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IN RE INTEREST OF SHAQUILLE H., A CHILD UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA, APPELLEE, V. SHAQUILLE H., APPELLANT.

827 N.W.2d 501

Filed March 15, 2013. No. S-11-953.

1. **Juvenile Courts: Child Custody: Time.** Neb. Rev. Stat. § 43-271(1)(b) (Reissue 2008) provides that the hearing as to a juvenile in custody of the probation officer or the court shall be held as soon as possible but, in all cases, within a 6-month period after the petition is filed, and as to a juvenile not in such custody as soon as practicable but, in all cases, within a 6-month period after the petition is filed.
2. **Speedy Trial: Minors.** The computation of the 6-month period provided for in Neb. Rev. Stat. § 43-271(1)(b) (Reissue 2008) shall be made as provided in Neb. Rev. Stat. § 29-1207 (Cum. Supp. 2012), as applicable.
3. ____: ____. A juvenile is entitled to a speedy adjudication, i.e., one within 6 months of the filing of a petition; but that right is subject to the calculations used when determining a criminal defendant's speedy trial rights.
4. **Juvenile Courts: Words and Phrases.** The "shall" from Neb. Rev. Stat. § 43-271 (Reissue 2008) is directory, rather than mandatory, and discharge is not required if it can be shown that it remains in the juvenile's best interests to deny discharge.
5. **Speedy Trial: Proof.** Evidence of a crowded docket alone is insufficient to support a finding of good cause for exclusion of time periods under Neb. Rev. Stat. § 29-1207 (Cum. Supp. 2012).
6. ____: ____. When ruling on a motion for absolute discharge, specific findings of all excludable periods of Neb. Rev. Stat. § 29-1207(4)(a) to (f) (Cum. Supp. 2012) are required.
7. **Juvenile Courts: Speedy Trial.** A juvenile court judge must make specific findings on the record regarding any excludable time periods as defined in Neb. Rev. Stat. § 29-1207 (Cum. Supp. 2012) before making the ultimate determination as to whether discharge would be in the best interests of a child.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and IRWIN and SIEVERS, Judges, on appeal thereto from the Separate Juvenile Court of Douglas County, DOUGLAS F. JOHNSON, Judge. Judgment of Court of Appeals affirmed.

Thomas C. Riley, Douglas County Public Defender, Christine D. Kellogg, and Christine Mori for appellant.

Donald W. Kleine, Douglas County Attorney, Malina Dobson, Debra Tighe-Dolan, and Tony Hernandez, Senior Certified Law Student, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and CASSEL, JJ.

HEAVICAN, C.J.

I. INTRODUCTION

Shaquille H. appealed from an order of the separate juvenile court of Douglas County, Nebraska, which denied his motion to discharge. The Nebraska Court of Appeals affirmed. We granted Shaquille's petition for further review.

II. BACKGROUND

1. FACTUAL BACKGROUND

On September 14, 2010, the State of Nebraska filed a complaint in the county court for Douglas County alleging that Shaquille, born in May 1994, had violated Neb. Rev. Stat. § 28-1202 (Cum. Supp. 2012) and Omaha Mun. Code, ch. 20, art. VII, § 20-204 (1993). On October 13, Shaquille filed a motion to transfer to juvenile court. That motion was initially denied following a hearing on November 4. On November 9, however, the motion was granted upon a motion to reconsider.

An amended petition was filed in the Douglas County Juvenile Court on November 10, 2010, alleging violations of Neb. Rev. Stat. § 43-247(1) (Reissue 2008). Specifically, the amended petition alleges that Shaquille carried a concealed weapon on his person in violation of § 28-1202(1) and possessed a "pistol, revolver or other form of short-barreled hand firearm" in violation of Neb. Rev. Stat. § 28-1204(1) (Cum. Supp. 2012). At a detention hearing held on November 10, Shaquille was ordered to be detained at the Douglas County Youth Center or post bond. Shaquille was arraigned on December 8, a written denial was entered on his behalf, and the record indicates that a request to "exonerate" the bond was filed. Though unclear, it appears from the record that Shaquille was released from custody sometime between November 10 and December 8 and has not been in custody since that time.

