

Circuit Court for Prince George's County
Case No. JA131226

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1070

September Term, 2016

IN RE: T.B.

Woodward,
Leahy,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: March 15, 2017

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

On September 9, 2013, the State filed a petition alleging that appellant, T.B., was a delinquent child for committing the following offenses: second degree rape, third degree sexual offense, fourth degree sexual offense and second degree assault. On January 30, 2014, the Circuit Court for Prince George's County (Woodard, J.), found appellant not competent to stand trial, a determination which continued to be reached following multiple review hearings in 2014 and 2015. On June 27, 2016, appellant moved to dismiss the petition on the ground that he had not attained competency within 18 months. The court (Dawson, J.) conducted a hearing and denied appellant's motion to dismiss and placed the allegations on the stet docket on the condition that appellant obtain and complete sex offender therapy and treatment and have no unsupervised contact with children under 12 years of age. Appellant filed the instant appeal in which he raises the following question for our review:

Did the juvenile court err in denying appellant's motion to dismiss where appellant was found not to be competent to stand trial and was not found to have attained competency within 18 months?

FACTS AND LEGAL PROCEEDINGS

On June 15, 2013, then-fourteen-year-old T.B. was at the home of the six-year-old victim. T.B. instructed the victim to go to the bathroom and followed her inside, whereupon he pulled down the victim's pants and made her lie on the floor. T.B. removed his pants, inserted his penis into the victim's vagina and had sexual intercourse with her.

The six-year old victim reported the attack within a few days. On June 19, 2013, T.B., accompanied by his parents, waived his rights and agreed to be interviewed at the

Prince George's County Police Department. During the interview, T.B. admitted orally and in writing, that he had sexual intercourse with the six-year old victim.

T.B. was, consequently, charged with second-degree rape, second-degree assault, third-degree sexual offense and fourth-degree sexual offense. The juvenile petition alleged that, "as a direct result" of T.B. committing these offenses, he "require[d] guidance, treatment, and rehabilitation."

On September 9, 2013, the State filed a petition alleging that appellant was a delinquent child. On November 14, 2013, the court ordered that appellant be evaluated to determine his competency to proceed and the Department of Juvenile Services was ordered to "promptly" provide the Department of Health and Mental Hygiene (DHMH) the documents it needed to conduct its review of T.B. The DHMH was further ordered to evaluate T.B. and submit its report within 45 days regarding T.B.'s competency to stand trial. A competency hearing was scheduled for January 3, 2014.

On December 4, 2013, Dionna Witherspoon, Chief of the Juvenile Pre-Trial Services, sent T.B.'s trial counsel a letter, *via* facsimile, indicating that a request initiated on November 18, 2013 for pertinent documents and a questionnaire had not been completed. Ms. Witherspoon also indicated that the delay affected the ability of her office to complete the evaluation within the required 45-day timeline and prepare for the hearing scheduled on January 3, 2014. T.B.'s counsel submitted the required documents on December 8, 2013. A joint motion was filed and the competency hearing was rescheduled for January 30, 2014.

On December 18, 2013, Dr. Deborah D. Gambles., Psy. D., evaluated T.B. During the interview, T.B. was anxious and clearly "nervous about the situation." In a January 3, 2014 report, Dr. Gambles concluded that T.B., who had struggled with impulse control, was not competent. However, Dr. Gambles opined that, with interventions, T.B. possessed a substantial probability of attaining competency within the foreseeable future.

On January 17, 2014, the DHMH issued a report in which it opined that appellant was not competent to stand trial but possessed a substantial probability of attaining competency with services. The DHMH further reported that appellant presented a low risk for future dangerous behavior towards himself or others. Based on the DHMH report, the court found appellant not competent to stand trial by Order dated January 30, 2014. The court also directed the DHMH to provide appellant with competency attainment services for an initial period of 90 days while he remained in his parents' custody.

T.B. did not begin to receive the ordered attainment services until three months later. Witherspoon informed the juvenile court that she had received its order on March 25, 2014 and was unable to reach T.B.'s guardian until 21 days after that date. On April 24, 2014, the parties appeared to review T.B.'s progress. T.B. confirmed that there "had been some back and forth" and a "lot of confusion" regarding the court's previous Order and that, as a result, T.B. had not received attainment services the entire 84-day period between January 30, 2014 and April 24, 2014. The case was continued in this status and a review hearing was scheduled for August 15, 2014.

