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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.W.,

Defendant and Appellant.

A132442

(San Francisco City & County
Super. Ct. No. JW106237)

Defendant and appellant J.W. appeals from a disposition order made after the juvenile court found true allegations of a Welfare and Institutions Code section 602 petition alleging defendant committed forcible rape in concert (Pen. Code, §§ 261, 264.1)¹ and forcible rape (§ 261, subd. (a)(2)). The court placed defendant on supervised home probation, with 10 weekends in juvenile hall, stayed, pending his successful completion of a juvenile sex offender treatment program. Defendant contends he was entitled to a jury trial at the jurisdictional hearing because he potentially faces commitment to the Department of Juvenile Facilities (DJF) and upon discharge or parole therefrom would be subject to registration requirements under section 290.008² and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Section 290.008 provides in pertinent part: “(a) Any person who . . . is discharged or paroled from the [DJF] . . . after having been adjudicated a ward of the

residency restrictions under section 3003.5.³ Defendant acknowledges existing precedent holds there is no constitutional right to jury trial in juvenile proceedings, but contends this authority did not consider lifetime registration requirements and residency restrictions, and the seemingly blanket rule that there is no jury trial right in juvenile proceedings should be revisited under equal protection and due process theories. He further points out the California Supreme Court has granted review on the issue he raises in *In re S.W.*, review granted January 26, 2011, S187897.⁴ The Attorney General contends the issue raised is not ripe for review since defendant was not committed to and is not facing parole from DJF, and this court is, in any event, is bound by existing precedent. Even assuming the issue defendant raises is properly before us, we agree existing precedent controls and affirm the disposition order.

BACKGROUND

We recite only the facts relevant to the issue before us. (See *People v. Garcia* (2002) 97 Cal.App.4th 847, 850, fn. 1.) On April 19, 2011, the San Francisco District Attorney filed a delinquency petition (Welf. & Inst. Code, § 602, subd. (a)) alleging defendant, then aged 12, participated with two other male classmates, in raping a female classmate.

Prior to the jurisdictional hearing, defendant moved for a jury trial on the ground he potentially faced lifetime sex offender registration requirements and residency restrictions. Defendant conceded the juvenile court was bound “under the doctrine of *stare decisis* . . . by *People v. Nguyen* (2009) 46 Cal.4th 1007, but preserves this

juvenile court pursuant to Section 602 . . . because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.” (§ 290.008, subd. (a).) Subdivision (c) includes offenses specified in sections 261 and 264.1. (§ 290.008, subd. (c).)

³ Section 3003.5 (“Jessica’s Law”) provides in pertinent part: “(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2,000 feet of any public or private school, or park where children regularly gather.” (§ 3003.5, subd. (b).)

⁴ On March 2, 2011, the court converted the grant to hold status pending its decision in *People v. Mosley*, review granted January 26, 2011, S187965.

argument for appeal.” The juvenile court denied the motion, agreeing *Nguyen* made clear there is no right to jury trial in a juvenile case.

Defendant did not testify at the jurisdictional hearing. One of the other alleged participants, J.G., did so, and so did the victim. At the conclusion of the hearing, on June 13, 2011, the juvenile court found the allegations to have been sustained. Defendant filed a notice of appeal from the jurisdiction order on June 24, 2011.

At the disposition hearing on July 29, 2011, both the prosecution and defense counsel agreed defendant’s performance on home detention during the proceedings had been exemplary. Defense counsel asked that the 10 weekends of juvenile hall time sought by the prosecution all be stayed; the prosecution asked that two weekends be imposed and the balance stayed. In recognition of defendant’s strong performance at school, compliance with home detention, and continuing support from his mother, the juvenile court declared wardship, stayed all 10 weekends in juvenile hall and placed him on probation on numerous terms and conditions, including that he complete the juvenile sex offender treatment program.

On December 23, 2011, defendant’s appellate counsel advised the court his notice of appeal was premature and should have been filed following the disposition order, and requested augmentation of the record to include the disposition proceedings. On January 10, 2012, the court granted the augmentation request and deemed defendant’s notice of appeal to have been premature.

DISCUSSION

As we stated above, defendant raises one issue on appeal—that he was entitled to a jury trial during the jurisdictional hearing because he potentially faces commitment to the DJF, and upon discharge or parole therefrom would be subject to sex offender registration requirements and residency restrictions. (§§ 290.008, 3003.5.) Although he took the position in the juvenile court that *People v. Nguyen, supra*, 46 Cal.4th 1007 (*Nguyen*), is binding precedent on the issue of jury trial in juvenile proceedings (and he was “preserv[ing] this argument for appeal”), he urges in his briefing on appeal that *Nguyen* is not binding because it did not address the circumstances presented here, i.e.,

where a juvenile faces potential lifetime sex offender registration requirements and residency restrictions.

We conclude defendant's representation to the juvenile court was correct—that *Nguyen* is controlling on the salient issue. In *Nguyen*, our Supreme Court stated the United States Supreme Court “has concluded that the Constitution does not afford the right to a jury trial in juvenile proceedings.” (*Nguyen, supra*, 46 Cal.4th at p. 1019, citing *McKeiver v. Pennsylvania* (1971) 403 U.S. 528 (*McKeiver*)). The court observed at least five United States Supreme Court justices were of the opinion a juvenile proceeding was not the equivalent of a criminal proceeding under the Sixth Amendment for numerous reasons, including a greater emphasis on “informality, rehabilitation, and *parens patriae* protection of the minor.” (*Nguyen*, at p. 1019.) Five justices were also of the view “that a jury is not essential to fair and reliable *factfinding* in a juvenile case” and “ ‘[t]he imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding function.’ ” (*Id.* at p. 1020, quoting *McKeiver, supra*, 403 U.S. at p. 547.) The *Nguyen* court therefore agreed with the “overwhelming majority” of other state and federal cases that there is no constitutional impediment to using juvenile court adjudications to enhance later adult sentences. (*Nguyen*, at pp. 1021-1028.)

While *Nguyen* involved an enhancement question in an adult criminal proceeding, the Supreme Court's pronouncement that there is no constitutional right to jury trial in juvenile proceedings was pivotal to its analysis, and it is not a pronouncement with which we may, or are even inclined to, disagree. As the court discussed, there is a rational reason to treat adult and juvenile offenders differently and due process concerns are not implicated because a judge, rather than a jury, serves as the trier of fact. (See *McKeiver, supra*, 403 U.S. at p. 551 (conc. opn. of White, J.) [“Although the function of the jury is to find facts, that body is not necessarily or even probably better at the job than the conscientious judge.”].)

We are also bound by the Supreme Court's determination that sex offender registration is not “punishment” (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1196-1197; *In re Alva* (2004) 33 Cal.4th 254, 287-292; *People v. Castellanos* (1999) 21 Cal.4th 785,

792), and similarly, its determination that Jessica’s Law’s residency restrictions do not impose “punishment” for the offense that gives rise to the registration requirement, but rather for conduct that occurs after the commission of, or the conviction for, the registerable offense. (*People v. Picklesimer* (2010) 48 Cal.4th 330, 338, fn. 4; *In re E.J.* (2010) 47 Cal.4th 1258, 1280.) Moreover, if either is “punishment,” the inquiry becomes that described in the preceding paragraph, i.e., whether the juvenile has a constitutional right to a jury trial. The law at this juncture is that he or she does not.

DISPOSITION

The juvenile court’s dispositional order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.