing to follow the direction of school personnel and failing to abide by the rules and regulations of the Clay County Board of Education; requiring his mother to keep her bedroom door locked out of fear he would remove firearms therein without permission; and, threatening his mother with physical violence. The matter remained ongoing in circuit court for approximately two years, during which period petitioner's probation was revoked

and he was placed in the Faltis Children's Shelter after several infractions at his school which resulted in multiple days of detention. Eventually, petitioner was released from the Faltis Shelter and was placed back in his mother's custody, with several terms and conditions imposed. One such condition was that petitioner's probation was ordered to extend until such time as he reached the age of twenty-one.

On appeal, petitioner argues that the circuit court erred in continuing its jurisdiction over him past the age of eighteen, given his classification as a juvenile status offender. Specifically, he argues that juvenile status offenders are distinguished from other juvenile offenders, and that the circuit court incorrectly treated him as a juvenile delinquent. Petitioner cites to this Court's prior holding that "status offenders have a special position within the current system, despite the fact that technically they are not distinguished from children guilty of actual criminal conduct." *State ex rel. Harris v. Calendine*, 160 W.Va. 172, 183, 233 S.E.2d 318, 326 (1977). Pursuant to the definition in West Virginia Code § 49-1-4(9), petitioner makes the distinction that a juvenile delinquent is "a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult." As such, petitioner argues that it is clear he is merely a status offender because he does not meet this definition. Petitioner argues that, accordingly, the circuit court cannot continue its jurisdiction over him past the age of eighteen, because West Virginia Code § 49-5-2(f) grants circuit courts jurisdiction until the age of twenty-one over juvenile delinquents only.

In response, the State confesses error, noting that "the Attorney General has the power and discretion to confess reversible error in criminal appeals before this Court." *Manchin v. Browning*, 170 W.Va. 779, 789, 296 S.E.2d 909, 919 (1982). The State notes that it is undisputed that petitioner was, at all relevant times, a status offender. Citing our prior cases on the matter, the State asks that petitioner's request that the Circuit Court of Clay County's jurisdiction over him must end on his eighteenth birthday should be granted.

"Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.' Syllabus Point 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995)." Syl. Pt. 1, *Hollinghead v. Childers*, 226 W.Va. 714, 704 S.E.2d 714 (2010). Further, "[t]his Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*.' Syl. Pt. 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996)." Syl. Pt. 2, *Nutter v. Nutter*, 218 W.Va. 699, 629 S.E.2d 758 (2006). Upon review, we find that the circuit court exceeded its jurisdiction in extending probation over petitioner, a juvenile status offender, beyond his eighteenth birthday. This Court has previously discussed the issues of a circuit court's jurisdiction over juvenile status offenders in the case of *State v. Steven H.*, 215 W.Va. 505, 600 S.E.2d 217 (2004). In that matter, we offered the following instruction to circuit courts:

Our review of the probation order reveals another issue which, although not raised by the Appellant and not dispositive of this case, is nevertheless deserving of brief

comment. The probation order states that the Appellant was to remain on probation until the age of twenty-one. While this issue is technically moot since the probation is no longer in effect, due to the Appellant's drug and school expulsion violations, we note for future reference that the statutory principles appear to support a probation order which extends only until the age of eighteen for a juvenile *status offender*. The statutory schemes direct that juvenile *status offenders* must be distinguished from other juvenile offenders adjudicated *delinquent* by reason of the commission of an act which would be a crime if committed by an adult. Although West Virginia Code § 49-5-11a provides that a “court is not limited to the relief sought in the department's petition” in a status offender case, the age limitations applicable to status offenders must be recognized. West Virginia Code § 49-5-2(f) (2001) provides that “[i]f a juvenile *commits an act which would be a crime if committed by an adult*, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age.” Where the juvenile is simply a *status offender*, however, that age extension to twenty-one years does not apply, nor is there any other statutory provision allowing probation for such a status offender to extend to age twenty-one. See W. Va.Code § 49-1-2 (1997) (Repl.Vol.2001) (defining child and juvenile); W. Va.Code § 49-2-2 (1972) (Repl.Vol.2001) (addressing duration of custody); W. Va.Code § 49-5-1 (1998) (Repl.Vol.2001) (defining child). Consequently, future probation orders for juvenile status offenders, while otherwise acceptable and discretionary with the court, should extend only until the status offender attains the age of eighteen years.

State v. Steven H., 215 W.Va. 505, 511 n.6, 600 S.E.2d 217, 223 (2004).

For the foregoing reasons, we reverse the circuit court’s amended order entered on January 31, 2011, and remand for further proceedings consistent with this memorandum decision requiring that petitioner’s probation be limited to such time as he reaches the age of eighteen.

Reversed and Remanded.

ISSUED: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Margaret L. Workman