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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re D.W., a Person Coming under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.W.,

Defendant and Appellant.

A134487

(Contra Costa County
Super. Ct. No. J1101572;
Solano County Super. Ct.
No. J40313002)

Appellant D.W. admitted threatening a public officer in violation of Penal Code section 71. The juvenile court declared appellant to be a ward of the court and committed him to serve a nine-month term at a rehabilitation facility. Appellant’s court-appointed counsel has briefed no issues on appeal and asks this court to review the record as required by *People v. Wende* (1979) 25 Cal.3d 436. We have done so and find no issues that merit further briefing.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was a 14-year-old student at Everest Academy in Vallejo as of September 15, 2011.¹ On that date, appellant and another student were “ ‘acting up in class.’ ” After their teacher sought to “de-escalate” their behavior, the other student hit the teacher in the chin. Appellant yelled that he was going to leave the school, return

¹ Because appellant admitted the allegation in the juvenile wardship petition, we derive the relevant facts from the probation report.

with a handgun, and shoot everyone. Appellant and the other student then ran around the school's campus, climbed onto the roof, and slid down poles. Vallejo police arrested the two students after they tried to leave the school's campus.

On September 16, 2011, the Solano County District Attorney filed a juvenile wardship petition charging appellant with one felony count of threatening a public officer. (Pen. Code, § 71.) At the same time, the district attorney filed a form indicating that appellant was statutorily eligible for deferred entry of judgment (sometimes referred to as DEJ) pursuant to Welfare and Institutions Code section 790.

At a hearing on September 28, 2011, in exchange for being considered for deferred entry of judgment, appellant admitted the allegation that he had threatened a public officer. As reflected in the plea form, any promises made to appellant would not be binding if appellant failed to appear at any subsequent hearing. At the hearing, the court clarified that appellant would be referred for deferred entry of judgment and that it was the court's standard practice to allow him to withdraw his plea if he was not found to be eligible for deferred entry of judgment.² During the plea colloquy, the court explained that appellant could be confined for up to three years if he were declared a ward of the court. The court found that appellant "knowingly, intelligently, and voluntarily waived his rights and that there [was] a factual basis for the admission." The court referred the matter to probation for a recommendation regarding deferred entry of judgment and disposition. The signed minutes associated with the hearing reflect that the court declared the crime to be a felony.

In a hearing conducted on October 28, 2011, the probation department requested that the court issue a bench warrant for appellant after he had failed to appear for an

² The court referred to appellant being allowed to withdraw his admission if he were not found "eligible" for DEJ. As appellant's counsel points out, eligibility and suitability are separate and distinct determinations. (See Welf. & Inst. Code, § 790, subd. (b).) The district attorney makes the initial determination that a juvenile is statutorily eligible for DEJ. (Welf. & Inst. Code, § 790, subd. (b).) The determination of whether a juvenile is suitable for DEJ is made by the juvenile court. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607, fn. 10.)

interview on October 13. The Solano County juvenile court ordered a bench warrant for appellant's arrest.

Following the issuance of the warrant, appellant was arrested in Contra Costa County and transferred to Solano County. On November 18, 2011, the probation department filed a memorandum recommending that appellant be transferred to Contra Costa County for disposition in light of the fact that appellant would be residing with his father in Bay Point. The Solano County juvenile court transferred the matter for disposition to Contra Costa County.

The Contra Costa County juvenile court accepted the transfer and set the matter for a disposition hearing on December 12, 2011. The probation department in Contra Costa County submitted a dispositional report and recommendation in which it recommended appellant be declared a ward of the court and placed in a six-month program at the Orin Allen Youth Rehabilitation Facility. The report did not address appellant's suitability for deferred entry of judgment. At a continued disposition hearing conducted on December 19, 2011, appellant's counsel requested a further continuance so that appellant could be screened for deferred entry of judgment. After the probation officer stated that she believed a DEJ evaluation could be completed in one week, the court continued the disposition hearing for 10 days.

At the continued disposition hearing on December 29, 2011, the probation officer reported that appellant had not been screened for DEJ because the probation department had not been directed to do so in the court's minute order from the December 19 hearing. To avoid further delay, appellant's counsel agreed to go forward with a hearing on appellant's suitability for DEJ based upon the social study already prepared by the probation department. The prosecutor argued that DEJ would be inappropriate based on the nature of the underlying offense as well as indications in the probation report that appellant was affiliated with the KNI gang and had a gang tattoo. The prosecutor also noted that appellant had not accepted full responsibility for his actions. As reflected in the probation report, appellant denied that he had threatened to shoot anyone and denied

mentioning a handgun or having access to handguns. The probation officer concurred with the prosecutor's recommendation to deny DEJ.

The court denied the request for deferred entry of judgment, observing that it was approaching the matter as if it were properly before the court, notwithstanding appellant's failure to appear at a probation interview following entry of his plea. The court then proceeded to disposition, adjudged appellant a ward of the court with no termination date, and committed appellant to a nine-month regular program at the Orin Allen Youth Rehabilitation Facility, with an additional 90-day conditional release period. The court adopted the probation officer's recommendations as its findings. The probation report specified that the "aggregate custody time" was three years, with credit given for 53 days spent in juvenile hall in Solano and Contra Costa Counties.

The court ordered standard conditions of probation, including a \$100 restitution fine payable by September 12, 2012. Appellant was directed to submit collection samples and print impressions pursuant to Penal Code section 296.1, and he was required to write a letter of apology to the victim to be submitted by February 29, 2012. The court imposed gang probation conditions recommended by the probation department, finding that the probation report supplied a factual basis to impose the conditions. Among other things, the gang conditions required appellant not to associate with any gang members, affiliates, or associates appellant knows to be part of a gang, including the KNI criminal street gang. Appellant was specifically ordered to stay away from certain named individuals. The gang conditions also ordered appellant to stay away from areas where he knows gang members meet, or areas he knows where there is gang related activity, including specified locations in Antioch.

Appellant filed a timely notice of appeal.

DISCUSSION

Appellant's counsel filed a brief identifying no potentially arguable issues and asking this court to independently review the record under *People v. Wende, supra*, 25 Cal.3d 436. Appellant was afforded an opportunity to file a supplemental brief with

this court but did not do so. We have reviewed the entire record and conclude no issue warrants further briefing.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.