A pretrial conference was held on January 6, 2011, and the matter was set for adjudication on February 11. Due to the

funeral of an attorney who had practiced before the juvenile court, the court, on its own motion, rescheduled the adjudication for April 13. Shaquille's counsel indicated that Shaquille was unable to attend the hearing on April 13 because he did not have transportation. A continuance was requested, and the matter was rescheduled for July 1 in anticipation of a plea. Shaquille failed to appear at the July 1 hearing. The State requested a capias be issued, and Shaquille's counsel requested a continuance. Both motions were denied. The court then gave Shaquille until July 5 to appear.

The record shows that Shaquille eventually appeared on July 1, 2011, following the conclusion of the original hearing. At that time, it was determined that Shaquille no longer wished to enter a plea. The record provides that "by agreement of counsel," the adjudication was reset for October 14.

On October 12, 2011, Shaquille filed a motion to discharge for failure to adjudicate within the time required by Nebraska statute. The next day, the court called counsel into the courtroom to discuss a continuance so that the juvenile court judge could attend his aunt's funeral on October 14. During the October 13 hearing, the motion to discharge was discussed but not decided. The adjudication remained scheduled for the next day.

At the adjudication hearing on October 14, 2011, the parties first addressed the pending motion to discharge. The State called the juvenile court's bailiff, who testified that she did not specifically recall rescheduling Shaquille's case, but that she would have rescheduled it to the next available date that "worked around counsel's conflicts and the [c]ourt's calendar." Following the bailiff's testimony, the juvenile court judge denied the motion to discharge, stating on the record that because the purpose of the juvenile court is rehabilitative and the nature of the charges was quite serious, it was not in Shaquille's best interests to grant the motion. The judge made no specific findings with respect to Shaquille's statutory right to speedy adjudication or calculation of any possible excludable time periods.

The State then called its first adjudication witness. Shortly thereafter, the hearing was again continued, this time to

December 22, 2011. On November 8, Shaquille appealed the denial of his motion to discharge.

2. Court of Appeals' Opinion

The Court of Appeals affirmed the decision of the juvenile court.[1] In its opinion, the Court of Appeals performed the calculations related to the speedy adjudication claim that were not prepared by the juvenile court. The Court of Appeals separated the delay into four time periods: February 12 to April 13, 2011; April 14 to July 1; July 2 to October 14; and October 15 to November 8.

(a) February 12 to April 13

The Court of Appeals concluded that this period of 61 days was excludable from Shaquille's speedy adjudication calculation for good cause. Specifically, Shaquille's case was continued in this instance on the motion of the juvenile court judge so that he could attend the funeral of an attorney who had practiced before the juvenile court. The Court of Appeals, relying in part on this court's decision in *In re Interest of Brandy M. et al.*,[2] concluded that the record supported this finding and affirmatively showed the bailiff would have rescheduled Shaquille's case on the next available date.

(b) April 14 to July 1

The Court of Appeals concluded that this period of 79 days was a delay attributable to Shaquille. Because Shaquille did not appear at the April 13, 2011, hearing due to lack of transportation, the continuance was chargeable to him.

(c) July 2 to October 14

The Court of Appeals concluded this period of 105 days was also a delay attributable to Shaquille, because the record shows that the continuance was "'by agreement of counsel.'"[3]

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[1] *In re Interest of Shaquille H.*, 20 Neb. App. 141, 819 N.W.2d 741 (2012).

[2] *In re Interest of Brandy M. et al.*, 250 Neb. 510, 550 N.W.2d 17 (1996).

[3] *In re Interest of Shaquille H., supra* note 1, 20 Neb. App. at 147, 819 N.W.2d at 746.

(d) October 15 to November 8

The Court of Appeals concluded this period—between the continuance granted, following the beginning of the adjudication hearing on October 14, 2011, until the filing of Shaquille's appeal—was excludable for good cause due to the bailiff's testimony regarding how matters are rescheduled and the judge's explanation about his aunt's funeral.