Between April 30, 2014 and June 16, 2014, T.B. participated in attainment services.

On July 7, 2014, Dr. Gambles reevaluated T.B. In a report dated July 29, 2014, Dr. Gambles concluded that T.B., who had "significant problems with . . . impulsivity," was incompetent and did not possess a substantial probability of attaining competency. At an August 15, 2014 review hearing, counsel relayed Dr. Gambles's latest findings to the juvenile court. The court continued the case in its present status, ordered further attainment services and scheduled a review hearing for December 8, 2014.

Between September 14, 2014 and October 13, 2014, T.B. participated in thirteen competency attainment educational appointments with Licensed Certified Social Worker-Clinical, Sharon Richardson. On October 29, 2014, Dr. Eric J. Lane, Psy. D., evaluated T.B. In a November 13, 2014 report, in which Dr. Lane reserved the right to alter his opinions based on future information not yet compiled, Dr. Lane concluded that T.B. was incompetent and did not possess a substantial probability of attaining competency. Dr. Lane further opined that there was "no clear evidence to suggest that [T.B.] was exaggerating cognitive limitation in an apparent attempt to avoid legal proceedings."

The December 8, 2014 competency review hearing was postponed because the State needed additional time to provide T.B. with attainment services. Between October 29, 2014 and February 23, 2015, T.B. participated in eight competency attainment educational appointments. Dr. Lane reevaluated T.B. on February 23, 2015. In a March 9, 2015 report, while again reserving the right to alter his opinion based on future information, Dr. Lane renewed his conclusions that T.B. was incompetent, that he did not possess a substantial probability of attaining competency and that there was no clear evidence that T.B. was

malingering.

On April 10, 2015, the parties appeared before the juvenile court for a competency hearing. The State noted that, although the DHMH had concluded that T.B. was incompetent and did not possess a substantial possibility of attaining competency, it "indicated that there are certain interventions that might have some impact on the conditions affecting his competency." The juvenile court reviewed T.B.'s responses to the evaluator's questions and opined that they were "pretty good." The State agreed that T.B. "did very well" and asked that the juvenile court continue the attainment services. T.B.'s counsel countered that some of T.B.'s answers "were explanations that were provided" to him "after initial questioning." The juvenile court responded that, if "somebody else may be providing answers," then it could not trust the evaluations.

Counsel asked the juvenile court to dismiss the petition because T.B. had received attainment services for over two years without attaining competency and therefore the case had stretched "beyond the time frame for this matter to be dismissed." The prosecutor argued that, despite the DHMH's recommendation, the juvenile court was free to determine for itself whether T.B. should "obtain services." The juvenile court denied T.B.'s Motion to Dismiss, stating: "I understand there's an educational issue, but the Court will order attainment services to continue in this matter."

The next proceeding was scheduled, without objection, for August 7, 2015, a week after the 18-month period from the initial finding that T.B. was incompetent was reached. The day before that hearing, on August 6, 2015, T.B.'s counsel filed a Motion to Continue

Competency Review to retain her own expert to evaluate T.B. The juvenile court granted counsel's motion, rescheduled the competency hearing for the requested date and ordered that T.B. continue to receive competency attainment services. On August 27, 2015, counsel informed the juvenile court that she had forgotten to strike the matter for that day because the case was scheduled for a December 4, 2015 competency hearing.

On November 5, 2015, Witherspoon advised the juvenile court that, "due to scheduling conflicts," T.B. would not be reevaluated until December 1, 2014 and therefore the report would not be ready in time for the December 4, 2015 hearing. Based on that letter, counsel filed another motion to continue the competency hearing, which the juvenile court granted.

Between October 15, 2015 and December 1, 2015, T.B. participated in thirteen competency attainment appointments with Ms. Richardson, during which she conducted periodic assessments of his base-level knowledge of legal terms and concepts. During those assessments, T.B. accurately described the following concepts: plea bargains, purpose of a trial, what could happen if he was found guilty, the importance of being honest with one's attorney, the role of the prosecutor, the role of the judge, evidence, witnesses, the charges against him, sentencing possibilities and probation. Based on T.B.'s responses, Ms. Richardson concluded that T.B. "appear[ed] to continue to grasp [the] basic concepts" of the attainment lessons.

