

S191868

COPY

In the Supreme Court of the State of California

In re G. F. , a Person Coming Under the
Juvenile Court Law.

Case No. _____

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

G. F. ,

Defendant and Appellant.

**SUPREME COURT
FILED**

APR - 1 2011

Frederick K. Ohlrich Clerk

Deputy

First Appellate District, Division Five, Case No. A127161
Sonoma County Superior Court, Case No. 35283J
The Honorable Raima H. Ballinger, Judge

PETITION FOR REVIEW

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
LAURENCE K. SULLIVAN
Supervising Deputy Attorney General
ERIC D. SHARE
Supervising Deputy Attorney General
MICHAEL E. BANISTER
Deputy Attorney General
State Bar No. 152826
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5971
Fax: (415) 703-1234
Email: Michael.Banister@doj.ca.gov
Attorneys for Respondent

TABLE OF CONTENTS

	Page
Issue Presented.....	1
Statement.....	1
Reason for Granting the Petition.....	3
Conclusion	8

TABLE OF AUTHORITIES

Page

CASES

In re Antwon R.
(2001) 87 Cal.App.4th 3487

In re J.L.
(2008) 168 Cal.App.4th 432, 3, 4, 6

In re James H.
(1985) 165 Cal.App.3d 9117

In re Jonathan T.
(2008) 166 Cal.App.4th 4746

In re Ricky H.
(1981) 30 Cal.3d 1767

In re Tyrone O.
(1989) 209 Cal.App.3d 1456

In re Willy J.
(1976) 5 Cal.App.3d 2567

People v. Daniels
(1996) 51 Cal.App.4th 5206

People v. Hatch
(2000) 22 Cal.4th 2605, 6

People v. Pride
(1992) 3 Cal.4th 1956

People v. Siko
(1988) 45 Cal.3d 8205, 6

V.C. v. Superior Court
(2009) 173 Cal.App.4th 14553, 4

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Stats. 2007, ch. 175	
§ 22.....	1
Stats. 2008 ch. 699	
§ 28.....	1
Penal Code	
§ 186.22, subdivision (a).....	2
§ 186.22, subdivision (b)(1)(C)	2
§ 186.22, subdivision (d)	2
§ 202, subdivisions. (a)-(d)	5
§ 242.....	2
§ 245, subdivision (a)(1).....	2
§ 290.008, subdivision (c).....	1
§ 602.....	1
§ 707.....	1
§ 707, subdivision (b)	2
§ 733, subdivision (c).....	3, 4
§ 734.....	6
§ 777.....	1, 2, 3
§ 782.....	passim
§ 12022.7, subdivision (a).....	2
§ 1385.....	4, 5, 6
Welfare and Institutions Code Article 13.6	7
Welfare and Institutions Code	
§ 733, subdivision (c).....	1, 2

COURT RULES

California Rules of Court	
rule 8.500(b)(1).....	4
rule 8.500(e).....	1

Respondent respectfully petitions for review of the decision of the Court of Appeal for the First Appellate District, Division Five. The decision, which is attached as Exhibit A, is reported at 192 Cal.App.4th 1252. The Court of Appeal filed its decision on February 23, 2011. This petition for review is timely. (Cal. Rules of Court, rule 8.500(e).)

ISSUE PRESENTED

Welfare and Institutions Code section 733, subdivision (c),¹ was enacted in 2007. (Stats. 2007, ch. 175, § 22, eff. Aug. 24, 2007, operative Sept. 1, 2007; amended by Stats. 2008, ch. 699, § 28.) Section 733, subdivision (c), prohibits a juvenile court from committing to the DJJ a ward whose most recent offense “alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense forth in subdivision (c) of Section 290.008 of the Penal Code.” Section 782 provides that the juvenile court “may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation.”

The question presented is: Whether the enactment of section 733, subdivision (c), impliedly repeals the juvenile court’s authority under section 782 to dismiss the latest petition, and to proceed instead on a section 777 probation violation notice when a previously declared ward is a serious or violent recidivist and would benefit from a DJJ commitment.

STATEMENT

A September 18, 2008, juvenile delinquency petition (§ 602) alleged that appellant committed assault with a deadly weapon and by means of

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) with infliction of great bodily injury (Pen. Code, 12022.7, subd. (a)) and for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)). (CT 1-3.) That is an enumerated offense in section 707, subdivision (b) which can lead to a DJJ commitment under section 733, subdivision (c).

