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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re H.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

H.B.,

Defendant and Appellant.

A130084

(Contra Costa County
Super. Ct. No. J06-00757)

A subsequent delinquency petition under Welfare and Institutions Code section 602¹ alleged appellant, H.B., then age 15, committed attempted murder and attempted robbery involving the use of a firearm. The court sustained the allegations of the petition, continued appellant's wardship, and committed him to the Division of Juvenile Justice (DJJ). Appellant contends the juvenile court abused its discretion by committing him to the DJJ without considering his rehabilitative needs. We disagree and affirm the judgment.

I. BACKGROUND

A fifth supplemental delinquency petition filed January 12, 2010, alleged appellant committed attempted murder (Pen. Code, §§ 187, 664; count one) and attempted robbery (Pen. Code, §§ 211, 212.5, subd. (c), 664; count two). The petition alleged a principal

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

was armed with a firearm. (Pen. Code, § 12022, subd. (a)(1).) An amended subsequent petition alleged appellant committed assault with a firearm. (Pen. Code, § 245, subd. (a)(2); count three).

The juvenile court sustained the petition following a contested jurisdictional hearing. After a contested dispositional hearing, the court found the allegations constituted section 707, subdivision (b) offenses, continued wardship, and committed appellant to the DJJ. The court found appellant had exceptional educational needs. It set appellant's section 731, subdivision (c) maximum term of DJJ physical confinement at six years with no credit for time served.

A. Facts

D.K., a 15-year-old student at Antioch's Deer Valley High School, was walking home from school about 3:15 p.m. on December 7, 2009, when he was accosted by appellant and Jonathan B., a 20-year-old adult. Jonathan asked D.K. if he had a cell phone or money. When D.K. said no, Jonathan angrily told him he was lying and demanded the cell phone and money. D.K. tried to run, but Jonathan and appellant chased him down. There was a struggle between D.K. and Jonathan. Jonathan punched D.K. in the face several times. Appellant also punched D.K., one blow landing on D.K.'s mouth and drawing blood. Jonathan tried to pull a backpack from D.K.'s back.

D.K. was pushed to the ground during the attack. He told police the assailant later identified as appellant was the one who pushed him to the ground, but at the time of the jurisdiction hearing he could not remember which of the assailants pushed him. As both assailants stood above D.K., Jonathan B. pulled a nine-millimeter semi-automatic handgun from his pocket. Jonathan pointed the handgun at D.K. as he was attempting to get to his feet. Jonathan cocked the weapon and said to D.K., "Mother fucker," and shot D.K. in the back through his backpack from a distance of two feet. The bullet exited D.K.'s left side, near his rib cage, without causing serious injury. Jonathan and appellant fled together.

D.K. later identified Jonathan B. from a photo line-up. Following his arrest, Jonathan admitted shooting D.K. and told police of appellant's involvement in the

robbery. After appellant's arrest, he first denied knowing Jonathan had a gun. Later, he told police he had observed Jonathan with the handgun three or four days before the robbery, and Jonathan had even asked appellant to hold it momentarily while Jonathan was dancing. Appellant stated he spent the night of December 6, 2009 in a vacant house. The next day, he met up with Jonathan, who lived in the neighborhood. They smoked three or four blunts together. Before robbing D.K. at Deer Valley High School, Jonathan had tried to get appellant to rob a female at a shopping center after Jonathan spotted her using a Sidekick cell phone. He had shown appellant his gun, and tried to hand it to him to do the robbery, but appellant told police he refused the gun and refused to do the robbery. Jonathan suggested they do a robbery at Deer Valley High School. According to appellant, he told Jonathan he did not want to do a robbery, but he would go to the high school with him to look for a friend there.

Based on this evidence, the juvenile court sustained the attempted murder and attempted robbery allegations because it found (1) appellant specifically intended to rob the victim, and (2) a reasonable person in appellant's position would have understood under all the circumstances an attempted murder was a natural and probable consequence of the attempted robbery. (See CALCRIM No. 402; *People v. Hammond* (1986) 181 Cal.App.3d 463, 467–468.) The court pointed out appellant stayed with Jonathan B. all day on the day of the robbery, knowing Jonathan wanted to rob someone. He knew Jonathan had a gun and knew the gun was real because he had held it. Both Jonathan and appellant walked up to the victim, both ran after him, and both attacked him. Appellant did not run when Jonathan pulled out the gun and cocked it, but stood with him. The court also sustained the assault with a firearm allegation based on aiding and abetting.

