

# RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5366-09T1

STATE OF NEW JERSEY IN THE  
INTEREST OF

O.S.

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Argued: March 16, 2011 - Decided: April 19, 2011

Before Judges Cuff and Fisher.

On appeal from the Superior Court of New Jersey, Chancery Division-Family Part, Camden County, Docket No. FJ-04-2349-09.

Sandra Simkins, Associate Clinical Professor, argued the cause for appellant O.S. (Rutgers School of Law-Camden Civil Practice Clinic, attorneys; Ms. Simkins, on the brief).

Mary Beth Wood, Senior Deputy Attorney General, argued the cause for respondent State of New Jersey (Paula T. Dow, Attorney General, attorney; Lewis A. Scheindlin, Assistant Attorney General, of counsel; Ms. Wood, on the brief).

PER CURIAM

O.S., a juvenile, having been adjudicated delinquent and committed to the Juvenile Justice Commission (JJC) for a term of fifteen months, appeals from the denial of his motion for recall. We affirm.

On February 27, 2009, Judge Dortch adjudicated O.S. delinquent for acts which, if committed as an adult, would constitute conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 2C:5-2 and 2C:35-5. He was admitted to the JJC Juvenile Medium Security Facility (JMSF) on May 31, 2009. In his recall motion, O.S. asserted that he was assaulted by other residents on two occasions. He also related that a riot occurred at the JMSF between North Jersey and South Jersey residents on December 29, 2009, that he suffered injuries during this altercation, and that staff knew that tensions were running high between these groups and did nothing to prevent the event. He also reported that he was assaulted by other residents in April 2010 and suffered a fractured jaw. He complains that not only did he experience a delay in receiving appropriate treatment but also was isolated from other residents. According to O.S., the isolation deprived him of educational opportunities and regular visits from mental health, anger management staff and social workers. He also could not call home, and staff spurned multiple requests to call his legal representatives. In addition, O.S. asserted he had not received prescribed ADHD medication.<sup>1</sup>

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<sup>1</sup> On April 4, 2011, O.S. sought to file an emergent application. In the application, counsel advised us that another physical  
(continued)

O.S. asserted the JJC had legal obligations to him that it had not met, including his right to adequate protection from harm, adequate mental health care, and access to legal representation. He claimed that these actions or omissions by the JJC violated his constitutional rights under the Eighth and Fourteenth Amendments, and the right to adequate mental health care. He also claimed that the JJC interfered with his right to counsel and violated regulations governing the use of room restriction. O.S. requested that the court "grant a recall hearing to evaluate the safety of [O.S.] remaining at JMSF."

Judge Dortch declined to recall O.S. The judge held that he retained jurisdiction to recall an adjudicated delinquent committed to the custody of the JJC, if the record suggested rehabilitation and a need to modify the disposition. On the other hand, he held that he did not retain jurisdiction to oversee a placement determination considered appropriate by the JJC. The judge observed that O.S. and other similarly situated juveniles have a civil remedy to address the conditions of any placement.

On appeal, the juvenile raises the following argument:

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(continued)  
assault to O.S. occurred on April 2, 2011.

POINT I

I. WHEN UNSAFE FACILITY CONDITIONS THREATEN THE REHABILITATION OF THE CHILD, THE COMMITTING JUVENILE COURT HAS JURISDICTION TO MODIFY DISPOSITION

A. THE JUVENILE CODE EXPRESSLY GIVES THE COMMITTING JUVENILE COURT JURISDICTION TO MODIFY A DISPOSITION

B. THE JURISDICTION OF THE JUVENILE COURT IS DESIGNED TO BE FLEXIBLE, EXPANSIVE AND PRAGMATIC IN ORDER TO PROMOTE REHABILITATION EFFECTIVELY

C. THE JUVENILE CODE WILL ONLY ACHIEVE ITS PURPOSE OF PROVIDING FOR THE PROTECTION AND CARE OF CHILDREN IF THE JUVENILE COURT RETAINS JURISDICTION THROUGHOUT PLACEMENT

The Family Part of the Superior Court exercises "exclusive jurisdiction in all cases where it is charged that a juvenile has committed an act of delinquency . . . ." N.J.S.A. 2A:4A-24(a); State in the Interest of C.V., 201 N.J. 281, 295 (2010). The N.J. Code of Juvenile Justice (Code), N.J.S.A. 2A:4A-20 to -48, authorizes a Family Part judge "to enter dispositions that comport with the Code's rehabilitative goals." C.V., supra, 201 N.J. at 295; State in the Interest of J.L.A., 136 N.J. 370, 376-77 (1994).<sup>2</sup> The Code authorizes a Family Part judge numerous