We granted Shaquille's petition for further review.

III. ASSIGNMENTS OF ERROR

In his petition for further review, Shaquille assigns, restated and consolidated, that the Court of Appeals erred in affirming the juvenile court's denial of his motion to discharge.

IV. STANDARD OF REVIEW

An appellate court's review of a juvenile court's determination of whether a juvenile has been denied his or her statutory right to a prompt adjudication is made de novo on the record to determine whether there has been an abuse of discretion by the juvenile court.[4] Prompt adjudication determinations are initially entrusted to the discretion of the juvenile court and will be upheld unless they constitute an abuse of discretion.[5]

V. ANALYSIS

1. Statutory Speedy Adjudication

At issue in this petition for further review is whether the Court of Appeals erred in affirming the denial of Shaquille's motion to discharge.

[1,2] Neb. Rev. Stat. § 43-271(1)(b) (Reissue 2008) provides:

> The hearing as to a juvenile in custody of the probation officer or the court shall be held as soon as possible but, in all cases, within a six-month period after the petition is filed, and as to a juvenile not in such custody as soon as practicable but, in all cases, within a six-month period after the petition is filed. The computation of the six-month period provided for in this section shall be made as provided in section 29-1207, as applicable.

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[4] *In re Interest of Brandy M. et al.*, *supra* note 2.

[5] *Id.*

[3-5] Thus, generally speaking, a juvenile is entitled to a speedy adjudication, i.e., one within 6 months of the filing of a petition; but that right is subject to the calculations used when determining a criminal defendant's speedy trial rights. As the Court of Appeals noted in its opinion, in this case, the speedy adjudication clock began running on November 11, 2010, or the day after the petition was filed in juvenile court, so the last day upon which the court could schedule the adjudication would have been May 10, 2011.[6] But this court has held that (1) the "shall" from § 43-271 is directory, rather than mandatory, and discharge is not required if it can be shown that it remains in the juvenile's best interests to deny discharge, and (2) evidence of a crowded docket alone is insufficient to support a finding of good cause for exclusion of time periods under Neb. Rev. Stat. § 29-1207 (Cum. Supp. 2012).[7]

Shaquille does not take issue with the exclusion of the 79-day period between April 14 and July 1, 2011; nor does he take issue with the exclusion of the 25 days subsequent to the commencement of his adjudication until his appeal was filed. He does take issue, however, with the exclusion of the period between February 12 and April 13, and the exclusion of the period between July 2 and October 14. In particular, Shaquille argues that it is the State's burden to show those time periods are excludable[8] and that the State failed to meet that burden.

With respect to the first period, Shaquille acknowledges that the bailiff's testimony was presented, but argues that under *In re Interest of Brandy M. et al.*, a crowded court docket is insufficient to support a showing of good cause. With respect to the latter period, Shaquille essentially argues that the record does not support the conclusion made by the Court of Appeals that the delay until October 14, 2011, was done with Shaquille's consent. We address the latter period first.

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[6] See *State v. Baker*, 264 Neb. 867, 652 N.W.2d 612 (2002).

[7] See *In re Interest of Brandy M. et al., supra* note 2.

[8] See *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009).

(a) July 2 to October 14

With respect to this time period, the record includes an order of the juvenile court filed July 6, 2011, memorializing the July 1 hearing, providing that "by agreement of counsel this matter shall be **reset for an adjudication hearing for an hour and a half on October 14, 2011 at 10:30 a.m. (Counsel shall notify client of scheduled hearing date and time)**."

Shaquille argues that the notation in the record cannot mean that he or his counsel agreed to the October 14, 2011, adjudication hearing, because the record as a whole is clear that due to the court's crowded docket, "counsel are not in a position to pick and choose court dates."[9] As such, "by agreement of counsel" means that counsel agreed only to the length of time (1½ hours) of the hearing.