Appellant admitted the allegations on September 23, 2008. (1 CT 8-12; RT [9/23/08] 3-5.) On December 22, 2008, the court declared appellant a ward and placed him under the supervision of the probation department. (1 CT 32-34; RT [12/22/08] 41-48.)

In an August 18, 2009, delinquency petition, the district attorney alleged that appellant committed felony battery against three persons on August 16 for the benefit of a criminal street gang (Pen. Code, §§ 242, 186.22, subd. (d); count one), and knowingly participated in a criminal street gang (Pen. Code, § 186.22, subd. (a); count two). (1 CT 104-106.) On August 19, 2009, appellant admitted count one and the accompanying gang enhancement; count two was dismissed. The court ordered appellant detained in juvenile hall pending a disposition hearing set for September 2. (1 CT 111-115, 117-118); RT [8/19/09] 4-8.)

On August 20, 2009, the court granted the prosecution's ex parte request to advance the matter to August 26, 2009 for a hearing on its "motion to withdraw plea." (1 CT 119.) On August 24, 2009, the prosecution filed a notice of probation violation (§ 777), alleging that appellant had joined in the August 16 gang-related assault on the three victims named in the most recent wardship petition. (1 CT 120-124.)

At the hearing on August 26, 2009, the court treated the prosecution's motion to withdraw the plea in light of *In re J.L.* (2008) 168 Cal.App.4th 43, as a motion to strike the 2009 petition, set a further hearing for September 2, 2009, and permitted the prosecution to refile the motion. On August 28, 2009, the prosecution filed a revised motion to dismiss the 2009 petition

and to commence proceedings on the section 777 notice of probation violation. (1 CT 128-129, 131-134; RT [8/26/09] 72-75.) On September 2, 2009, the court trailed the disposition pending resolution of the People's motion to strike the 2009 petition and set the motion for a hearing on October 23, 2009. (1 CT 136-139; RT [9/2/09] 77-82.)

On October 23, 2009, the court granted the People's motion to strike the August 18, 2009, delinquency petition. (1 CT 154; RT [10/23/09] 14-19.) On October 27, appellant admitted the probation violation. (2 CT 173-174, 178-180; RT [10/27/09] 5-6.)

On February 3, 2010, the court committed appellant to the DJJ for a maximum term of confinement of 17 years, with credit for 352 days in custody. (2 CT 186-188; 2/3/10 RT 18-27.)

On February 23, 2011, the Court of Appeal issued a published decision holding that the juvenile court's dismissal of the 2009 petition was an abuse of discretion on the authority of *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, a case that it found to be materially indistinguishable. (Typed opn. at p. 6, fn. 4.) Disagreeing with *In re J.L., supra*, 168 Cal.App.4th 43, the Court of Appeal reversed the dispositional order committing appellant to the DJJ and remanded the matter for further consideration. (Typed opn. at p. 9.)

REASON FOR GRANTING THE PETITION

A square conflict among the Courts of Appeal requires resolution of the question presented. The Sixth Appellate District in *In re J.L., supra*, 168 Cal.App.4th at p. 57, and the Third Appellate District in *V.C. v. Superior Court, supra*, 173 Cal.App.4th at pp. 1467-1468, disagree as to the relationship between sections 733, subdivision (c), and 782. *J.L.* affirmed the juvenile court's dismissal of the latest wardship petition under the authority of 782. *V.C.* reversed the juvenile court's dismissal based on section 782. In the instant case, the First Appellate District rejected *J.L.* in

favor of *V.C.* Under California Rules of Court, rule 8.500(b)(1), this Court may resolve conflicts among appellate courts when “necessary to secure uniformity of decision or to settle an important question of law.”

The Court of Appeal’s rejection of *J.L.* in favor of *V.C.* represents a significant question of law. In *V.C.*, the court analogized section 782’s longstanding general dismissal authority to Penal Code section 1385. The appellate court did so in the context of a juvenile court’s grant of the prosecution’s motion to dismiss the petition after the minor already had proceeded to disposition and placement based upon a fully-executed plea bargain. A principal rationale for the court’s analogy to the adult system drew on those particular facts: “Allowing a trial court to rescind a plea bargain that has been accepted *and fully executed* . . . would clearly introduce unacceptable instability in the practice of plea bargaining.” (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1467, italics added.) By contrast, neither *J.L.* nor this case involved the rescission of an executed plea bargain.