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<sup>2</sup> We must acknowledge, however, that punishment has now joined rehabilitation as a goal of the juvenile justice system. See State v. R.G.D., 108 N.J. 1, 8 (1987) (noting that "[p]ublic concern about unrehabilitated juvenile offenders [has] stimulated a 'just des[s]erts' approach to juvenile crime.").

options to fashion an appropriate disposition, N.J.S.A. 2A:4A-43(b), and provides guidance for judges considering incarceration as an appropriate disposition, N.J.S.A. 2A:4A-44. The Family Part judge also retains jurisdiction in any delinquency matter to change or modify a disposition at any time by way of a recall hearing. State in the Interest of R.M., 141 N.J. 434, 453 (1995); see R. 5:24-3, -5, and -6; N.J.S.A. 2A:4A-43 and -44. Once, however, a Family Part judge determines that a juvenile requires incarceration and commits that juvenile to the care, custody and control of the JJC, the Family Part judge has no authority to direct the conditions of a juvenile's confinement, such as the facility to which the juvenile should be assigned, or the level of restrictions or privileges given to a juvenile, or oversight of sanctions imposed on a juvenile for conduct in the assigned facility. Cf. Breeder v. N.J. Dep't of Corrs., 132 N.J. 457, 469 (1993) (explaining sentencing is a "judicial function" and "the [Department of Corrections] fulfills the executive function of administering a system of imprisonment").

The disposition fashioned by a Family Part judge is a judicial function. See C.V., supra, 201 N.J. at 295-96 (discussing the authority reposed in Family Part judges to fashion an appropriate response to delinquent behavior). When

the juvenile demonstrates that he has been rehabilitated, a Family Part judge may recall the juvenile and modify the disposition. N.J.S.A. 2A:14A-45. This is a wholly different function than oversight of the place and terms of confinement and the sanctions imposed on a juvenile for infractions of facility rules. Oversight of the terms and conditions of placement is not a dispositional concern and is not within the jurisdiction of a Family Part judge.

O.S. argues that his motion for recall does not require the Family Part judge to exceed his retained jurisdiction. He contends that the conditions of confinement are such that any rehabilitative effect of the confinement has been thwarted. To that end, O.S. insists that the Family Part judge can recall O.S. to address these impediments to rehabilitation. We disagree.

The Legislature has vested the JJC and its Executive Director with broad discretionary powers to administer the work of the Commission, including the authority to "assume the custody and care of all juveniles committed by court order . . . ." N.J.S.A. 52:17B-170(e)(7), -176. The Executive Director is also charged with the immediate supervision and management of all State secure juvenile facilities, N.J.S.A. 52:17B-170e(8), -171b(1), which includes the direction of the day-to-day

management of the Commission's facilities, institutions, and programs, N.J.S.A. 52:17B-171b(2). As part of that statutory delegation of authority, the Executive Director is empowered to designate the place of confinement and custody classification for all juveniles under her custody and care. N.J.S.A. 52:17B-170e(7), (8), (18); see also N.J.A.C. 13:95-8.5 and 13:100-1.1 to - 2.8 (regulations governing classification assignment).

Once the Family Part judge determines that incarceration is the proper disposition, the place of confinement and the day-to-day issues that arise during that confinement, no matter the magnitude of those issues, are not a concern that affects the fundamental decision of whether the needs of the juvenile and the public require incarceration.<sup>3</sup> No matter how O.S. attempts to couch his argument, to do as O.S. suggests inserts the Family Part judge into the day-to-day management of the place of confinement. That is manifestly beyond his authority.

We do not mean to suggest that O.S. is without a remedy to address threats to his personal safety. We have been informed that he and others have filed a complaint in the United States District Court. We simply hold that the Family Part judge does

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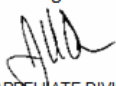
<sup>3</sup> In addition, O.S.'s argument focuses solely on the rehabilitative goal of a disposition. He does not acknowledge that the disposition must also recognize the role of punishment in the juvenile justice system. State in the Interest of J.D.H., 171 N.J. 475, 483 (2002).

not have the authority under the guise of a recall motion to address whether the facility to which a juvenile has been assigned is appropriate, whether the classification at a facility is appropriate, whether particular sanctions or restrictions are appropriate, or whether the JJC is discharging its serious responsibilities to the juveniles who have been committed to its custody and care.

We, therefore, affirm the June 10, 2010 order denying the motion for recall filed by O.S.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION