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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re MICHAEL R., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,

v.

MICHAEL R.,
Defendant and Appellant.

A133391

(San Francisco County
Super. Ct. No. JW066743)

Michael R., defendant below, appeals from the order of the court, following a disposition hearing, that he be committed to the Department of Juvenile Justice (DJJ). Michael contends that the court abused its discretion in ordering a DJJ commitment because less restrictive alternatives were appropriate and there was no evidence that he would benefit from the DJJ commitment. Michael also contends that the order of commitment wrongly specified 12 years as the maximum period of confinement and requests that order be corrected to specify 11 years and 4 months as the maximum period of confinement.

We affirm the court’s order committing Michael to the DJJ and amend the commitment order to specify 11 years and 4 months as the maximum period of confinement.

BACKGROUND

Michael, born in 1993, was arrested three times in 2005 and 2006 for grand theft, possession of a weapon and vandalism, and second degree burglary. No petitions pursuant to Welfare and Institutions Code section 602 followed these arrests.¹

Michael first came before the juvenile court when he was charged, on October 2, 2006, in a petition with one count of second degree burglary (Pen. Code, § 459) and one count of receiving stolen property (Pen. Code, § 496, subd. (a)). The probation officer's investigation of the offense stated that Michael, accompanied by two other minors, had broken the window of a van and taken a briefcase from inside the vehicle.

Before the hearing on the October 2 petition, Michael was charged, on October 11, 2006, in a second petition with one count of burglary in the second degree (Pen. Code, § 459), one count of tampering with an automobile (Veh. Code, § 10852) and one count of vandalism (Pen. Code, § 594, subd. (b)). The probation officer's investigation of the offense indicated that Michael, accompanied by three other minors, removed a backpack from a parked vehicle after one of his companions broke a window.

A third petition was filed on November 2, 2006, amended the same day to allege first degree robbery (Pen. Code, § 212.5, subd. (a)) and attempted first degree robbery (Pen. Code, § 212.5, subd. (a)). The probation officer's investigation of the offense stated that while riding a bus, Michael removed an iPod and headphones from the jacket pocket of a co-student of his middle school and left the bus without returning the items. Michael had also tried to take the victim's cell phone, but backed away when the victim's cousin prevented him.

The three petitions were addressed at a hearing on December 7, 2006. The first count of the October 2 petition was dismissed and the second was amended to allege a misdemeanor violation of Penal Code section 496, subdivision (a), which Michael admitted. The October 11 petition was dismissed and both counts of the November 2 petition were sustained. The court ordered release on home probation, with electronic

¹ Henceforth, all references to petitions denote petitions pursuant to Welfare and Institutions Code section 602.

monitoring and participation in the Columbia Boys and Girls Club. This court later reversed the trial court's finding that sustained the attempted robbery count from the November 2 petition.

A fourth petition was filed on April 2, 2007, alleging counts of second degree robbery (Pen. Code, §§ 211, 212, subd. (c)) and aggravated assault (Pen. Code, § 245, subd. (a)(1)). According to the probation officer's investigation, Michael and a companion hit a boy at their school, knocking him to the ground. Michael then took the victim's wallet. At a hearing on April 9, the robbery count was dismissed and Michael admitted the assault count. The court reinstated home probation.

A fifth petition was filed on April 17, 2007, alleging two counts of aggravated assault (Pen. Code, § 245, subd. (a)(1)). The probation officer's investigation report stated that Michael and a companion worked in tandem to distract a victim and attack him with a stun gun. Michael encouraged his companion's attacks and recorded a video of the attack on his companion's cell phone. At a hearing on April 25, the first count was amended to allege criminal liability as an accessory after the fact (Pen. Code, § 32), which Michael admitted, and the second assault count was dismissed. Probation was continued with an out of home placement at the San Francisco Boys Shelter.

A sixth petition was filed on August 23, 2007, alleging one count of aggravated assault (Pen. Code, § 245, subd. (a)(1)) and two counts of negligent discharge of a firearm (Pen. Code, § 246.3). According to the probation officer's investigation, Michael shot a BB gun at the leg and ear of a 10-year-old girl. Although the girl was initially traumatized, she was not physically injured and Michael claimed that no BBs remained in the gun when he shot at her. At a hearing on September 17, the first count was amended to misdemeanor battery (Pen. Code, § 242), which Michael admitted, and the remaining counts were dismissed. Probation with placement at the San Francisco Boys Shelter was continued. Michael returned to home probation on April 28, 2008.

A seventh petition was filed on June 20, 2008, alleging one count of second degree burglary (Pen. Code, § 459) and one misdemeanor count of possession of burglary tools (Pen. Code, § 466). The probation officer's investigation report stated that Michael was

seen breaking the window of a vehicle with a spark plug and rummaging in the glove compartment, without taking anything. At a hearing on July 10, Michael admitted the burglary charge and the possession charge was dismissed. The court continued home probation. On July 31 and August 4, bench warrants were issued because Michael had failed to appear at hearings. Michael was taken into custody and the warrants were recalled on August 6. The court continued home probation again on August 20.

An eighth petition was filed on March 18, 2009, alleging one count of aggravated assault (Pen. Code, § 245, subd. (a)(1)), one count of second degree burglary (Pen. Code, § 459) and one count of receiving stolen property (Pen. Code, § 496, subd. (a)). The assault count originated from an incident on February 20, when, according to the probation officer's investigation report, Michael confronted a girl with a group of other youths. Michael slapped one of the girl's friends and others in the group attacked the girl. The remaining counts originated from an incident on March 14, when a store manager accused Michael of shoplifting jewelry with two companions. A gold chain from the store was found in Michael's possession. At a hearing on March 25, the assault count was amended to misdemeanor battery (Pen. Code, § 242), which Michael admitted. Michael also admitted receiving stolen property and the burglary count was dismissed. Home probation was continued.

A ninth petition was filed on October 13, 2009, alleging one count of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) and one count of conspiracy to commit robbery (Pen. Code, § 182, subd. (a)(1)). The probation officer's investigation report stated that a companion wielding a handgun, which later proved to be an air pistol, confronted a woman, while she was retrieving her bag from the trunk of her vehicle, and demanded her wallet. As this occurred, Michael took the woman's shoulder bag from the trunk. At a hearing on October 26, the robbery count was amended to grand theft (Pen. Code, § 487, subd. (c)), which Michael admitted, and the conspiracy count was dismissed. Probation at an out of home placement was ordered on November 19. On December 15, Michael was placed at Mary's Help group home. Michael was returned to home probation on October 22, 2010.

A tenth and final petition was filed on May 11, 2011, alleging three counts of second degree burglary (Pen. Code, § 459), two counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) and one misdemeanor count of brandishing an imitation firearm (Pen. Code, § 417.4). According to the probation officer's investigation report, Michael and a companion were stopped by security agents outside a store after they were seen leaving with items of clothing for which they had not paid. A video recording showed that an agent grabbed Michael, who had attempted to run, but Michael twisted away. Michael pointed an object at the agent, which the agent thought was a firearm, and the agent told Michael to keep the merchandise. When Michael was later arrested, he had a silver replica revolver in his possession. Michael's companion was detained and a search of his backpack revealed items taken from two other stores. At a hearing on May 26, Michael admitted one count of second degree robbery, acknowledging that it would qualify as a future strike, and the other five counts were dismissed.

A disposition hearing was held on September 14, 2011. Tony Hurley, Michael's probation officer, had written a disposition report that recommended a DJJ commitment because it would provide Michael with services to address his educational, mental health and vocational needs. An alternative disposition report, recommending either placement in a transitional housing program with MAC's Children and Family Services (MAC's) or an extended detention at the Juvenile Justice Center, had been submitted to the court on Michael's behalf. At the hearing, Hurley said that the probation department had not considered MAC's as an option for Michael and that it would require further study before he could say if MAC's was an option he could recommend. The court postponed disposition so that the probation department could study the MAC's option.

On September 26, 2011, defense counsel informed the court that Chief Probation Officer Sifferman had indicated that no funding was available to place Michael at MAC's because he was already 18 years old. Although defense counsel could identify no other available funding source, counsel maintained that a DJJ commitment would be inappropriate simply because there was no funding available for a more appropriate placement. Defense counsel also proposed that the court could place Michael for a few

additional months in Juvenile Hall. As a third alternative, defense counsel also suggested a placement at Log Cabin Ranch School until he turned 19. Defense counsel maintained that Michael was not a threat to public safety because he had never hurt anyone.

The probation department continued to recommend a DJJ commitment and the prosecution urged the court to accept that recommendation. The prosecution argued that the court should consider Michael's record as a whole, which included 25 contacts with police, 9 sustained petitions, and serious offenses. The prosecution pointed out that although Michael had completed two out of home placements, he had reoffended after each release.

The court determined that even if funding were not an obstacle and even though MAC's had accepted Michael as a suitable candidate, MAC's was a "poor option" because "[i]t's a place where people have successfully completed placement and needed a little time before they move on to be on their own." The court did not regard Michael as being "at that level at all."

The court noted that since October 2006, Michael's criminal activity had been continuous and consistent and that "the only rehabilitation that is now afforded to Michael is DJJ." The court noted that a DJJ commitment included "treatment, substance abuse, mental health, education, medical, dental, vocational work experience, activities, case management, transition reentry, community planning, behavioral management." The court concluded: "So I am sending him there with the hope that this will be the one suitable program for Michael and that he will be, pursuant to Welfare and Institutions Code [section] 202, kept from the community because of safety issues and then there will also be opportunity for rehabilitation for him." The court continued Michael as a ward and committed him to the DJJ for a period not to exceed 11 years, 4 months. The September 27, 2011 order of commitment, however, states the maximum period of confinement as 12 years.

Michael timely filed a notice of appeal.

DISCUSSION

I. *Commitment to the DJJ*

Michael contends that the court erred in committing him to the DJJ because there was no evidence that he would benefit from a DJJ commitment and there was no evidence that other programs were not appropriate or could not meet Michael's needs.

A. *Standard of Review*

A trial court's decision to commit a minor to the DJJ will be reversed only if the trial court abused its discretion. (*In re Jose T.* (2010) 191 Cal.App.4th 1142, 1147.) A reviewing court must indulge all reasonable inferences in favor of the decision and affirm the decision if supported by substantial evidence. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) For evidence to be substantial, it "must be reasonable in nature, credible, and of solid value." (*Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1219.) In determining whether substantial evidence exists, a reviewing court examines "the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395; see also Welf. & Inst. Code, § 202.)

Since 1984, the Welfare and Institutions Code has required that courts commit minors "in conformity with the interests of public safety and protection, [to] 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." (Welf. & Inst. Code, § 202, subd. (b); *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) "[T]he Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety." [Citation.] (*In re Carl N.* (2008) 160 Cal.App.4th 423, 433.) Nevertheless, "the Legislature has not abandoned the traditional purpose of rehabilitation for juvenile offenders." (*In re Julian R.* (2009) 47 Cal.4th 487, 496.) "[W]hile there has been a slight shift in emphasis, rehabilitation continues to be an important objective of the juvenile court law. 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.* (1989) 210 Cal.App.3d 571, 576; accord, *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396; see also Welf. & Inst. Code, § 734 [requiring probability of benefit to the minor before commitment to the Youth Authority (now DJJ)].) In determining the appropriate disposition for the minor, the trial court is required to consider “(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.” (Welf. & Inst. Code, § 725.5.)

