

SECOND DIVISION

June 9, 2015

No. 1-15-0127

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Malik J., a Minor

(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal from the
Petitioner-Appellee,)	Circuit Court of
)	Cook County.
v.)	
)	No. 14 JD 3264
MALIK J.,)	
)	Honorable
Respondent-Appellant).)	Terrence V. Sharkey,
)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.

Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

¶ 1 *HELD:* Jurisdiction lies in this court where minor-respondent appealed from an order that adjudicated him a ward of the court, entered a finding of guilty, and set forth a disposition; sentencing and supervision orders vacated where disposition was not authorized by statute; cause remanded with directions.

¶ 2 Following a bench trial, minor-respondent Malik J. was found guilty of misdemeanor theft, then adjudged a ward of the court and sentenced to 12 months' supervision. On appeal, respondent contends that the State failed to prove him guilty of theft beyond a reasonable doubt. For the following reasons, we vacate the supervision and sentencing orders and remand this cause with directions.

¶ 3 BACKGROUND

¶ 4 The State filed a petition for adjudication of wardship charging respondent with two counts of theft of a cell phone. Count I alleged that the value of the stolen property exceeded \$300; Count II alleged that the value of the stolen property did not exceed \$300.

¶ 5 At trial, the State sought to establish that respondent was involved in a common scheme to return a stolen cell phone in exchange for reward money. The stolen cell phone at issue belonged to Shivonne Sims, a Cook County probation officer. On June 22, 2014, Officer Sims' iPhone 5s was stolen while she was teaching a cake decorating class to her minor-clients. Her husband, Elgie Sims, a State Representative for the 34th District, later received a call from a "young lady" named "Sierra," who informed him that she had the phone and asked if there was a reward. Sierra gave Representative Sims her location, at which time he drove to Chicago and Parkside Avenues. Initially, Representative Sims met up with his wife and two Chicago police officers at the designated location. He then went to the corner and waited for Sierra alone. Sierra eventually showed up accompanied by respondent, and Representative Sims handed Sierra his "legal card," his state representative card, and all of the cash that he had on him, a total of \$13. Sierra immediately handed everything to respondent. Representative Sims then walked away and pointed Sierra and respondent out to the police officers, who proceeded to "engage*** them." A stipulation by the parties established that respondent was the cousin of J.S., a student in the cake

decorating class taught by Officer Sims on the day that her phone was stolen. The court entered a directed finding as to Count I and found respondent guilty on Count II. It then continued the case for a social investigation and sentencing.

¶ 6 At a hearing on December 18, 2014, the probation officer who conducted the social investigation of respondent recommended six months of supervision along with various conditions. The State agreed with the recommendation of supervision, but urged a term of 9 to 12 months, with conditions of community service and mandatory school. The court stated, "I'll go along with the recommendation," and advised respondent that he had "a right to appeal [the] finding of guilt and the sentence I've just imposed." The court also told respondent: "Do well and I will consider closing this case out even on March 24."

¶ 7 That day, the court entered two orders: (1) an order entitled "PROBATION (SUPERVISION) ORDER" (supervision order) with the word probation crossed out in ink; and (2) an order entitled "SENTENCING ORDER." The supervision order placed respondent on supervision for a term of 12 months and imposed various conditions. The sentencing order had several boxes checked, including the following: "[t]he minor is adjudged a ward of the court"; "[f]inding and judgment of guilty to stand"; "[t]he minor is placed on supervision for a period of," followed by, in handwriting, "12 months"; and "[a]ppeal rights given." The cause was continued to March 24, 2015 for a progress report. Respondent timely appealed.

¶ 8 ANALYSIS

¶ 9 Initially, we must address our jurisdiction over this matter. Respondent seeks to appeal from the court's order of December 18, 2014, in which he was adjudged a ward of the court, found guilty of theft, and sentenced to 12 months' supervision. According to respondent, the court entered a final judgment and therefore jurisdiction lies with this court pursuant to Illinois

Supreme Court Rules 660(a) (eff. Oct. 1, 2001), 603 (eff. Feb. 6, 2013), and 606 (eff. Dec. 11, 2014).

¶ 10 The State, however, argues that we do not have jurisdiction to review respondent's claim. Specifically, the State argues that a continuance under supervision is not a final and appealable order. In support, it cites *In re Henry B.*, 2015 IL App (1st) 142416, and *In re Michael D.*, 2015 IL App (1st) 143181.

