

North Carolina Criminal Law Blog

Disposition Continuance to Provide for Time in Secure Custody Not Allowed

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Are there limits on the court's ability to continue the dispositional hearing in a delinquency case? The Court of Appeals recently identified one limit *[In re D.R.F., Jr., _____ N.C.App. _____ \(May 7, 2024\)](#)*.

<https://appellate.nccourts.org/opinions/?c=2&pdf=42897>. The court held that a continuance for the sole purpose of placing the juvenile in secure custody as punishment before disposition is not a valid basis for that continuance and constitutes an abuse of discretion.

The Facts of the Case

The juvenile was adjudicated delinquent for communicating a threat to commit mass violence on educational property. The trial court then announced it was moving to disposition and the State requested a continuance. The State's basis for the request included the following statements.

“Your Honor, the State will request that the disposition be delayed and hold the juvenile in custody for seven days prior to disposition and I will tell the Court there is a reason for that. He has been adjudicated delinquent on three prior communicating threats. One being another count of disorderly conduct at school. He was on probation for communicating threats when this happened. Obviously, if it was alluded to, I didn’t want to allude to it since we are now in a disposition or prior to disposition. Obviously, if there is any time to take this serious it is now. Unlike other ones, there is no history, but this there is history. I will show you the proof. He is a level II with four points. I will show you the approved complaints. Again, this is a pattern of conduct that needs to be stipend [sic], so I will ask Your Honor to waive disposition for seven days in order for the juvenile to be held in secure custody. Thank you.” Slip op. at 17.

Defense counsel indicated they were ready to proceed with disposition and that they did not object to a continuance, but that they did object to time in secure custody pending disposition. The trial court granted the State’s request for a continuance and placed the juvenile in secure custody for seven days pending disposition. The adjudication order noted the continuance of the dispositional hearing and placement of the juvenile in secure custody pending that hearing. The juvenile timely filed notice of appeal of the adjudication and disposition orders after disposition was entered in the matter.

The Court’s Analysis

The Issue was Preserved for Appeal

The State first argued that this issue was not preserved for appeal because the ruling regarding the continuance and placement in secure custody was not designated in the Notice of Appeal. The court held that this argument was entirely without merit because the juvenile filed written Notice of Appeal from the adjudication order which contained the ruling continuing disposition and placing the juvenile in secure custody.

The Issue Qualifies for Exception to the Mootness Doctrine

The State also argued that appeal of this issue was moot because the juvenile already served the seven days in secure custody. The secure custody days were served immediately before the disposition hearing that was held on June 9, 2022. The court noted that this assertion was “baseless.” Slip. Op. at 16. Relying on precedent established in *In re Z.T.W.*, 238 N.C. App. 365 (2014) <<https://casetext.com/case/in-re-ztw>>, the court explained that a secure custody order can be appealed after its expiration on the grounds that the order is capable of repetition, yet evading review. The court explained in *Z.T.W.* that a temporary secure custody order meets this criteria as “an order implementing an inherently temporary measure that is likely to recur in other instances in the future.” *Z.T.W.*, 238 N.C. App. 373.

There was No Valid Basis for the Continuance and Use of Secure Custody

The court applied an abuse of discretion standard to the trial court’s order continuing the matter and placing the juvenile in secure custody. That analysis included a review of the statutory criteria for ordering a continuance. Pursuant to **G.S. 7B-2406**

<https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2406.pdf>, continuances can be granted

- for good cause as long as is reasonably required a) to receive additional evidence, reports, or assessments that the court requested or other information needed in the best interests of the juvenile, or b) to allow for a reasonable time to conduct expeditious discovery, or
- in extraordinary circumstances when necessary a) for the proper administration of justice or b) in the best interests of the juvenile.

There were no arguments made in this case that either the good cause prong or the extraordinary circumstances prong of the statute were met. Instead, the court noted that “the continuance of the disposition hearing was for the sole purpose of placing Daniel in secure custody as punishment prior to any disposition hearing and not for any legitimate purpose in aid of disposition.” Slip op. at 17-18. The trial court’s decision to continue disposition and place the juvenile in secure custody pending disposition was therefore made without a valid statutory basis, constituting an abuse of discretion.

Take Home Lesson

There are many times when the court can, and sometimes must, continue disposition. For example, under certain circumstances the court must continue disposition in order to obtain a comprehensive clinical assessment or to provide time for a care review team to convene. **G.S. 7B-2502(a2), -(a3)** https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2502.pdf. These continuances fall squarely within the good cause prong of G.S. 7B-2406.

To comply with the holding in this case, the court may want to consider the following two-step process before ordering a continuance.

- Clearly identify the reason the hearing is being continued and
- Ensure that reason meets either the good cause or extraordinary circumstances criteria contained in G.S. 7B-2406.



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