B. Disposition Hearing

A contested disposition hearing took place on September 27 and October 4, 2010. Daniel MacAllair, an expert on youth corrections and treatment programs, testified on behalf of appellant. Appellant's probation officer, A.J. Lawrence, and a probation officer employed by the Youthful Offender Treatment Program (YOTP), Robbyn-Nicole Livingston, also testified.

MacAllair testified the population of the DJJ (formerly known as the California Youth Authority (CYA)) has dropped to its lowest level in 60 years, down to a population of approximately 1,350 juveniles in 2010, who are housed in six facilities, five of which are over 40 years old. Most of the decline was caused by a declining youth crime rate beginning in the 1990's. In addition, counties began to retain more youth in community-based programs due, in part, to adverse reports and publicity concerning conditions in the DJJ facilities. The 1,350 wards remaining in the DJJ are the most troubled and violent in the juvenile justice system.

Northern California wards with identified mental health issues would most likely be assigned to the N.A. Chaderjian Youth Correctional Facility (Chaderjian), where most mental health treatment programs are concentrated. Chaderjian is the most modern of the DJJ facilities. MacAllair testified institution-based gangs were pervasive at Chaderjian as in all DJJ facilities, and wards would be tested and initiated into the gang culture right from the beginning of their stay based on their fighting prowess and ability to stand up for themselves. Violent incidents are common at Chaderjian. The average age of a DJJ ward is 19½, and at Chaderjian, which is a treatment hub, there is a range of ages up to age 25, and all ages are generally housed together.

In MacAllair's opinion, the DJJ has done little to improve the many deficiencies brought to light in reports and litigation concerning the former CYA going back to the mid-1990's. Most importantly, the DJJ has not changed its culture from a prison culture to a rehabilitative culture, nor has it gotten very far along in implementing the type of mental health treatment model originally envisioned for it. On the positive side, Chaderjian has two intensive treatment programs and a specialized counseling program that have enhanced staffing with good, well-meaning staff, including a psychologist, consulting psychiatrist, social workers, and youth correctional counselors. But MacAllair did not believe the treatment planning system was well-organized or consistent in ensuring the right treatment decisions were made and follow-through was adequate. According to MacAllair, local facilities are better treatment options than the DJJ, and often encourage parental participation, which is very limited at DJJ facilities. However,

the DJJ has more time to work with a ward than a local facility, which must release the ward once he or she turns 21 no matter how serious the committing offense. At the DJJ, appellant would be a level two ward (the second most serious level) with an expected parole release date in four years.

Probation Officer Lawrence became appellant's probation officer in March 2009. He was familiar with appellant's personal history. Appellant was born exposed to drugs in utero. In his early childhood, he saw his grandfather shoot his grandmother, and also witnessed an older cousin being gunned down near their home. Appellant had been a ward of the court since 2005. Appellant's mother was always supportive of probation services and willing to turn him in when problems arose. Appellant has been diagnosed as severely emotionally disturbed since the age of eight, with diagnoses of bipolar disorder, depression, and oppositional defiant disorder. He was on medication for these disorders at the time of the disposition hearing. He has been hospitalized involuntarily five or six times under section 5150. He had been given an individualized education plan (IEP) at school to help him complete his education while taking account of his emotional disturbance and a learning disability.

Lawrence recounted that appellant had been in three different residential treatment programs. He stayed at one, LaCheim, for a considerable period of time, but he absconded a number of times from LaCheim, in some cases returning on his own. Due to his history of going AWOL, he was moved to a more structured group home in Fresno, and eventually returned home to live with his mother in January 2009 after completing that program. At home, appellant was often resistive to taking his medications.

Appellant has no known history of gang affiliation. While in juvenile hall he had reached a "level 1" classification several different times, meaning his conduct and behavior earned him certain privileges. Most of his write-ups there were based on outbursts related to his mental health issues, according to Lawrence. He had also earned some recognition for good conduct at the juvenile hall high school, Mt. McKinley School.