¶ 11 In *Henry B.*, the respondent was found guilty of battery following a bench trial. 2015 IL App (1st) 142416, ¶ 17. At sentencing, the trial court did not enter a finding of guilty or any judgment, but instead continued the case under supervision pursuant to section 5-615(1)(b) of the Juvenile Court Act (Act). *Id.* ¶ 18. Respondent appealed the order of supervision, arguing that it was a final judgment and thus appealable. *Id.* ¶¶ 19, 26. This court dismissed the appeal for lack of jurisdiction. *Id.* ¶¶ 27, 41. In finding that the court's order was not final and appealable, we noted that the order "contained no finding of guilty and no judgment order." *Id.* ¶ 27. We also cited several cases where it was held that an order of supervision is not a final judgment. *Id.*

¶ 12 We later reached the same result in *In re Michael D.* There, the defendant was found guilty of theft following a bench trial. 2015 IL App (1st) 143181, ¶¶ 7, 9-10. The trial court entered a sentencing order, which stated, "No finding or judgment of guilty entered. The minor is placed on supervision for a period of 1 year"; the court did not state that it had made the defendant a ward of the court. *Id.* ¶¶ 14, 31. The court continued the case and appointed the State Appellate Defender " 'for purposes of an appeal in this matter.' " *Id.* ¶¶ 14-15. On appeal, we addressed our jurisdiction "to consider a juvenile supervision order entered after a finding of guilt." *Id.* ¶ 17. We concluded that the court's supervision order was not "final" for purposes of

appeal, but rather, interlocutory because the trial court had "the power to vacate it at anytime." *Id.* ¶ 54. We therefore dismissed the defendant's appeal for lack of jurisdiction. *Id.* ¶ 58.

¶ 13 Contrary to the State's claim, we do not find *Henry B.* and *Michael D.* controlling in this case. Unlike in those cases, the juvenile court, in ordering supervision, also adjudicated respondent a ward of the court and ordered the "[f]inding and judgment of guilty to stand." We ultimately find the court's order more consistent with a dispositional order, which is the final judgment in a juvenile proceeding. *In re J.N.*, 91 Ill. 2d 122, 127 (1982).

¶ 14 "The Act provides for three distinct stages of a juvenile delinquency proceeding: '[1] the findings phase, [2] the adjudicatory phase, and [3] the dispositional phase.'" *Michael D.*, 2015 IL App (1st) 143181, ¶ 24 (quoting *In re Veronica C.*, 239 Ill. 2d 134, 144 (2010)). An order of supervision must be entered during the findings stage, either before or after a finding of guilt. *Id.* ¶ 27; see 705 ILCS 405/5-615(1) (West 2012). "[T]he adjudication phase [is] where the court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court." *Michael D.*, 2015 IL App (1st) 143181, ¶ 28 (quoting *Veronica C.*, 239 Ill. 2d at 145); see 705 ILCS 405/5-705(1) (West 2012). "Under the Juvenile Court Act, a dispositional order is not to be entered until *after the court has adjudged the minor a ward of the court.*" (Emphasis added.) *Michael D.*, 2015 IL App (1st) 143181, ¶ 28 (quoting *In re M.W.W.*, 125 Ill. App. 3d 833, 836 (1984)); see 705 ILCS 405/5-705(1) (West 2012) (noting that "if [the minor] is to be made a ward of the court, the court shall determine the proper disposition best serving the interests of the minor and the public").

¶ 15 Here, the court did not order supervision at any time during the findings phase. Instead, the court ordered supervision *after* adjudging respondent a ward of the court. This is the

procedure for entering a dispositional order under section 5-705 of the Act—first there is an adjudication of wardship, and then there is an entry of a dispositional order.

¶ 16 We find the instant case analogous to *In re J.N.*, 91 Ill. 2d 122 (1982). In *J.N.*, the minor was found guilty of criminal damage to property following an adjudicatory hearing. *J.N.*, 91 Ill. 2d at 125. The trial court entered an order stating its finding and continuing the case for disposition. *Id.* It then issued two orders: an order entitled " 'Dispositional Order/Conditions of Supervision/1 yr.' " (dispositional order), and an order entitled " 'Hearing Order.' " *Id.* The dispositional order was a form order containing the word "probation" in its title with that word crossed out in ink. *Id.* It listed various " 'conditions of supervision/probation' " and stated that the matter was continued " 'for review.' " *Id.* The hearing order stated that, during the period of the continuance, "the minor was to continue under supervision through 'Juvenile Court Services' " and "that the cause was being 'continued for supervision/continued for review.' " *Id.* This court held that these orders did not constitute a final judgment because the court had merely continued the case for supervision. *Id.* at 125-26. The supreme court disagreed and vacated our ruling, noting that "in substance and realistically [the orders] constituted a final judgment." *Id.* at 126.