Upon reviewing Shaquille's argument, we find that the juvenile court did not abuse its discretion, nor did the Court of Appeals abuse its discretion, in concluding that the State met its burden to exclude this time period from Shaquille's speedy adjudication calculation. The juvenile court order clearly provides that counsel for Shaquille agreed to the delay in adjudication. Thus, we shall exclude this time period from Shaquille's calculation.

(b) February 12 to April 13

Shaquille argues this period is not attributable to good cause because this court has concluded that a crowded docket is not sufficient to show good cause, and the State did not otherwise meet its burden to show good cause. The Court of Appeals explicitly concluded that this 61-day period was excluded for good cause because the juvenile court judge continued the adjudication so that he could attend the funeral of an attorney who practiced before the juvenile court and that the attendant delay for the crowded court docket was also excludable because the bailiff testified that she rescheduled the adjudication on the next available date.

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[9] Memorandum brief for appellant in support of petition for further review at 6.

It is unnecessary for this court to analyze whether this time period is excludable in order to find that Shaquille's motion to discharge should be dismissed; thus, we decline to do so. The Court of Appeals concluded that when excluding all of the four periods of time, the State had 270 days, or until February 4, 2012, to schedule Shaquille's adjudication. If we do not exclude this 61-day period, the State would have had 209 days, or until December 5, 2011, to schedule the adjudication. Shaquille filed his motion to discharge on October 12, 2011, and, as such, it was premature. Shaquille's adjudication commenced on October 14, though it did not finish, and Shaquille does not contend that this was insufficient to comply with his speedy adjudication right. Thus, we find the Court of Appeals did not abuse its discretion in affirming the decision of the juvenile court.

2. Constitutional Speedy Trial Adjudication

Shaquille also assigns that the Court of Appeals erred in not addressing his constitutional speedy adjudication rights. Because we find that Shaquille's motion to discharge was premature and that there has been no violation of Shaquille's statutory speedy adjudication right in this case, we decline to address this assignment of error. We agree with the Court of Appeals that even if such constitutional right exists, which we do not decide here, no constitutional rights have been implicated in this case because Shaquille has time remaining on the statutory speedy trial adjudication clock.[10]

3. Lack of Specific Findings

[6,7] Finally, we address Shaquille's concern that the Court of Appeals affirmed the decision of the juvenile court, even though the juvenile court judge failed to make any specific findings regarding the excludable time periods as defined in § 29-1207. This court held in *State v. Williams*[11] that specific findings of all excludable periods of § 29-1207(4)(a) to (f) are

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[10] See *In re Interest of Brandy M. et al., supra* note 2.

[11] *State v. Williams, supra* note 8.

required. In this case, the juvenile court did not make such specific findings; the Court of Appeals did those calculations for the juvenile court. The holding in *Williams* may have escaped the notice of a juvenile court judge because *Williams* is an adult criminal case. Thus, here, we explicitly extend this requirement to the juvenile court. A juvenile court judge must make specific findings on the record regarding any excludable time periods as defined in § 29-1207 before making the ultimate determination as to whether discharge would be in the best interests of a child.

VI. CONCLUSION

For the foregoing reasons, we affirm the decision of the Court of Appeals.

AFFIRMED.

MILLER-LERMAN, J., participating on briefs.

STATE OF NEBRASKA, APPELLEE, V.
REBECCA M. BREE, APPELLANT.
827 N.W.2d 497

Filed March 15, 2013. Nos. S-12-684 through S-12-686.

1. **Sentences: Appeal and Error.** Whether a defendant is entitled to credit for time served is a question of law. An appellate court reviews questions of law independently of the lower court.

Appeals from the District Court for Platte County, ROBERT R. STEINKE, Judge, on appeal thereto from the County Court for Platte County, FRANK J. SKORUPA, Judge. Sentences vacated, and causes remanded for resentencing.

Nathan J. Sohriakoff, Deputy Platte County Public Defender, for appellant.

Jon Bruning, Attorney General, George R. Love, and Siobhan E. Duffy, Senior Certified Law Student, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and CASSEL, JJ.