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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

SALVADOR O.,

Defendant and Appellant.

A134638

(Sonoma County
Super. Ct. No. 36667-J)

Salvador O. appeals from a juvenile court order requiring him to serve 540 to 750 days in “any penal institution.” He contends that there is no legal authority for the order because it will require him to serve time in county jail, and that the juvenile court abused its discretion in imposing a lengthy fixed term disposition. He further argues that the court failed to calculate his maximum confinement time and the amount of secure custody credit to which he is entitled. We will remand for calculation of appellant’s custody credits and determination of his maximum period of confinement. In all other respects, we will affirm the order.

STATEMENT OF THE CASE

On January 18, 2012, the Sonoma County District Attorney filed a subsequent delinquency petition (Welf. & Inst. Code, § 602, subd. (a))¹ alleging that appellant, a 17 and a half year old ward of the court, had escaped from a juvenile facility in violation of Welfare and Institutions Code section 871, subdivision (a). Appellant admitted the allegation and the petition was sustained on January 27. On February 10, the court committed appellant to 540 to 750 days in “any penal institution.” The court’s order specifies, “Minor shall be committed to Juvenile Hall for . . . 540 to 750 days” and further indicates, “any penal institution including MADF.”

Appellant filed a timely notice of appeal on February 10, 2012.

STATEMENT OF FACTS

Appellant was initially declared a ward of the court in October 2010, after admitting allegations of felony robbery (Pen. Code, § 211) and misdemeanor attempt to dissuade a witness (Pen. Code, § 136.1, subd. (a)(2)) arising from the assault and robbery of Oscar L.² According to the probation report, while walking along the railroad tracks, Oscar came upon a group of five young men smoking marijuana and joined them. The five went to a market and when they returned asked Oscar if he wanted to buy some marijuana. He purchased \$20 worth and remained with the group for another 20 minutes. After one of the group asked if Oscar wanted to sell his necklace and Oscar declined, another of the young men told Oscar to “look over there” and then kicked him in the face. Oscar fell and when he attempted to get up, he was pushed down. Three of the young men kicked and hit him multiple times. One of the group ripped the necklace off Oscar’s

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² The petition alleged four felony counts—robbery, threat, attempt to dissuade a witness, and assault with a deadly weapon—with allegations of personal use of a knife in committing the robbery and threat offenses. Appellant’s admissions were made under an agreement that the attempt to dissuade a witness count would be reduced to a misdemeanor, the enhancement allegation under the robbery count would be dismissed, and the remainder of the petition would be dismissed.

neck, took his vest off him, looked at his cellular phone and threw it back at him, took \$30 from his wallet and threw the wallet back at him. While Oscar was on the ground, a member of the group whom Oscar later identified as appellant stood over him, brandishing a knife, and told him not to contact the police or they would kill him. Oscar got up and ran, and appellant chased him for a while. Oscar went to his brother's house and his brother called the police. Oscar initially identified appellant's brother in a photographic lineup as the person who chased him and threatened him with a knife. Appellant's brother told the police it was appellant who had used the knife and chased Oscar. Oscar later identified appellant as the person who held the knife and threatened him. Appellant admitted striking Oscar in the face and elbowing him, taking \$6 from Oscar's wallet when it fell out of Oscar's vest, threatening to beat Oscar up if he called the police, and chasing him for a quarter of a mile. He admitted that he had a folding knife clipped to his belt during the incident but denied brandishing the knife, taking Oscar's necklace or threatening to kill Oscar.

On November 22, 2010, appellant was declared a ward of the court and detained at juvenile hall pending commitment to a probation camp. On November 30, he participated in a fight at juvenile hall, resulting in a petition that was sustained, upon his admission, on January 6, 2011. juvenile hall reported that the fight was gang related. Appellant remained at juvenile hall pending camp placement, which occurred on January 24, 2011.

In May 2011, a juvenile correctional counselor reported that appellant had been working diligently since his admission to camp on the issues that brought him there, gang involvement, substance abuse and building responsible relationships. He had identified anger issues in himself and actively sought help in addressing them. He was described as an "exceptional" student, was compliant with the expectations of probation and camp staff, and participated in individual and family counseling and all aspects of the camp program. Due to his progress and stability, appellant was moved into the aftercare component of the program on July 29.