Little more than a perception of an “apparent conflict” between sections 733, subdivision (c), and 782 (typed opn. at p. 8) led the Court of Appeal below to hold that section 733 impliedly repealed authority under section 782 to dismiss the latest sustained wardship petition to allow a serious or violent recidivist’s commitment to the DJJ. It relied on footnote dicta in *V.C.*, which states that the dismissal authority of criminal proceedings in Penal Code section 1385 has been judicially construed as “run[ning] only in the immediate favor of a defendant.” (Typed opn. at p. 5, quoting *V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1465, fn. 9.) By applying that language to the juvenile court’s dismissal of a delinquency petition, the Court of Appeal has construed section 782 to be in *complete* parity with Penal Code section 1385. Under its interpretation, section 782

authorizes a dismissal of a petition only if that is in the minor's interest in not being adjudicated for a criminal offense. (Typed opn. at pp. 5-6.)

The court's interpretation of section 782 as fully equivalent to Penal Code section 1385 contradicts the plain language of section 782. The latter authorizes dismissal where "the interests of justice *and the welfare of the minor* require such dismissal." (Italics added.) The court's view of dismissals under section 782 also conflicts with a primary purpose of the Juvenile Court Law. In contrast to the adult system's focus on punishment, a primary goal of juvenile delinquency proceedings is the promotion of the welfare and the rehabilitation of the minor. (§ 202, subs. (a)-(d).)

While recognizing section 782 affords "broad" discretion to dismiss, the Court of Appeal decided that the statute was "not broad enough to trump the clear limits that section 733(c) places on the court's dispositional authority." (Typed opn. at p. 9.) As parenthetical support, the Court of Appeal cited *People v. Hatch* (2000) 22 Cal.4th 260, 269 for the proposition that Penal Code section 1385 "does not permit dismissals in the interest of justice where the Legislature had clearly evidenced a contrary intent." (Typed opn. at p. 9.) But *Hatch* stands for a different proposition:

Because the trial court's power to dismiss "in furtherance of justice" is statutory, the Legislature may eliminate it. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 518.) "To do so, the Legislature need not expressly refer to section 1385." (*Ibid.*) Nonetheless, we will not abrogate a court's power under section 1385 "absent a clear legislative direction" to do so. (*People v. Thomas* (1992) 4 Cal.4th 206, 210; see also *People v. Williams* (1981) 30 Cal.3d 470, 482 (*Williams*) ["Section 1385 permits dismissals in the interest of justice in any situation where the Legislature has not clearly evidenced a contrary intent"].)

(*People v. Hatch, supra*, 22 Cal.4th at p. 269.)

"As a general rule of statutory construction, of course, repeal by implication is disfavored." (*People v. Siko* (1988) 45 Cal.3d 820, 824.) In

contrast to the “remarkable conclusion that the Legislature creates exceptions to a specific code section merely by failing to mention it,” “normal rules of statutory construction . . . dictate a contrary presumption . . . [that] the statute, is presumed to govern every case to which it applies by its terms—unless some other statute creates an express exception.” (*Ibid.*) Applied to sections 733 and 782, *Hatch* and *Siko*, as well as decisions cited therein, support this conclusion: Section 733’s enactment was not an implied repeal of section 782 where dismissal of the most recent delinquency petition is necessary to further the rehabilitation of the minor and the protection of the public by a commitment to the DJJ.

Ultimately, the Court of Appeal’s rejection of *J.L.* is at war with its own acknowledgment that “juvenile courts have broad discretion under section 782 to dismiss petitions when required by the interests of justice and minor’s welfare.” (Typed opn. at p. 9, citing *Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 232; see also § 734 [no ward may be committed to DJJ absent showing of probable benefit].)

A DJJ commitment for a serious or violent recidivist is appropriate when it benefits the minor’s rehabilitation and welfare. It cannot be disputed that the DJJ has many rehabilitative programs of probable benefit to wards. (See *People v. Pride* (1992) 3 Cal.4th 195, 256; *In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486; *People v. Daniels* (1996) 51 Cal.App.4th 520, 523; *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153.) For this reason, the analogy between section 782 and Penal Code section 1385 is unconvincing.