On December 1, 2015, Dr. Lane reevaluated T.B. and, in a December 15, 2015 report, Dr. Lane concluded that there existed clear evidence that T.B. had feigned

incompetency:

During this evaluation, there existed clear evidence that [T.B.] was feigning cognitive impairment and an inability to learn basic competency attainment terms and concepts. The extent of cognitive limitations that he presented during this competency to proceed evaluation exceeds what would be expected given his known developmental and clinical histories, as well as documentation from his competency attainment services provider. As recently as November 28, 2015, [T.B.] accurately defined many of the legal terms and concepts that comprised the mental status examination specific to legal proceedings during this evaluation on December 1, 2015

Competency to Proceed requires that an individual have the capacity to perform a number of specific intellectual and interpersonal functions. During this evaluation, [T.B.] did not display the intellectual and cognitive capacities that were both general as well as specific to the tasks required to be Competent to Proceed and that were within the range of capacities expected for an adolescent of the same chronological age. However, compared to his previous competency to proceed evaluations with this examiner, [T.B.'s] performance during this evaluation was less robust. His responses indicated that he was feigning deficits. Consistent with this, he was also assigned below change-level results on a standardized measure of performance validity. His responses during this evaluation [were not] consistent with this [sic] answers given during recent competency attainment services with Ms. Richardson, when [T.B.] has been able to actually define many of the legal terms and concepts assessed during this competency to proceed evaluation. There is no clinical explanation for this decline.

My opinion is based on the capacities that [T.B.] demonstrated on examination, as well as during recent competency attainment services appointments, rather than any particular historical diagnosis, intelligence testing results, IEP disability designation, or behavioral patterns. His responses during the current[] evaluation indicated an exaggerated inability to understand the nature and the object of the proceedings against him, as well as assist in his defense. Conversely, during recent competency attainment services appointments with Ms. Richardson, [T.B.] has consistently demonstrated the capacity to assist in his defense.

In this case, the available information indicated [that T.B.'s] factual/specific knowledge is in fact sufficient. [T.B.] has been able to retain information regarding both basic and abstract legal terms and concepts. Despite his presentation during this evaluation, the reports from his competency attainment provided document that [T.B.] has benefitted from participating in competency attainment services, and in

those sessions, [T.B.] has demonstrated a sufficient understanding of courtroom procedures. [T.B.'s] demeanor and his verbal responses during the current evaluation suggest that he would be able to behave appropriately in Court. [T.B.] is able to confer with his attorney both before and during courtroom proceedings.

During competency attainment sessions, [T.B.] has demonstrated the ability to describe the allegations against him and he has demonstrated the communication and decision making skills necessary to adequately assist his attorney in his own defense. Overall, there is in no credible evidence that [T.B.] lacks the capacity to appreciate the allegations against him or the ability to consult with his attorney in his defense. As described above, during this evaluation, [T.B.] engaged in a strategy meant to present himself as cognitively impaired and he feigned significant deficits and difficulties. As such, it is possible that he will display this same strategy when working with his attorney and in court. It is important to note, however, that although [T.B.] may choose to present himself as severely impaired, this is a volitional choice and there is no evidence at the present time that he is unfit to proceed. He is capable of assisting his attorney should he choose to do so.

Rather than proceeding with a competency hearing on December 21, 2015, T.B.'s counsel requested a "short continuance" for T.B. to be evaluated by an expert retained by her. Without objection, the juvenile court granted the request and rescheduled the hearing for January 14, 2016; however, the January 14, 2016 competency hearing was rescheduled.

On December 30, 2015, Dr. LaFaye Marshall, Psy. D, CSOTP, a doctor for the Office of the Public Defender, evaluated T.B. In a January 8, 2016 report, Dr. Marshall stated that he was "unable to make a definitive decision regarding [T.B.]'s competency to proceed" and recommended that T.B. undergo a neuropsychological evaluation. Based on that report, counsel moved to continue the competency hearing, for 30 days, to February 22, 2016, which the juvenile court granted.

Dr. Joette James, Ph.D., ABPP-CN, a doctor retained by appellant's counsel, evaluated T.B. on February 11, 2016. However, Dr. James did not prepare her report before

the next scheduled hearing because she wanted to meet with T.B. again before doing so. On that basis, T.B. requested a one-month postponement. Without objection, the juvenile court rescheduled the hearing for March 31, 2016. The March 31, 2016 hearing was postponed to May 5, 2016 because Dr. James was unavailable.