B. *Less Restrictive Alternatives*

The alternative disposition report, submitted on Michael’s behalf, recommended either placement at MAC’s Children and Family Services or an extended detention at the Juvenile Justice Center. At the second disposition hearing, defense counsel also suggested a placement at Log Cabin Ranch School until Michael turned 19. Michael contends that the court’s finding that these less restrictive dispositions would be ineffective or inappropriate was not supported by substantial evidence.

The court carefully considered the MAC’s alternative before rejecting it as inappropriate for Michael. At the first disposition hearing, when it became apparent that the probation department had not considered MAC’s as a placement for Michael, the hearing was continued so that the probation department could do so. Even though funding for MAC’s would not be available for Michael, the court stated that it would have placed Michael there anyway, if it were an appropriate placement. However, the court concluded that MAC’s was “a place where people have successfully completed placement and needed a little time before they move on to be on their own. I don’t think Michael is at that level at all.”

At the time of the disposition hearing, Michael was over age 18 and would turn 19 in fewer than eight months. Because of Michael’s age, he did not qualify for state funding for MAC’s and he could stay at Log Cabin Ranch School only until the age of 19. Even if funding were not an issue, MAC’s transitional housing program would also be available only until Michael turned 19. Sifferman, the chief probation officer, had

requested that the court not make long term commitments at the Juvenile Justice Center. In contrast to the constraints in the length of Michael's participation in less restrictive alternatives, he could stay at DJJ until he was 25.

Michael had already had two out of home placements. From October 2007 to April 2008, Michael was placed in the San Francisco Shelter Program. From November 2009 to August 2010, Michael was placed at Mary's Help Residential Group Home. Despite successfully completing the programs at these out of home placements, Michael committed new offenses soon after returning to his home. Despite over five years on supervised probation, Michael had failed to reform, and the court could reasonably conclude that rehabilitative efforts extending past Michael's 19th birthday would be required.

Michael came to the disposition hearing with a five year history of arrests that had resulted in 10 juvenile court petitions. Michael's actions demonstrated an ongoing lack of regard for the property of others and involved shoplifting, multiple vehicle breakins, and robbery. When almost 14, Michael and a companion assaulted a schoolmate, knocking him to the ground. Shortly after that, Michael encouraged a friend and made a video recording as the friend attacked a man with a stun gun. At the age of 14, Michael frightened a young neighbor girl, pretending to shoot her with a BB gun. When almost 16, Michael slapped a girl. At 16, Michael acted in concert with another who attempted a robbery with an air pistol that appeared to be a handgun and at 17, Michael pointed a replica gun that appeared to be a handgun at security personnel who confronted him for shoplifting. Michael admitted that if he had not been in custody pending the disposition hearing, he would "probably be doing way worse stuff."

The state argues that Michael's "increasingly violent crimes established that he posed a danger to the public requiring secure housing." Michael argues that he "has never resorted to significant violence, nor placed anyone, other than perhaps himself, in danger of serious injury." While it is true that Michael's actions have not resulted in serious harm to others, his recent use of a replica handgun and association with an accomplice wielding an air pistol that appeared to be a handgun demonstrate Michael's

willingness to engage in encounters that have a high potential for violent response. Hurley, in his disposition report, concluded that Michael “continues displaying assaultive behavior which makes him a risk to the community.” Michael’s own alternative disposition report that was submitted to the court stated that “Officer Hurley is correct in his assessment regarding Michael’s unacceptable aggressive behavior”

We conclude that substantial evidence supports an inference that Michael required rehabilitative programs that would extend beyond his 19th birthday and that Michael’s history of criminal activity required a placement in secure facilities for his own safety and the safety of the community. The court carefully considered the less restrictive alternatives to a DJJ placement that Michael proposed and did not abuse its discretion in rejecting them as inappropriate for Michael because they would be limited in time and/or insecure.