“Juvenile proceedings are not criminal prosecutions. [Citation.]” (*People v. Arias* (1996) 13 Cal.4th 92, 164, cert. den. (1997) 520 U.S. 1251.) “The State has “a *parens patriae* interest in preserving and promoting the welfare of the child,” [citation], which makes a juvenile proceeding fundamentally different from an adult criminal trial.” (*Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1225, cert. den. 513 U.S. 822,

quoting *Schall v. Martin* (1984) 467 U.S. 253, quoting *Santosky v. Kramer* (1982) 455 U.S. 745, 766.) “Consequently, any number of criminal law statutory procedures do not apply to juvenile proceedings. . . .” (*In re Dorothy B.* (1986) 182 Cal.App.3d 509, 519 [listing examples], overruled on another point in *In re Andrew I.* (1991) 230 Cal.App.3d 572, 582-583.)

(*In re Antwon R.* (2001) 87 Cal.App.4th 348, 350-351.)

It has long been recognized that a juvenile court may, indeed must, consider a minor’s recidivism in arriving an appropriate disposition, including a commitment to the DJJ. (See, e.g., *In re Ricky H.* (1981) 30 Cal.3d 176, 185-190; *In re James H.* (1985) 165 Cal.App.3d 911, 923; *In re Willy J.* (1976) 5 Cal.App.3d 256, 265.) The 2007 amendment to section 733 not only omits any reference to section 782’s dismissal authority, the statute nowhere purports to restrict the juvenile court’s dispositional authority over minors adjudged to be a “serious habitual offender” within the meaning of Article 13.6 of the Welfare and Institutions Code. (See, e.g., § 500 [“In enacting this article, the Legislature intends to support increased efforts by the juvenile justice system comprised of law enforcement, district attorneys, probation departments, juvenile courts, and schools to identify these offenders early in their careers, and to work cooperatively together to investigate and record their activities, prosecute them aggressively by using vertical prosecution techniques, *sentence them appropriately*, and to supervise them intensively *in institutions* and in the community” (italics added)].)

The Court of Appeal’s holding that 733, subdivision (c), impliedly repeals juvenile court authority to fashion an appropriate disposition for serious or violent recidivists runs counter to long established juvenile court law. Review is necessary to resolve the conflict among the appellate districts regarding this important issue.

CONCLUSION

Accordingly, respondent respectfully requests that review be granted.

Dated: April 1, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
LAURENCE K. SULLIVAN
Supervising Deputy Attorney General
ERIC D. SHARE
Supervising Deputy Attorney General



MICHAEL E. BANISTER
Deputy Attorney General
Attorneys for Respondent

SF2010400189
20424594.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 2,258 words.

Dated: April 1, 2011

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in cursive script that reads "Michael E. Banister".

MICHAEL E. BANISTER
Deputy Attorney General
Attorneys for Respondent

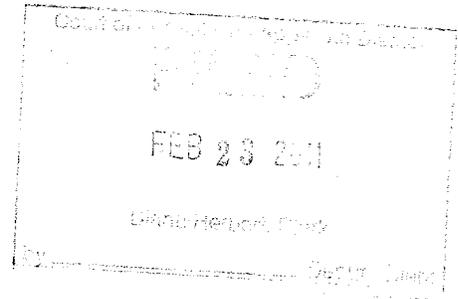
EXHIBIT A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE



**In re GREG F., a Person Coming Under
the Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

GREG F.,

Defendant and Appellant.

A127161

**(Sonoma County
Super. Ct. No. 35283J)**

A juvenile court’s authority to commit a minor to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), is a matter of statutory law. Pursuant to Welfare and Institutions Code section 733, subdivision (c)¹ (hereafter section 733(c)), “[a] ward of the juvenile court who meets any condition described below *shall not be committed to the [DJJ]:* [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code.” (Italics added.) In this case, after Greg F. (appellant) admitted a juvenile delinquency petition (§ 602) alleging an offense that was not DJJ

¹ All undesignated section references are to the Welfare and Institutions Code.

Section 733 was enacted in 2007. (Stats. 2007, ch. 175, § 22, eff. Aug. 24, 2007, operative Sept. 1, 2007; amended by Stats. 2008, ch. 699, § 28.)

eligible under section 733(c), the juvenile court utilized section 782 to dismiss that petition in order to reach back to an earlier petition alleging a DJJ-eligible offense that appellant had admitted. The court did so in order to commit appellant to DJJ. Because we read section 733(c) to limit the court's authority to dismiss a petition under section 782, we reverse the disposition order.