¶ 17 The supreme court observed that several types of dispositional orders are available, including "conditional discharge or probation with 'conditions as may be ordered by the court.' " *Id.* at 127. It then stated:

"We consider that the circuit court here entered what was in effect a dispositional order. In determining whether a judgment is final, one should look to its substance rather than to form. [Citations.] In substance, the result of the trial court's action was to place [the minor] on probation or to provide for a conditional discharge." *Id.* at 128.

The supreme court noted that the circuit court had not referred to the section of the Act addressing supervision; rather, it cited the section "which provide[d] for the dispositional orders of probation and conditional discharge." *Id.* Although it acknowledged that the minor was never explicitly found delinquent, it inferred a finding of delinquency where "[t]he court pronounced the finding of guilt in open court and in a written order that was never vacated." *Id.* It further found that an adjudication of wardship was implied under the circumstances even though it "recognize[d] that under the Act a dispositional order is not to be entered until after the court has adjudged the minor a ward of the court." *Id.* at 128-29. Ultimately, the supreme court found that "placing [the minor] on 'supervision' was to make a disposition of the case." *Id.* at 128. "[T]he judgment was final because all that remained to be done by the court was to execute the judgment," *i.e.*, "to terminate formally the status of supervision." *Id.* The supreme court rejected the State's argument that the minor's appeal was inconsistent with the section addressing supervision, which, at the time, required the minor's consent to a continuance under supervision. *Id.* at 129. It stated:

"That section permits the court to place a minor on supervision before findings and adjudication. Here, the court placed [the minor] on supervision after a finding of guilt, which [the minor] unequivocally protested and sought to challenge on appeal. Under these circumstances, that is, after being found guilty and being placed on supervision, [the minor] did not waive appeal by simply failing to express an objection to being placed on supervision." *Id.*

¶ 18 This case presents even stronger evidence that the juvenile court intended to enter a dispositional order. Here, the juvenile court, in its "sentencing order," explicitly adjudicated respondent a ward of the court and ordered the "[f]inding and judgment of guilty to stand." The

court followed the exact procedure leading up to the entry of a dispositional order. Insofar as there is a question as to whether the court truly intended to enter a final judgment on the finding of guilt, it is squarely answered by the fact that the court informed respondent of his appellate rights. Ultimately, the court gave every indication that it was seeking to enter a dispositional order. We therefore have jurisdiction to consider this appeal. See *id.* at 128-29.

¶ 19 We note that it is the imposition of supervision as a sentence in this case that has led to the confusion regarding our jurisdiction. An order of supervision can only be entered during the findings stage. Here, however, the court entered an order of supervision as a sentence at the dispositional stage. At the adjudicatory and dispositional phases, the only dispositional alternatives are set forth in section 5-710 of the Act. *Veronica C.*, 239 Ill. 2d at 146 (citing 705 ILCS 405/5-710 (West 2006)). "A 'continuance under supervision' is not listed among [the available alternatives]." *Id.* The sentence of supervision entered in this case was therefore not authorized by statute.

¶ 20 A sentence that is not authorized by statute is void. *People v. Thompson*, 209 Ill. 2d 19, 23 (2004). This court "ha[s] an independent duty to vacate void orders and may *sua sponte* declare an order void." *Id.* at 27.

¶ 21 Here, we must clearly vacate the order of supervision, as it was not an authorized disposition. In addition, however, we choose to vacate the entire sentencing order, including the adjudication of wardship. It is unclear to us whether the court intended to place respondent under supervision or enter judgment on the finding of guilt through an authorized disposition. The court agreed to go along with the recommendation of supervision, but also entered orders consistent with a final judgment of guilt. We believe it best to return the instant case to the findings stage, after the court's initial finding of guilt. By returning the case to this point in the

proceedings, the juvenile court will have the opportunity to make clear whether it intended to place respondent on supervision or proceed to the adjudicatory and dispositional stages.

¶ 22 In light of our chosen disposition, we decline to address the sufficiency of the evidence argument raised by respondent on appeal. There is a distinct possibility that respondent might receive supervision on remand, in which case there would be no final judgment of guilt and thus no reason to consider the sufficiency of the evidence. See *Henry B.*, 2015 IL App (1st) 142416, ¶ 37-38 (noting that there is no finding of guilt or judgment entered when a minor is placed on supervision). If, however, the court decides to adjudicate respondent a ward of the court and enter an authorized disposition, respondent may then appeal the underlying finding of guilt in accordance with the applicable supreme court rules.

¶ 23 In sum, we vacate the supervision and sentencing orders entered by the juvenile court and remand the cause with directions. The juvenile court shall determine on remand whether respondent should be placed on supervision; if the court finds that supervision would not be appropriate, the court shall proceed to the adjudicatory and dispositional phases of proceedings and choose a disposition that is provided for by the Act.

¶ 24 Orders vacated; cause remanded with directions.