C. The Benefit to Michael of a DJJ Placement

In recommending a DJJ placement for Michael, Hurley’s report to the court stated: “If placed at DJJ, Mike will receive a compressive [*sic*] assessment to implement a treatment plan to fit his specific needs. He will be entitled to receive services to address his educational, mental health and vocational needs.” The court stated: “I have some knowledge of the DJJ while reading up on it. DJJ used to be not a good facility to send minors to. But beginning 2008, they were selected to implement a program service day and implemented a program service day schedule which includes treatment, substance abuse, mental health, education, medical, dental, vocational work experience, activities, case management, transition reentry, community planning, behavioral management. And they will give him an academic career education program that will fit the needs of particular minors and enhance their activity.”

Michael contends that there is no evidence of probable benefit from a DJJ commitment and that the statements by the court merely list “various generic types of programs it believed exist at DJJ without correlating any of them to Michael’s needs.” Even though the court specifically cited an education program that would benefit

Michael, he criticizes the court for not “expressing or demonstrating any understanding of exactly what that program is, what Michael needs, and how the two actually relate.”

Michael’s argument requires more of the court than does the law. “There is no requirement that the court find exactly how a minor will benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed” (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.) Here, one of Michael’s identified needs was to finish his high school education. The court was aware that an educational program would be available to Michael following a DJJ commitment and found it probable that Michael would benefit from that program. The court did not abuse its discretion in reaching that determination.

In his probation report, Hurley stated some of Michael’s needs, which are not contested in Michael’s briefs: “It is this officer’s belief that Michael needs to be placed in a highly structured facility to help him gain responsibility as an individual and provide him with identification of educational, vocational and psychological counseling.” In addition to the educational programs, the court identified mental health programs and vocational work experience as benefits that a DJJ commitment would provide. These programs specifically address Michael’s needs that were enumerated by Hurley and it was not an abuse of discretion by the court to conclude that Michael would benefit from such programs.

Michael’s age was a major factor at his disposition hearing because he would turn 19 in less than eight months time. If Michael were to reoffend, that offense would be dealt with in the adult court system, where Michael’s best interest would not be a factor. Indeed, when Michael admitted his latest offense, he acknowledged that it would qualify as a strike should he reoffend. It was not unreasonable for the court to conclude that it was in Michael’s interest to be placed in a program that could provide rehabilitative services beyond his 19th birthday in order to provide him the best chance not to reoffend.

We conclude that the record presents ample evidence supporting the court’s determination that Michael would benefit from a DJJ commitment. Because substantial

evidence also supports the court's determination that less restrictive alternatives were not appropriate, we affirm the order of the court committing Michael to the DJJ.

II. *The Maximum Period of Confinement*

At the disposition hearing, the court stated that Michael's maximum confinement time was 11 years and 4 months. The minute order from that hearing states the same period. However, the DJJ commitment order states 12 years as the maximum period of confinement. The discrepancy appears to have resulted from the inclusion of a count of attempted first degree robbery, which the juvenile court originally found true, but which this court reversed. Michael requests that this court amend the DJJ commitment order to reflect the maximum confinement time as stated at the hearing. The state does not oppose this request.

“[A] discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error.” (*People v. Mesa* (1975) 14 Cal.3d 466, 471, limited by a statute not applicable here, as recognized by *People v. Turner* (1998) 67 Cal.App.4th 1258, 1268.) This court has the power to correct clerical errors and make the records reflect the true facts. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; Pen. Code, § 1260.) We conclude that the DJJ commitment order contains a clerical error and our disposition reflects the required modifications.

DISPOSITION

The order committing Michael to the DJJ is modified as follows: (1) in item 6d, the first offense dated “11/2/2006,” with an eight-month term, is stricken and (2) in item 8a, the maximum period of confinement is modified from “12 YEARS” to “11 YEARS AND 4 MONTHS.” The order is affirmed in all other respects.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.