BACKGROUND

2008 Petition

Appellant, born in July 1993, admitted the allegations of a September 18, 2008 juvenile delinquency petition that alleged he committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) with infliction of great bodily injury (Pen. Code, § 12022.7, subd. (a)) and for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)). This offense is listed under section 707, subdivision (b) and, under section 733(c), may lead to a commitment to DJJ. The probation report reveals that on September 16, appellant and two other males exited a vehicle and threw rocks and shouted gang slogans at the 11-year-old victim, Joseph C., while the victim was riding his bicycle. Appellant then ran toward the victim and hit him on the head with a baseball bat, causing the victim to fall off his bicycle. As a result, the victim underwent surgery for an epidural hematoma and was hospitalized for approximately seven days. Appellant was declared a ward of the court (§ 602) on June 11, 2009.

2009 Petition

On August 18, 2009, another juvenile delinquency petition (§ 602) was filed alleging that on August 16, appellant committed felony battery against three persons for the benefit of a criminal street gang (Pen. Code, §§ 242, 186.22, subd. (d)). According to the probation report, on August 16, while having dinner in juvenile hall, appellant and two others stood up and attacked three Sureño residents. All six minors began fighting and security staff eventually detained them.

At a hearing on August 19, 2009, defense counsel stated she and the prosecutor had agreed that appellant would admit the battery and gang enhancement, and a second count of knowing participation in a criminal street gang (Pen. Code, § 186.22, subd. (a))

would be dismissed. The court informed appellant that based on his admission the matter would be put over for disposition, at which time the court would decide the consequences for appellant's admission. The court accepted the admission, ordered appellant detained in juvenile hall pending a disposition hearing set for September 2, and referred the matter for a written dispositional report. On August 20, the court granted the prosecution's ex parte request to advance the matter to August 26 for a hearing on its "motion to withdraw plea." The request form indicated that appellant's counsel opposed the motion.

On August 24, 2009, the prosecution filed a notice of probation violation (§ 777) alleging appellant's gang-related August 16 battery.

At the August 26, 2009 hearing, the prosecutor urged the court to withdraw appellant's admission to the 2009 petition pursuant to *In re J.L.* (2008) 168 Cal.App.4th 43. The court stated the motion should be characterized as a motion to strike the 2009 petition and gave the prosecution leave to refile its motion. On August 28, the People filed a motion seeking to set aside appellant's admission to the 2009 petition, to dismiss that petition, and to commence proceedings on the section 777 notice of probation violation.

On October 23, 2009, the court granted the People's motion to dismiss the 2009 petition in the interests of justice and appellant's welfare. It also set a hearing on the section 777 probation violation for October 27. On October 27, appellant admitted the August 16 probation violation.

On February 3, 2010, appellant was committed to DJJ for a maximum term of confinement of 17 years, with credit for 352 days in custody. He filed a timely notice of appeal.

DISCUSSION²

The offense alleged in the 2009 petition and admitted by appellant, i.e., felony battery against three persons for the benefit of a criminal street gang (Pen. Code, §§ 242,

² This analysis is adapted from the unpublished opinion by Jenkins, J., in the Court of Appeal in *In re M.P.* (A123815). (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254, fn. 9.)

186.22, subd. (d)) is not an offense “described in subdivision (b) of Section 707” or a sex offense set forth in Penal Code section 290.008. Thus, pursuant to section 733(c), it could not provide a legal basis for committing appellant to DJJ.

Pursuant to section 782³ and *In re J.L., supra*, 168 Cal.App.4th 43, the prosecution requested that the court dismiss the 2009 petition, so that under section 733(c) “the most recent offense alleged in any petition and admitted or found to be true by the court” would be the felony assault with infliction of great bodily injury and for the benefit of a street gang (Pen. Code, §§ 245, subd. (a)(1), 12022.7, subd. (a), 186.22, subd. (b)(1)(C)) alleged in the 2008 petition. This offense is one “described in subdivision (b) of Section 707,” and could support appellant’s DJJ commitment. In granting the request to dismiss the 2009 petition and appellant’s admission to it, the court stated it was doing so “in the interest of justice.”