Livingston described the YOTP, which is a two-year-old, highly structured “cognitive behavioral program” housed inside the juvenile hall. The YOTP is designed for chronic-offender, criminally sophisticated minors, some of whom might otherwise be DJJ-eligible. Based on close monitoring of their performance, the residents progress through a series of three program phases in the institution, each generally lasting 11 weeks, until they prove they are ready to be transitioned back into the community in a fourth, transition phase that lasts a minimum of six months. The program is of indeterminate length depending on how quickly the individual resident internalizes and participates in the program objectives in each phase. It includes individual therapy, as well as a limited amount of family therapy. High school age residents attend Mt. McKinley School in special classes and can have IEP’s, as in any other accredited school. Once residents are released into the community, there is intensive follow-up, including both supervision and services. According to Livingston, most of the residents who made it to phase four had not reoffended. There is a waiting list to get into the YOTP, during which time the ward remains in juvenile hall.

On cross-examination, Livingston admitted it was not the “norm” for YOTP residents to be DJJ-eligible although “several” of its 30 residents were eligible based on their history and offenses. The program had never had a minor who had committed a murder or attempted murder. In fact, appellant’s case had already been screened for the YOTP and found to be inappropriate for the program. Livingston acknowledged appellant’s history of section 5150 commitments would be problematic, and agreed the YOTP was not equipped to provide more than limited mental health services.

The court also read and considered the social study prepared by the probation department. The report recommended a commitment to the DJJ and stated in part: “[D]espite intensive out-patient services, including special education . . . , psychotherapy, psychotropic medications, juvenile home detention, numerous detentions in juvenile hall and several placements in residential treatment facilities, [appellant’s] delinquent behavior continues to escalate. . . . [¶] . . . [¶] Despite the mother’s best efforts, [appellant] is obviously beyond her control, is associating with a negative peer group, and

involving himself in criminal activity in the community. [¶] . . . [¶] . . . [Appellant] presents a significant threat to public safety and . . . has significant rehabilitation issues [T]he long term[] and secured treatment programs offered at the [DJJ] will give [appellant] ample opportunity to address . . . the problem areas [of] . . . violence and anger management. He will also be able to work on the issues of victim awareness, education and drug abuse.” The report noted appellant would “benefit from the many services provided at the [DJJ] such as anger management counseling, substance abuse counseling, impact of crimes on victims training and an education program.”

Following the disposition hearing, the juvenile court took the matter under submission and delivered its ruling in open court a week later committing appellant to the DJJ. Among other things, the court discussed the gravity and circumstances of appellant’s offenses, his history of escape and AWOL’s, his school truancies and disciplinary problems, his failure to take full or sincere responsibility for his conduct or show genuine concern about the victim, his pattern of increasingly serious criminal and antisocial behavior, and the imminent threat he posed to public safety. The court rejected the YOTP as an alternative in part because of the seriousness of appellant’s offenses and his consistent failure in local programs over a number of years.

This timely appeal followed.

II. DISCUSSION

Appellant contends the juvenile court abused its discretion by ordering placement at the DJJ without regard to the rehabilitative requirements of juvenile law. According to appellant, there was no evidence *any* programs at the DJJ could assist in his rehabilitation despite ample evidence in the record of his rehabilitative needs.

A. Standard of Review

We review a DJJ commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) “It is not the responsibility of this court to determine what we believe would be the most appropriate placement for a minor. This is the duty of the trial court, whose determination we reverse only if it has acted beyond the scope of

reason.” (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) We will not disturb the juvenile court’s findings as long as there is substantial evidence to support them. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) There must be evidence in the record demonstrating both a probable benefit to the minor by a DJJ commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. (*In re Angela M.*, at p. 1396.)

We review the juvenile court’s action in light of the two-fold purpose of the juvenile law “(1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public’” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614, quoting § 202.)

B. Analysis

Appellant asserts there was *no* evidence of probable benefit to him of a DJJ commitment, and the trial court failed to even identify his rehabilitative needs, but based its dispositional order exclusively on the seriousness of his offense even though it was the first serious offense he had committed.

As an initial matter, we know of no requirement the juvenile court must recite a list of the minor’s rehabilitative needs on the record and explain what specific programs at the DJJ will address those needs. Available precedents suggest no such oral pronouncement requirement exists. (See *In re Julian R.* (2009) 47 Cal.4th 487, 498–499 [court not required to recite that it had considered the individual facts and circumstances of the case in determining the maximum period of confinement for a juvenile offense]; *In re Robert D.* (1979) 95 Cal.App.3d 767, 773, italics omitted [“the juvenile court must find [a DJJ] commitment to be a probable benefit to the minor. [Citation.] However, the specific reasons for such commitment need not be stated in the record. Rather that determination must be supported by substantial evidence contained within the record”]; *In re John F.* (1983) 150 Cal.App.3d 182, 185, fn. omitted [“When the Legislature has

wanted the courts to make specific findings in juvenile matters it has been explicit in so directing”].)

