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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**J.G.,**

**Defendant and Appellant.**

**A133145**

**(Alameda County  
Super. Ct. No. SJ10014481)**

J.G. appeals from a dispositional order entered in a proceeding commenced under Welfare and Institutions Code section 602. He contends the juvenile court erred in ordering him to register as a sex offender, because he was not committed to the custody of the Department of Juvenile Justice. (Pen. Code, § 290.008.) We will strike the provision of the dispositional order requiring sex offender registration and affirm the order in all other respects.

**I. FACTS AND PROCEDURAL HISTORY**

A juvenile wardship petition filed in June 2011 alleged that appellant committed a rape in May 2011. (Pen. Code, § 261, subd. (a)(2).)<sup>1</sup>

<sup>1</sup> Except where otherwise indicated, all statutory references are to the Penal Code.

A jurisdictional hearing was held in July 2011. Although the facts underlying appellant's offense are not necessary for the resolution of his appeal, suffice it to say that, according to the prosecutor's case, appellant held down a tenth grader on a bed at a friend's house, pulled off her shorts and underwear as she was saying "help" and "no," inserted his penis into her vagina, put his hand over her mouth, and told her to "[s]hut up, bitch" when she continued to protest. The court found beyond a reasonable doubt that appellant had committed forcible rape. (§ 261, subd. (a)(2).)

The probation department report recommended that appellant be committed to the care, custody and control of the probation officer, removed from his mother's home, and placed in a family home or group home "under the standard out-of-home probation conditions with additional conditions." The probation department report did not recommend that appellant be required to register as a sex offender.

The dispositional hearing was held on September 1, 2011. The prosecutor concurred in the proposed disposition. Appellant's counsel indicated that he had discussed the disposition with appellant and appellant's mother, and appellant was "prepared to be placed."

The juvenile court found that "the minor's welfare requires that his custody be taken from his parent" under Welfare and Institutions Code section 726, subdivision (a)(3). The court added: "he is declared a ward and committed to the care, custody, and control of the Probation Officer to be removed from his mother and placed in a suitable family home or group home."

The court also stated that appellant was "ordered to be registered pursuant to the sexual offense registration requirements of the code." The following exchange ensued: "[DEFENSE COUNSEL]: Your honor, the Court order regarding sexual registration, that's consistent with the Welfare and Institutions Code, right? [¶] THE COURT: Yes. [¶] [DEFENSE COUNSEL]: Because I believe that that's required only if he goes to CYA. So it's consistent with the Welfare and Institutions Code. [¶] THE COURT: Yes."

The written minute order was in line with these pronouncements and required that appellant “[r]egister as sex offender.”

This appeal followed.

## II. DISCUSSION

Appellant contends the juvenile court lacked authority to impose the requirement that he register as a sex offender. Respondent agrees, as do we.

Section 290.008, subdivision (a) reads: “Any person who, on or after January 1, 1986, is *discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed* after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.” (Italics added.) There is no dispute that appellant’s offense is an offense listed in subdivision (c) of section 290.008. But there is also no dispute that appellant was *not* committed to the custody of the Department of Corrections and Rehabilitation.

Before enactment of section 290.008 in 2007, the relevant authorization for imposing the registration requirement was contained in section 290, subdivision (d), which differed from the current statute in that it referred to the “Department of the Youth Authority” rather than the “Department of Corrections and Rehabilitation.” (See *In re Derrick B.* (2006) 39 Cal.4th 535, 539 fn. 3 (*Derrick B.*)). Former section 290, subdivision (d) did not authorize an order of sex offender registration for a ward who was not actually committed to the California Youth Authority. (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 619-620. See *In re J.P.* (2009) 170 Cal.App.4th 1292, 1299.) By the same analysis, section 290.008 does not authorize an order of sex offender registration for a ward who is not committed to the Department of Corrections and Rehabilitation, the relevant division of which is the Division of Juvenile Justice (as the Youth Authority is now known). No other authority for the registration requirement was cited by the court or proposed by the parties. (See *Derrick B., supra*, 39 Cal.4th at pp. 539-540.)

Because appellant was committed “to the care, custody, and control of the Probation Officer” and ordered “placed in a suitable family home or group home,” rather than being committed to the Department of Corrections and Rehabilitation, the juvenile court erred in imposing the sex offender registration requirement.

### III. DISPOSITION

The dispositional order of September 1, 2011, is stricken to the extent it requires appellant to register as a sex offender. The dispositional order is affirmed in all other respects.

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NEEDHAM, J.

We concur.

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JONES, P. J.

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SIMONS, J.