Deciding appellant’s claim of error depends, in part, on resolving the apparent conflict between sections 733(c) and 782; two appellate decisions have reached inconsistent results on this issue. In *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455 (*V.C.*), the minor was charged in a section 602 petition filed in 2005 with a DJJ-eligible sex offense and was granted probation. While on probation, he was charged in a section 602 petition filed in 2007 with three new offenses, only one of which was DJJ-eligible. Pursuant to a plea bargain, the minor admitted the non-DJJ-eligible offense and the two DJJ-eligible offenses were dismissed, and he was continued on probation. (*V.C.*, at p. 1460.) Thereafter, the prosecution filed a section 777 notice of probation violation based on the minor’s commission of two non-DJJ-eligible offenses. As in our case, to avoid the bar of section 733(c), the prosecutor moved under section 782 to dismiss the 2007 petition so that it could seek a DJJ commitment on the DJJ-eligible offenses

³ Section 782 provides in relevant part: “A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation.”

charged in the 2005 petition. The juvenile court granted the motion and dismissed the 2007 petition pursuant to section 782. (*V.C.*, at p. 1461.)

On a petition for writ of mandate the appellate court reversed, concluding the juvenile court abused its discretion under section 782 in dismissing the 2007 petition. (*V.C.*, *supra*, 173 Cal.App.4th at pp. 1463-1469.) In considering whether the dismissal was “ ‘in the interests of justice,’ ” the court found Penal Code section 1385, the dismissal statute applicable to adult criminal proceedings, analogous to section 782. (*V.C.*, at p. 1464.) *V.C.* noted that decisions interpreting Penal Code section 1385 have found that section “ ‘runs only in the immediate favor of a defendant, i.e., by cutting off an action or a part of an action against the defendant.’ [Citations.]” (*V.C.*, at p. 1465, fn. 9.) Extending that reasoning to section 782, *V.C.* found it “troubling” that the court used its dismissal power under section 782 to increase the range of potential sanctions to which the minor defendant was subject if found in violation of his probation. (*V.C.*, at p. 1465, fn. 9.) *V.C.* concluded that the dismissal of the 2007 petition was not “in the interests of justice” under section 782 because it was a violation of due process to deprive the minor of the benefit of the fully-executed plea bargain by dismissing the 2007 petition at the prosecution’s request in order to render the minor eligible for a DJJ commitment based on the 2005 petition. (*V.C.*, at pp. 1465-1467.)

V.C. also concluded that the juvenile court’s dismissal was not in the interests of society, as expressed by the Legislature in section 733(c): “The language of section 733(c) allows commitment to [DJJ] only when ‘*the most recent offense* alleged in any petition and admitted or found to be true by the court’ . . . is an eligible offense. The statute does not focus on the overall or entire delinquent history of the minor or on whether the minor may be generally considered a serious, violent offender. The language looks to the minor’s ‘most recent offense.’ The Legislature has specifically determined it is the minor’s most recent offense that determines the minor’s eligibility for [DJJ] commitment. Dismissal of the most recent petition in order to reach back to an earlier petition containing a [DJJ] qualifying offense would be contrary to the unmistakable plain language of section 733(c). It would frustrate the legislative policy expressed by

the language of section 733(c). Such a dismissal cannot be in the interests of justice. [Citation.]” (*V.C.*, *supra*, 173 Cal.App.4th at p. 1468.) *V.C.* noted that, pursuant to the legislative history of section 733(c), its purpose is to “. . . stop the intake of youthful offenders adjudicated for non-violent, non-serious offenses . . . to the [DJJ]” [Citation.]” (*V.C.*, at p. 1468.) It also noted that section 733(c) was enacted in an effort to reduce state costs by limiting “. . . “. . . “the number of youth offenders housed in state facilities by . . . shift[ing] responsibility to the counties for all but the most serious youth offenders. . . .” [Citation.]’ [Citation.]” (*V.C.*, at p. 1469.) *V.C.* concluded that construing section 782 to permit the dismissal of a minor’s most recent petition with a non-DJJ-eligible offense to reach a prior petition with a DJJ-eligible offense would be inconsistent with the statutory purpose underlying section 733(c) because it “would not restrict the intake of juvenile offenders to [DJJ] to those who are currently serious or violent offenders.” (*V.C.*, at p. 1469.)⁴