Here, there was ample evidence of probable benefit. The court stated it had read and considered the probation officer’s social study, which recounted appellant’s delinquent history, discussed his rehabilitative needs, and explained why DJJ programs would be of probable benefit to him. Appellant’s delinquent history dates back to 2005, when at age 11, he was cited for vandalism and resisting arrest after he and other youths jumped up and down on a parked car. Over a five-year period, appellant had numerous referrals to juvenile court for, among other things, theft, threatening students, police, teachers, and his mother, drug use, resisting arrest, battery, biting his mother, and throwing gasoline on his sister and threatening to set her on fire. He also suffered numerous probation violations. Following his detention in this case, appellant was involved in several disciplinary incidents at juvenile hall, including threatening to kill himself as well as another person. He was relocated to a different living unit after negative interactions with less sophisticated residents, and placed in a special program for repeated poor behavior, including fighting. His behavior was characterized as “erratic” by juvenile hall staff.

Based on this record, the social study found appellant needed to learn there were consequences of choosing to engage in negative behavior, and to learn how to manage his anger in a fashion that did not victimize others. The probation department felt DJJ treatment programs could address appellant’s rehabilitative needs by providing anger management and drug abuse counseling, victim awareness training, and an education program. In sum, tracking the language of section 734, the report found: “The mental and physical conditions and qualifications of [appellant] are such as to render it probable that he will be benefitted by the reformatory educational discipline or other treatment provided by the [DJJ].”

The court expressly found appellant would benefit from placement at the DJJ: “I have considered the less restrictive programs and forms of custody, and *the Court is fully satisfied* that they are inappropriate dispositions at this time *and that [appellant] could*

better benefit from the various programs and classes provided at DJJ.” (Italics added.)

The court went on to cite the probation department’s recommendation as one of the factors it considered in arriving at its placement determination, which we assume includes the bases for the department’s recommendation, including the department’s analysis of appellant’s rehabilitative needs and how the DJJ could address them. Substantial evidence thus support’s the court’s determination of probable benefit. The court also heard testimony from witnesses MacAllair and Livingston that the DJJ offered specialized and well-staffed mental health programs the YOTP could not match. The evidence also confirmed, in substance, that only the DJJ could retain appellant in a secure facility long enough to guarantee sustained exposure to educational, counseling, and mental health services and classes. Given appellant’s history and performance in less restrictive settings, this affords the DJJ a significant advantage over other placements in terms of its probable benefit. (See *In re Jonathan T.* (2008) 166 Cal.App.4th 474, 485–486 [court properly found probable benefit in DJJ commitment based on finding minor would need a closed setting to succeed with a long-term rehabilitation program due to history of running away and displaying violent behavior].)

We need not belabor the other major factor supporting a DJJ commitment— protection of the public. Attempted murder and attempted robbery are unquestionably serious offenses. While appellant minimizes his earlier delinquent history, the record shows a clear pattern of escalating violence and criminality, and the inability of appellant, his mother, or the juvenile authorities to prevent that escalation from occurring or continuing. The trial court did not abuse its discretion in finding appellant was a danger to the public. (See *In re Gregory S.* (1978) 85 Cal.App.3d 206, 212–213 [CYA commitment proper for minor who participated in armed robbery, kidnapping for purposes of robbery, and assault on 15-year-old, even though minor was only 13 years old and had no previous offenses, where minor was becoming progressively more antisocial and dangerous and was a runaway threat].) While rehabilitation “continues to be an important objective of the juvenile court law” (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576), that law “now recognizes punishment as a rehabilitative tool

and emphasizes the protection and safety of the public” (*In re Luisa Z.* (2000) 78 Cal.App.4th 978, 987).

In our view, the juvenile court properly considered appellant’s age and rehabilitative needs, the circumstances and seriousness of his committing offenses and delinquent history, the probable benefits and drawbacks of alternative dispositions, and the purposes served by the juvenile court law in arriving at its dispositional order.

III. DISPOSITION

The judgment is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.