Dr. James reevaluated T.B. on April 25, 2016, but did not submit her report before the May 5, 2016 hearing. As a result, that hearing was rescheduled to May 23, 2016. On that date, Dr. James submitted her report in which she concluded that, due to neurological deficits, T.B. was not competent to proceed and unlikely to attain competency through educational or psychological programs.

At the May 23rd hearing, T.B.'s trial counsel moved to dismiss the case, arguing that "[i]t's been over three years at this point." The State explained that, because it had "just received the report" that morning, it was not in a position to have its witness "counter" Dr. James's report. The hearing was continued to June 27, 2016.

At the outset of the June 27, 2016 hearing, counsel renewed her Motion to Dismiss. Counsel referred to the 18-month limitation in Section 3–8A–17.9 and argued that dismissal was "mandatory." According to counsel, the juvenile petition "should have been dismissed back in August of 2015," which predated Dr. Lane's finding of competency. Therefore, counsel reasoned, had the case been dismissed at the 18-month mark in August 2015, they "would have never reached a finding of competency by anyone."

The State opposed the Motion to Dismiss. The prosecution pointed out that the State had acquiesced to T.B.'s "multiple requests for continuances" and that counsel had multiple

opportunities to have the expert for T.B. evaluate him. In light of the fact that Dr. Lane's report, in which he deemed T.B. competent, was then six months old, he felt that it was "too old" as a precondition to Dr. Lane testifying. Therefore, due to the delay, in order for Dr. Lane to testify at a hearing during which T.B. could present Dr., James, the court would have to order Dr. Lane to reevaluate T.B. The juvenile court denied the motion to dismiss.

Immediately following that ruling, T.B.'s counsel indicated that there existed "another resolution," *i.e.*, T.B. would accept a "stet" with the condition that he receive counseling. The State agreed to the proposed course.

In response to the court's inquiry, T.B. confirmed that he had reviewed the Joint Motion to Place Case on Stet Docket and that he agreed to its terms. The joint motion required T.B. to "obtain and complete sex offender therapy and treatment" and to have "no unsupervised contact with children under 12 years of age." The joint motion specifies that, if T.B. complies with those terms, his case will be dismissed on June 28, 2017. Without making a finding as to T.B.'s competency, the court placed the case on the stet docket.

DISCUSSION

Standard of Review

During our review of the circuit court's decision in a juvenile delinquency matter, "[w]e review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact." *In re Elrich S.*, 416 Md. 15, 30 (2010).

To resolve a question of law that is controlled by a statute, this Court must 'identify and effectuate the legislative intent underlying the statute(s) at issue.' While this Court must be guided by the plain language of the applicable statute, we must 'read

statutory language within the context of the statutory scheme, considering the purpose, aim, or policy of the enacting body.’

Thompson v. State, 412 Md. 497, 505 (2010) (quoting *Serio v. Baltimore County*, 384 Md. 373, 390 (2004)).

Contentions of the Parties

Appellant argues that the circuit court erred by denying his Motion to Dismiss despite the fact that he was not found competent to stand trial within the 18-month statutory period provided for under Maryland law. Referring to the controlling statute, appellant asserts that the language “shall” is mandatory and, therefore, the circuit court, sitting as a juvenile court, did not have the discretion to deny his Motion. According to appellant, after the 18-month statutory period lapsed, the court was required to dismiss his case.

The State responds that, “[a]lthough it is technically true that T.B. was not deemed competent within 18 months after the initial incompetency finding,” the extension of time beyond the statutory period was “attributable to T.B.’s strategic decision to prolong the case by feigning incompetency.” The State urges that “the juvenile court could not simply disregard the ‘clear evidence’ that established that T.B. had feigned incompetency during that period[.]” Accordingly, the State asserts that, because T.B.’s “malingering” was not discovered until after the statutory period ended, he should not be entitled to a “boon” nor permitted to “benefit from his deceit” by having the delinquency petition dismissed.

In his reply brief, appellant, through counsel, asserts that the State did not address the arguments in his appellate brief, but rather, contends that the juvenile court properly

denied his Motion to Dismiss the delinquency petition because of what the State describes as his “strategic decision to prolong the case by feigning incompetency.” Appellant notes that the State’s premise “rests upon two faulty premises,” *i.e.*, that the juvenile court had discretion to deny the Motion to Dismiss and that the court had found appellant feigned competency.