In *In re J.L.*, *supra*, 168 Cal.App.4th 43, the minor admitted a March 2006 section 602 petition alleging a DJJ-eligible offense (felony assault) and was continued at an adolescent center placement. In August 2006, a section 777 notice of probation violation was filed alleging the minor failed to return to his placement. (*In re J.L.*, at pp. 49-50.) In December 2006, a section 602 petition was filed charging the minor with another DJJ-eligible offense (attempted second degree robbery while armed with a knife) and a misdemeanor. The minor admitted the attempted robbery with a knife allegation and the misdemeanor was dismissed. The minor also admitted the probation violation alleged in the August 2006 section 777 notice. At the disposition hearing, the court heard evidence

⁴ We note that in *V.C.*, unlike here, the minor had admitted to the most recent petition pursuant to a fully executed plea bargain in which he “was apparently placed in accordance with [the] order of disposition.” (*V.C.*, *supra*, 173 Cal.App.4th at p. 1466.) We conclude this distinction is not significant. Section 733(c) precludes a DJJ commitment where “the most recent offense alleged in any petition *and admitted or found to be true by the court is*” a non-DJJ eligible offense. (Italics added.) Prior to the prosecution’s motion in this case to dismiss the 2009 petition under section 782, appellant had “admitted” a non-DJJ eligible offense alleged in that petition. Nothing more is necessary to trigger the bar of section 733(c).

regarding the prosecutor's and probation department's recommendation that the minor be committed to DJJ, and continued the disposition hearing before making a dispositional ruling. (*In re J.L.*, at p. 50.) Thereafter, the minor sought to withdraw his admission to the weapon enhancement in the December 2006 petition, stating that the law had changed under section 733 after he admitted the enhancement, and asserting that if the enhancement were not found true, the attempted robbery would be a non-DJJ eligible offense under section 733(c). Thus, he argued he was unaware of the consequences of his plea when it was entered. The court granted the minor's motion to withdraw his admission to the weapon enhancement and set a contested hearing thereon. (*In re J.L.*, at pp. 50-51.) Subsequently, the prosecutor sought dismissal of the December 2006 petition under section 782 and a commitment of the minor to DJJ. (*In re J.L.*, at pp. 52-53.) Pursuant to section 782, the court granted the prosecution's motion to dismiss the December 2006 petition, set aside the minor's admission to it and all subsequent proceedings on that petition, found the minor had committed the charged probation violation and committed him to DJJ based on the original assault charge in the March 2006 petition. (*In re J.L.*, at pp. 53-54, 57.)

The minor appealed, arguing his most recent offense was a probation violation, not a section 707, subdivision (b) offense, and therefore he was ineligible for a DJJ commitment. (*In re J.L.*, *supra*, 168 Cal.App.4th at pp. 47, 57.) In affirming the dismissal of the December 2006 section 602 petition and DJJ commitment, the appellate court stated: “[S]ection 733 does not specifically authorize the dismissal of a petition containing the most recent offense admitted or found to be true. However, section 782 does authorize the juvenile court to set aside findings and to dismiss a petition ‘if the court finds that the interests of justice and the welfare of the minor require such dismissal’” (*In re J.L.*, at p. 57.)⁵

⁵ The appellate court also held that a section 777 notice of probation violation “does not constitute an offense alleged in a ‘petition’ ” pursuant to section 733(c). (*In re J.L.*, *supra*, 168 Cal.App.4th at p. 61; accord, *In re M.B.* (2009) 174 Cal.App.4th 1472, 1477-1478.) Thus, the court concluded that “ ‘the [minor’s] most recent offense alleged in any

We agree with *V.C.* that the phrase “the most recent offense” in section 733(c) indicates the Legislature’s intent to limit DJJ commitments to minors who are *currently* serious or violent offenders, and to disallow a DJJ commitment for minors based on their overall juvenile history. We also agree with *V.C.* that utilizing section 782 to dismiss the most recent petition adjudicating a nonviolent, nonserious offense to reach back to an earlier petition adjudicating a violent or serious offense undermines section 733(c)’s prohibition against committing a minor to DJJ for any offense other than “the most recent offense alleged . . . and admitted or found true by the court.” This use of section 782 also undermines the budgetary purpose underlying section 733(c). (See *V.C.*, *supra*, 173 Cal.App.4th at pp. 1468-1469.)

