

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

In re T.O., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.O.,

Defendant and Appellant.

A134102

(Alameda County  
Super. Ct. No. SJ08110195)

On September 28, 2011, then 15-year-old T.O. was found with a loaded firearm in his backpack on the campus of Fremont High School. A juvenile court wardship petition was filed, and he admitted a violation of Penal Code former section 12021, subdivision (e),<sup>1</sup> possession of a firearm with a prior felony conviction. At a disposition hearing on October 17, 2011, the juvenile court ordered T.O. placed in an out-of-state group home. T.O. appeals from the dispositional findings and order.

Assigned counsel has submitted a *Wende*<sup>2</sup> brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that T.O. has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No

<sup>1</sup> See now Penal Code section 29820; all further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> *People v. Wende* (1979) 25 Cal.3d 436.

supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

### **BACKGROUND**

T.O. was first adjudicated a ward of the juvenile court, pursuant to Welfare and Institutions Code section 602, subdivision (a) at the age of thirteen, when he admitted a violation of section 246 (discharging a firearm at inhabited dwelling house). T.O. was arrested after neighbors reported hearing multiple shots being fired.<sup>3</sup> He was one of several individuals who were involved in shooting at one another. He was apprehended in a stolen car after a police pursuit. T.O. told police he was shooting back in self-defense. He was released to his mother on GPS monitoring.

A subsequent juvenile wardship petition was filed in June 2010.<sup>4</sup> Oakland police officers responded to a report of people fighting. When police arrived in the area and tried to question T.O., he ran from the officers and was seen throwing a black object over a fence. T.O. was taken into custody and a gun was found where he threw the object over the fence. T.O. told the probation officer that he found the gun and was keeping it for protection. He admitted a violation of former section 12025, subdivision (a)(2)<sup>5</sup> (possession of a concealed firearm).

On September 9, 2010, the juvenile court approved a recommendation for T.O.'s placement with Rite of Passage-Silver State Academy in Yerington, Nevada. He successfully completed the Rite of Passage program on July 1, 2011, exiting with a 3.08 grade point average, and returned to his mother's home. The juvenile court then again placed T.O. on probation supervision, residing in the home of his mother, with GPS monitoring.

---

<sup>3</sup> The facts of the underlying offenses are taken from the probation officer's reports and the police reports submitted to the juvenile court.

<sup>4</sup> This was T.O.'s seventh referral to the probation department.

<sup>5</sup> See now section 25400.

On September 28, 2011, police were called to Fremont High School where T.O. was being held in the office of the vice principal. A search of T.O.'s backpack revealed a Glock semi-automatic pistol and two magazines loaded with nine millimeter ammunition. At the detention hearing on September 30, 2011, T.O. admitted a violation of former section 12021, subdivision (e), and several other firearms charges were dismissed. T.O. was represented by counsel, who stated that the admission was with counsel's consent and who stipulated to a factual basis for the admission. The court found a knowing, voluntary and intelligent waiver of rights, declared the offense to be a felony, and ordered T.O. detained pending the disposition hearing.

The disposition hearing was held on October 17, 2011. T.O. was represented by new counsel, who contended that T.O. had the firearm in his possession for self-defense after "[a]nother student had pulled a gun on him at school the day before." He asked the court to place T.O. on continued probation in the home of an uncle, as recommended by the probation officer.<sup>6</sup> The court rejected the probation department's recommendation, stating: "I would be remiss as a judicial officer to send this young man home. And this recommendation is absurd." The court found that reasonable efforts had been made to prevent or eliminate the need for removal from the home, that T.O. had been tried on probation in the custody of a parent but had failed to reform, and that remaining in the minor's home was contrary to T.O.'s welfare (Welf. & Inst. Code, § 726, subd. (a)(2)). The court ordered T.O. removed from the home and directed that he be "placed in a suitable family home or group home." The court commented to T.O., "You're a

---

<sup>6</sup> The probation department recommendation was "that the present order be continued with the minor's mother giving discretion for the minor be placed in the home of his uncle . . . . The undersigned is recommending this placement because after meeting and investigating the background of [T.O.'s uncle] the undersigned has determined that this may be a positive placement for the minor where he can thrive and start to live the life of a teenager instead of roaming the streets of Oakland unsupervised acquiring weapons to take to school." The uncle "resides in Vallejo, has a bachelor's degree in Criminal Justice, . . . [and] works full time for Berkeley Unified School District . . . ."

dangerous young man. Very, very dangerous. It's amazing you haven't killed somebody yet, or you haven't been shot."

A placement review hearing was set for October 31, 2011, and was continued several times, apparently due in part to T.O.'s resistance to a program placement, particularly Rites of Passage. A further placement review report filed December 12, 2011, notes that T.O. was advised by the probation officer that he could not reject placement, and "therefore he is requesting that the Court okay for him to be placed at Clarinda Academy in Clarinda Iowa." On January 25, 2012, the probation department reported that T.O.'s interstate compact had been approved and he was scheduled for transportation to Clarinda Academy in Iowa on January 27. The placement at Clarinda Academy was approved February 6, 2012.

A notice of appeal, contesting the court's dispositional findings and order, was filed on December 16, 2011.

#### **DISCUSSION**

A juvenile court's dispositional order may be reversed on appeal only upon a showing the court abused its discretion. " " "We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them." ' [Citation.]" (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.)

While presenting no arguable issues for appellate review, counsel suggests that we "may wish to consider," in our independent review, a "pattern of prosecutor overcharging multiple allegations for a single instance" and "argumentative hyperbole" by the prosecutor in commenting on one of T.O.'s prior weapons convictions. Counsel does not suggest how any of this might be relevant to the court's exercise of its discretion in the determining the appropriate disposition for the minor, and we discern none.

Counsel also suggests that we may wish to consider certain remarks made by the juvenile court concerning the minor as suggesting "a questionable temperament." We

find nothing inappropriate or intemperate in the court's assessments, and certainly nothing that raises any arguable appellate issue.<sup>7</sup>

The court made the findings required under Welfare and Institutions Code section 726, and those findings are supported by substantial evidence. The court had before it a recidivist minor with repeated serious weapons offenses and persistent failures to respond to probation supervision. No error is shown.

**DISPOSITION**

The judgment is affirmed.

---

Bruiniers, J.

We concur:

---

Simons, Acting P. J.

---

Needham, J.

---

<sup>7</sup> Counsel also suggests that the juvenile judge “failed to properly frame the pertinent admission” at the time of the plea. This appeal challenges only the disposition, not the validity of the plea.