Analysis

Juvenile proceedings are not adult, criminal proceedings. *See e.g. In re Alexander*, 16 Md. App. 416, 420 (1972) (holding that “it was the plain legislative intent that a finding of delinquency in a juvenile court should not be equated in any way with a conviction for crime”). Accordingly, “[j]uvenile proceedings are governed by a separate, pervasive scheme of specific statutes and rules developed by the Maryland General Assembly and the Court of Appeals.” *Thompson*, 412 Md. 497 at 988 (citing *In re Victor B.*, 336 Md. 85, 96 (1994)). The Juvenile Causes Act, Title 3, subtitle 8(a), of the Courts and Judicial Proceedings Article of the Maryland Code governs juvenile proceedings for children who do not qualify as children in need of assistance,¹ but who are not to be considered as adults. MD. CODE ANN., CTS. & JUD. PROC. (“CJP”) § 3–8A–01, *et seq.* Title 11 of the Maryland

¹ MD. CODE ANN., CTS. & JUD. PROC. § 3-801. “‘Child in need of assistance’ means a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.” In the instant case, juvenile appellant, T.B. is not CINA.

Rules applies to juvenile causes. MD. RULE 1–101(k).

In *In re Keith W.*, 310 Md. 106 (1987), the Court of Appeals noted that “the overriding goal of Maryland's juvenile statutory scheme is to rehabilitate and treat delinquent juveniles so that they become useful and productive members of society.” This Court noted that, in keeping with this purpose, “[t]he General Assembly included the creation of competency, character development, protection and treatment of the child, and wholesome mental and physical development” in the juvenile statutory scheme. *In re D.M.*, 228 Md. App. 451, 467 (2016). Furthermore, “[t]he General Assembly has made plain in the juvenile causes subtitle its desire that such matters proceed expeditiously.” *In re James S.*, 286 Md. 702, 712 (1980).

“[I]f a competency issue has been generated, the circuit court must first make two determinations, (1) whether there is ‘probable cause to believe that the child has committed the delinquent act’ and (2) whether there is ‘reason to believe that the child may be incompetent to proceed[.]’” *In re Lakeshia M.*, 398 Md. 551, 560 (2007) (quoting § 3–8A–17.1(a)). “If the court finds that those factors are present, the court does not proceed to determine competence; rather, it ‘shall stay all proceedings and order an evaluation of the child's mental condition[.]’” *Id.* (quoting § 3–8A–17.1(a)). The evaluation is conducted by a “qualified expert.” § 3–8A–17.3(a)(1).

Within 15 days after receipt of the qualified expert’s report, the juvenile court is required to hold a hearing to determine the child’s competency. § 3–8A–17.4(a)(1). At the hearing, the court will then determine whether the juvenile is competent to proceed. § 3–

8A–17.4(b). The finding of fact is based on the qualified expert’s report and the State bears the burden of proving the juvenile’s competency beyond a reasonable doubt. § 3–8A–17.4(c–d). The State and/ or juvenile may call other expert witnesses to testify at the competency hearing. § 3–8A–17.1(a)(3).

If the court determines that the juvenile is incompetent, but that “there is a substantial probability that the child may be able to attain competency in the foreseeable future and that services are necessary to attain competency,” then a juvenile court can order attainment services, through the DHMH, for the juvenile for an initial period of “not more than 90 days.” § 3–8A–17.6(a). Attainment services may be ordered, by the court, in increments no greater than six-month periods. § 3–8A–17.8(c)(3)(i).

However, if the child has not gained competency within 18 months after the date of the court’s finding of incompetency and committed an act that would constitute a felony if the child was treated as an adult, then, as § 3–8A–17.9 provides:

The court *shall* dismiss the delinquency petition or the violation of probation petition if the child has not attained competency within: (1) 18 months after the date of the finding of incompetency if the child is alleged to have: (i) Except as provided in item (2) of this section, committed an act that would be a felony if committed by an adult

(Emphasis supplied). The language of § 3–8A–17.8(c)(3)(i) reiterates that any additional attainment services and competency hearings that are ordered by the juvenile court after the initial finding of incompetency with the potential to gain competency in the foreseeable future, are “[s]ubject to the time periods for dismissal of the case specified in § 3–8A–17.9[.]”

However, when a court determines that a child is incompetent and unlikely to gain competency in the foreseeable future, the Juvenile Causes Act provides that, “the court: (1) [m]ay dismiss the delinquency petition” without ordering further services or competency hearings, but that, regardless, “[a]fter the expiration of the time periods for dismissal specified in § 3-8A-17.9 . . . [the court] *shall* dismiss the delinquency petition or violation of probation petition.” § 3-8A-17.7(c) (Emphasis supplied).

