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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re L.W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

L.W.,

Defendant and Appellant.

A130921

(Alameda County
Super. Ct. No. OJ08103585)

Appellant L.W. was adjudged a ward of the court and placed on probation in a residential sexual offender treatment facility after he admitted to indecent exposure. He was removed from the facility after three days when he was charged with two counts of assault and placed in juvenile detention. While in detention, appellant assaulted a correctional officer, adding a third count to his pending charges. The juvenile court ordered appellant committed to the Department of Juvenile Justice (“DJJ,” formerly the California Youth Authority) under Welfare and Institutions Code sections 602 and 707, subdivision (b).¹ Appellant contends the juvenile court abused its discretion in ordering his placement with DJJ, and claims there was no evidence of probable benefit to him from the commitment. We affirm the court’s order.

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

FACTUAL AND PROCEDURAL BACKGROUND

A juvenile wardship petition alleging 13 counts against appellant, then 12 years old, as amended on July 31, 2009, was filed in Alameda County. The charges included in part: burglary, trespass, unlawful access of another's computer, indecent exposure, sexual battery, and lewd acts on a child under the age of 14. Pursuant to a negotiated disposition, appellant admitted to one count of indecent exposure. On recommendation from the probation department and county social services agency, appellant's dependency status was terminated and he was adjudged a ward of the court under section 602. The probation officer recommended to the court a high level of structure and supervision for the benefit and protection of appellant as well as the community. The court ordered appellant to Gateway Residential House ("Gateway") in Sacramento for sexual offender treatment.

Within three days of placement at Gateway, appellant was involved in an incident with a female staff member, which resulted in charges of assault with intent to commit rape, as well as assault with great bodily injury. Appellant admitted to these charges and was subsequently placed at Sacramento County Juvenile Hall. While at Juvenile Hall, appellant assaulted a female correctional officer by attempting to pull her into his cell when he was naked from his waist down. According to the dispositional report, "Probation Staff in Sacramento County stated that [appellant's] behavior . . . [was] horrible, and that he [was] very sexually deviant and [was] constantly masturbating." The court found proven misdemeanor charges of attempted battery on a school employee (Penal Code, §§ 664/243.6) and simple assault (Penal Code § 240). Due to appellant's status as a ward of the court in Alameda County, the matter was transferred back to Alameda Superior Court for disposition.

The disposition hearing was twice continued to allow both the probation department and appellant's counsel to investigate alternative placements that would best meet appellant's special needs. On January 12, 2011, the juvenile court ordered appellant's placement with DJJ, finding that "[appellant's] mental and physical condition and qualifications are such as to render it probable that he will be benefited by the

reformatory educational discipline or treatment provided by the [DJJ].” Appellant timely appealed from this court order.

DISCUSSION

We review the juvenile court’s decision to commit a minor to DJJ for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) On appeal, we will not disturb the juvenile court’s findings when they are supported by substantial evidence. (*Ibid.*) When reviewing whether there was substantial evidence to support DJJ commitment, we examine the record presented at the disposition hearing in light of the purposes of the juvenile law. (*Ibid.*)

Our juvenile laws are intended to provide for the safety of the public and each minor under the court’s jurisdiction. (§ 202, subd. (a).) “Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.” (§ 202, subd. (b).) Punishment may be imposed on a minor in a way that is consistent with these objectives. (*Ibid.*) In determining the suitability of commitment to DJJ, the juvenile court must consider, “in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.)

The juvenile court must be fully satisfied that the ward will receive probable benefit by the reformatory educational discipline or other such treatment provided by DJJ and that less restrictive alternatives would be ineffective or inappropriate.² (§ 734; *In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-56.) Even though consideration of punishment and public protection were made express purposes of the juvenile law in 1984, a youth’s

² There is no absolute rule barring DJJ commitment except as a last resort. (See *In re Martin L.* (1986) 187 Cal.App.3d 534, 544.)

possible rehabilitation remains a critical objective. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

“To support a [DJJ] commitment, it is required that there be evidence in the record demonstrating *probable* benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate.” (*In re Teofilio A., supra*, 210 Cal.App.3d at p. 576, italics added.) There is no requirement that the court find exactly how the minor will benefit from being committed to DJJ. (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

Appellant contends that his commitment to DJJ was an abuse of discretion because there was no evidence that DJJ had the intensive sexual offender treatment programs or mental health resources appropriate for his benefit. We disagree. The probation officer’s dispositional report indicated that appellant was most suitable for DJJ placement. The DJJ’s Intake Court Liaison told the probation officer that appellant would be required to participate in sexual offender treatment, as well as group sessions in anger management, victims of crimes, and cognitive skills. Additionally, the record suggests that appellant would be placed in a mental health unit. This evidence reasonably supports an inference that the juvenile court determined appellant could benefit from DJJ commitment because his needs would be addressed by the programs offered. The juvenile court only needs to find that the record demonstrates probable benefit to the minor, not exactly how the minor will benefit.

The juvenile court’s determination that less restrictive alternatives were ineffective or inappropriate is also supported by substantial evidence. The dispositional report was authored by the same officer who is charged with ordinarily handling sexual treatment offender program placements for Alameda County. The officer contacted all sexual offender treatment group homes utilized by Alameda County. Every facility responded that they would not accept appellant for placement in their program.³ Although appellant

³ “[Appellant] was already screened with all of the sexual offender treatment programs that the county utilizes, and not one was willing to sacrifice the safety of their employees as well as the community safety.”

knew he needed help, he seemed to have little insight into the causes for his behavior. His prior placement in residential treatment was unsuccessful when he committed a serious sexual attack on a staff member within three days of arrival. There is substantial evidence in the record to support the court's ultimate decision that alternative placements would be ineffective or inappropriate.

The record also supports our conclusion that the juvenile court was mindful of the section 725.5 considerations governing DJJ commitments. At the initial dispositional hearing on November 17, 2010, the court voiced concern "because the behaviors that we've been seeing are pretty extreme for a minor of this age." When the juvenile court inquired about alternative placements that offer sexual offender treatment, it stated, "he's a very young person to have this type of conduct." Finally, at the proceedings on January 12, 2011, the court identified, "[t]he minor is of a tender age, but the behaviors are extraordinary." These statements reasonably indicate that the court considered appellant's age during the commitment proceedings.

The court also considered the circumstances and gravity of the offenses. According to the dispositional report on November 17, 2010, appellant was completely naked when he punched a female staff member of Gateway multiple times. Appellant pushed her to the ground and tried to pull down her pants. The victim reported that he ejaculated onto her back. Moreover, after appellant was taken into custody at Sacramento County Juvenile Hall, it was reported that he tried to pull a probation aide into his room while he was naked from the waist down. According to the dispositional report, appellant has made statements that he sometimes is unable to control his urges and that he gets urges to hurt women. Based on the seriousness of his offenses and the risk he presented to himself and the community, the juvenile court determined DJJ was a suitable placement.

Finally, the juvenile court considered appellant's juvenile history as part of the dispositional report generated by the probation department. The assessment found that "[appellant] needs to be monitored at all times for his own safety and the safety of other people." The report documents appellant's history of sexual urges and resulting

escalation of delinquent activity. Despite his youth, the court recognized a real public safety risk based on appellant's juvenile history, which is consistent with his placement at DJJ and the underlying purpose of the juvenile law.

We conclude the juvenile court's decision was supported by substantial evidence and the court did not abuse its discretion in ordering appellant committed to DJJ.

DISPOSITION

The court's order is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.