We resolve the apparent conflict between sections 733(c) and 782 by relying on two principles of statutory construction. First, a later enacted statute, like section 733(c), ordinarily controls over an earlier enacted one. (*In re Michael G.* (1988) 44 Cal.3d 283, 293.) We are entitled to presume that, in 2007, when the Legislature enacted section 733(c), it was aware of the earlier enacted section 782, and could have clarified that section 782 remains available to the juvenile court to dismiss a petition containing the most recent offense, which is non-DJJ eligible, to reach back to an earlier petition containing a DJJ-eligible offense for purposes of committing the minor to DJJ. (*In re Michael G.*, at p. 293.) In the absence of any indication of such legislative intent, we will not assume such intent exists, particularly in light of section 733(c)’s clear substantive and temporal restrictions on committing minors to DJJ. The second principle of statutory construction we rely on is that more specific statutory provisions normally control as against more general provisions when both concern the same subject. (*In re Michael G.*, at p. 293.) Under this principle, section 733(c) would control over section 782, given that both statutes generally concern the disposition of juvenile matters, but section 733(c) is more narrowly concerned with commitments to DJJ.

petition and admitted or found to be true by the court’ ” was not the probation violation, but the DJJ-eligible assault alleged in the original petition that the minor admitted. (*In re J.L.*, *supra*, 168 Cal.App.4th at p. 63.)

While juvenile courts have broad discretion under section 782 to dismiss petitions when required by the interests of justice and the minor's welfare (*Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 232), absent a showing of legislative intent this discretion is not broad enough to trump the clear limits that section 733(c) places on the court's dispositional authority (see *People v. Hatch* (2000) 22 Cal.4th 260, 269 [§ 1385 does not permit dismissals in the interest of justice where the Legislature had clearly evidenced a contrary intent]).

We conclude the juvenile court lacked authority under section 782 to dismiss the 2009 petition for the purpose of reaching back to the 2008 petition containing a DJJ-eligible offense in order to support appellant's DJJ commitment.

The People assert that precluding dismissal under section 782 in the circumstances presented here "immunizes juvenile recidivism." Our response is two-fold. First, this situation would have been averted had the prosecutor filed a section 777 notice of probation violation rather than filing the 2009 petition.⁶ (See *In re J.L.*, *supra*, 168 Cal.App.4th at p. 60; accord, *In re D.J.* (2010) 185 Cal.App.4th 278, 286-288.) Second, the argument that our analysis of the interplay between sections 733(c) and 782 immunizes recidivism is one that is more properly directed to the Legislature.

Given our conclusion that the court abused its discretion in dismissing the 2009 petition, we reverse the dispositional order and remand the matter for further consideration.⁷

⁶ The prosecutor apparently realized this and, soon after filing the 2009 petition, filed a section 777 notice of probation violation alleging the gang-related August 16, 2009 battery.

⁷ In light of this determination we need not address appellant's claims that the evidence was insufficient to establish that he would probably benefit from a DJJ commitment and that the court violated his right to due process by relying on information it had received about DJJ from outside of the instant proceedings in determining that DJJ would probably benefit him.

DISPOSITION

The dispositional order is reversed and the matter remanded to the juvenile court for reconsideration of the disposition in light of this decision.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUNIERS, J.

(A127161)

Superior Court of Sonoma County, No. 35283J, Raima H. Ballinger, Judge.

Lisa M. Romo, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gerald A. Engler, Assistant Attorney General, Martin S. Kaye and Michael E. Banister, Deputy Attorneys General, for Plaintiff and Respondent.

RECEIVED
ATTORNEY GENERAL
11 FEB 24 10 09
DEPARTMENT OF JUSTICE
SAN FRANCISCO
FOCKET UNIT

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *In re G. F.*

No.: _____

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 1, 2011, I served the attached **PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Lisa M. Romo
Attorney at Law
2342 Shattuck Ave.,
PMB 112
Berkeley, CA 94704
(2 Copies)

The Honorable Jill Ravitch
District Attorney, Sonoma County
District Attorney's Office
Hall of Justice
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

County of Sonoma
Hall of Justice
Superior Court of California
600 Administration Drive, #107-J
Santa Rosa, CA 95403-2818

First District Appellate Project
Attention: Executive Director
730 Harrison St., Room 201
San Francisco, CA 94107

Diana Herbert
Clerk of the Court
Court of Appeal of the State of California
350 McAllister Street
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 1, 2011, at San Francisco, California.

M. T. Otnes
Declarant


Signature