As the foregoing illustrates, subtitle 8(A) of Title 3 of the Juvenile Causes Act is replete with language connoting varying levels of discretion to the juvenile court. Typically, “use of the word ‘may,’ [] connotes a discretionary act, *i.e.*, one that is not required, in contrast to the word ‘shall,’ which in many contexts is mandatory, that is, connoting a required act.” *Heit v. Stansbury*, 199 Md. App. 155, 158 (2011). However, “a statute or rule may be mandatory and yet not require dismissal as a sanction for failure to comply with its provisions.” *Keith W.*, 310 Md. at 104 (citations omitted).

Keith W., concerned Maryland Rule 11–114(b)² that governed the scheduling of an adjudicatory hearing that “shall be held” within a specific number of days following service of the petition or the denial of a request for waiver. The Rule in *Keith W.* did not specify a sanction for failure to hold the adjudicatory hearing within the requisite number of days. Rule 1–201(a) provides that,

[w]hen a rule, by the word ‘shall’ or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. *If no consequences are prescribed, the court may compel compliance with the rule or*

² Maryland Rule 914 at the time of *Keith W.*

may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

310 Md. at 102 (Emphasis supplied). Accordingly, the Court, in *Keith W.*, held, “[t]hus, in determining whether dismissal is an appropriate sanction for a violation of [Rule 11–114(b)], a judge presiding over a juvenile cause should examine the totality of the circumstances as required by Rule 1–201.” 310 Md. at 109.

Furthermore, the Court, in *Keith W.*, noted that, by evaluating the dismissal of juvenile delinquency petition *via* a totality-of-circumstances analysis,

the judge must keep in mind the overriding purpose of the juvenile statute along with the fact that this purpose will ordinarily not be served by dismissal of the juvenile proceeding. Neither the juvenile nor society should be denied the benefits of the juvenile's rehabilitation because of a technical violation of [Rule 11–114(b)]'s scheduling requirements. Nevertheless, we do not foreclose the possibility that under some circumstances dismissal will be a proper sanction.

Id. at 109–10.

Appellant, in *Keith, W.*, argued that dismissal was required pursuant to *State v. Hicks*, 285 Md. 310 (1979) and *In re James S.*, 286 Md. 702 (1980). Regarding *Hicks*, the Court responded that,

[t]he considerations in the juvenile context are vastly different from those in the criminal context. In contrast to [Rule in *Hicks*], [Rule in *Keith W.*] was not enacted to ‘put teeth into’ a mandatory statute enacted by the General Assembly. Furthermore, *in the juvenile context the General Assembly has placed no limitations upon the time within which an adjudicatory hearing must be held.* Finally, and more significantly, the purpose of Maryland's juvenile statute is not ordinarily best served by dismissal of the proceedings.

Id. at 105–06 (Emphasis supplied).

Regarding *James S.*, the Court concluded that, despite the identical language

between the Rule at issue, in *Keith W.*, and the statute at issue, in *James S.*, “that [the statute] was like any other statute of limitations and dismissal with prejudice was the required sanction when the statute's time limitations were not met. Clearly, [Rule in *Keith W.*] is not a statute of limitations and, thus, *James S.* is inapposite.” *Id.* at 108 (citing *James S.*, 286 Md. at 713).

In the instant case, the statutory time limit in § 3–8A–17.9 functions more like a statutory limitation as described in *James S.*, *supra*, as opposed to the discretionary scheduling time period described in *Keith W.*, *supra*. As the Court of Appeals noted in *James S.*, “[h]ad the legislature intended a more flexible time period in Section 3-812(b), the legislature would have used the word ‘may’ or would have allowed for an extension of the 15 day time limit. No such extension appears to be allowed under Section 3-812(b).” 286 Md. at 704. Although § 3–8A–17.9 does permit, on a finding of incompetency with a likelihood of gaining competency in the foreseeable future, six-month extensions for attainment services and reevaluation by the court, the statute also clearly requires that these extensions not exceed 18 months, using the mandatory language of “shall” as opposed to “may.”

Furthermore, the statute at issue, in the case *sub judice*, prescribes a sanction for noncompliance, *i.e.*, dismissal. The Rule at issue in *Keith W.* did not and, therefore, it was appropriate for the juvenile court in *Keith W.* to engage in a Rule 1–102 totality-of-the-circumstances analysis, as prescribed by the Maryland legislature.

Accordingly, it is clear, from the language of the statute, that the Legislature did not

confer upon the juvenile court the discretion to examine the totality of the circumstances before dismissing a delinquency petition, pursuant to § 3–8A–17.9. Therefore, we hold that the circuit court did not have discretion to deviate from the 18-month expiration requirement.

The State’s argument is that “[t]he governing statute [] is entirely silent as to how a juvenile court should proceed where, as here, the juvenile has feigned incompetency” and that “the juvenile court could not simply disregard the ‘clear evidence’ that established that T.B. has feigned incompetency during that [statutory] period in order to avoid responsibility for raping a six-year-old child.” According to the State, although the “malingering” was not discovered until after the 18 months expired, “T.B. should not be allowed to benefit from his deceit.”

We agree with appellant that the State is proceeding on the faulty premise that presupposes T.B. feigned incompetency. As the juvenile court clarified several times, on the record, *there had been no judicial determination regarding T.B.’s competence, vel non*. The State may be correct in pointing out that the statute is silent regarding how to proceed in a case where the juvenile has feigned ignorance. However, the statute is very clear about the 18-month statutory limitation. Moreover, the statutory violation was not merely a couple of days; rather, the June 27, 2016 hearing, where appellant’s renewed Motion to Dismiss was denied, occurred nearly a year *after* the eighteen month statutory period had already expired.

The State also argues that dismissing the delinquency petition would not further the

purpose of the Juvenile Causes Act. According to the State,

[g]iven the severity of the conduct that T.B. is alleged to have committed—the rape of a six-year-old child—the harm that would be inflicted should T.B. reoffend would be enormous. Therefore, by not dismissing the juvenile petition and instead requiring that T.B. satisfy his obligations under the joint stet agreement, the purpose of protecting the public interest is advanced.

This logic imbues § 3–8A–17.9 with a discretionary evaluation of the dismissal of delinquency that is not currently present. The statute requires dismissal after the expiration of the 18-month limit. Legislative history establishes that, although review of the initial incompetency finding can be revisited in six-month intervals, renewals cannot occur beyond the 18-month limit. Despite the abominable act of the sexual abuse of a six-year-old victim, we are compelled to follow the law as written. We therefore hold that the juvenile court erroneously denied appellant’s Motion to Dismiss.

Finally, we note that this appeal is properly before this Court, despite the juvenile court’s placement of the matter on the stet docket.³ Although we would normally address jurisdictional issues as a preliminary matter, the preceding analysis informs our view that the appeal is properly before us.

Because placement of a matter on a stet docket is not a final judgment, it would be

³ B.H. v. Anne Arundel Cty. Dep’t of Soc. Servs., 209 Md. App. 206, 210 n.1 (2012) (citations omitted). “A stet in Maryland is a method of placing an indictment or criminal information in a state of suspended animation into which new vitality may be breathed through either prosecutorial or defense resuscitation. The entry of a stet in a criminal case simply means that the State will not proceed against an accused on that indictment at that time.”

typically improper to appeal a steted matter. *See Quillens v. Moore*, 399 Md. 97, 115 (2007) (noting that “an appeal generally must be taken from a final judgment”). However, a stet, unlike a *nol pros*, requires a *court-ordered* approval. *Attorney Grievance Comm’n of Maryland v. Usiak*, 418 Md. 667, 674 n.6 (2011) (Emphasis supplied). Therefore, it would be necessary for the trial court to have proper jurisdiction to approve the placement on the stet docket.

In the instant case, the statutory 18-month limitation rendered the subsequent placement on the stet docket null and void. As we discussed, *supra*, the statute explicitly requires dismissal after the expiration of 18 months. The juvenile court’s placement of appellant’s delinquency petition on the stet docket suspended the matter, but did not dismiss it. Therefore, we conclude that the statutory limitation rendered nugatory any effect that placement on the stet docket may have upon the appeal.

Furthermore, both the appellant and the State acknowledge, in their briefs, that the appeal concerns the circuit court’s denial of appellant’s renewed Motion to Dismiss. The appeal does not concern the matter itself that was placed on the stet docket. Although subtle, this distinction reinforces the appropriateness of the appeal before us.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
VACATED;
COSTS TO BE PAID BY APPELLEE.**