Once home, appellant began to engage in problematic behavior, including substance abuse, taking his father's car without permission, and associating with an uncle who is a sex offender registrant, with whom staff had previously directed appellant to have no contact. Appellant was returned to the residential part of the camp program. In November 2011, the juvenile correctional counselor reported that although disappointed by his "setbacks" while on furlough, appellant was continuing to engage in the camp process and in his "self-discovery and insight into his poor decisionmaking." The report stated that appellant had had no positive drug tests while in the residential program but "continue[d] to struggle with substance abuse and his decision making while in the community."

On January 15, while visiting his aunt in Santa Rosa with his father, appellant left the house without telling anyone. Appellant's father contacted probation camp staff about 15 minutes later, when he was unable to find appellant. Staff contacted appellant on his cell phone, but he hung up as soon as he realized who was calling; staff left messages for appellant to contact them or his family. Appellant's aunt called his cell phone but he hung up on her as well. On January 25, appellant was found in the Santa Rosa area by "MAGNET." He was apprehended and taken to juvenile hall.

When interviewed, appellant said that he did not premeditate running away but spontaneously decided to go to the cemetery to visit the graves of his twin daughters, then met up with friends and smoked marijuana and drank tequila with them. He did not feel he could return after becoming intoxicated, stayed at a friend's house without telling anyone where he was, and planned to remain in the community until he was caught. Appellant stated that he liked the probation camp and expressed appreciation for the program assisting him in obtaining his general equivalency diploma, but he understood he would not be accepted back. Feeling that an extended term in juvenile hall would not benefit him, appellant wanted to be placed at a program called Tahoe Turning Point, which he had heard had a similar environment to the probation camp. Appellant intended to "do things 'on his own' " as his father had told him he would no longer provide support.

Appellant's parents divorced when he was a young child. His mother has a history of substance abuse and incarceration. His father was arrested for a domestic violence offense in 1999 and convicted of a driving under the influence in 2004. Appellant has three brothers from his parents' relationship and two younger brothers from his father's relationship with appellant's stepmother. Appellant's father drank heavily and abused the four older boys during their early childhood. Appellant lived in foster care for six or seven years. He and his brothers lived with his stepmother "on occasion" but at the time of his probation interview, she could not have children living with her because she was being "watched by CPS" after having had her two children removed from her custody. Appellant spent several months living in Oregon with his mother, and returned to Sonoma County in February 2010. He had been expelled from school in Oregon for fighting and had not attended school in California since his return. Appellant's oldest brother was involved in the 2010 offenses and had previously been declared a ward of the court; another brother was also a ward of the court and the younger of the older boys had been cited for possession of marijuana at school but the matter was dismissed.

Appellant began drinking alcohol at age 12, became "hooked" and "always drinks to excess," and has experimented with many illicit substances. He told the probation officer he was not a gang member but was an associate of the Sureno gang. He has several tattoos which he denied are gang related. He began to hate Nortenos in his freshman year of high school, after an incident when he was " 'jumped by a group of them.' " He said he had avoided fighting in juvenile hall because his martial arts instructor told him he would be kicked out of his martial arts school if he got into a fight in juvenile hall.

When interviewed after the offenses in October 2010, appellant's father, who had been sober for seven years, told the probation officer he did not know what to do to help his sons because they would not listen to his advice or directives. He felt appellant's behavior was partly due to his use of drugs and alcohol, felt appellant's girlfriend was a bad influence on him, and did not understand his sons' attraction to gangs. After the

present offense, appellant's father expressed frustration that he had worked for a long time with the probation camp and been supportive of appellant, but appellant continued to violate the rules. He wanted appellant to remain in custody because he did not believe he could trust appellant's behavior and did not want to be responsible for supervising appellant because of his job and other obligations. He stated that he was tired of helping appellant and paying for services when appellant would not follow the rules.

DISCUSSION

I.

Appellant challenges the dispositional order as unauthorized by section 202 because it requires him to spend time in county jail. Section 202, which specifies the dispositional alternatives available to juvenile courts, does not provide for a commitment to county jail. (§ 202, subd. (e).)³

As indicated above, appellant was 17 and a half years old when he committed the present offense. Noting his relapse into alcohol use, lack of family support and need for rehabilitative services, the probation department recommended that appellant be committed to juvenile hall until his 18th birthday. The probation report stated that this would allow appellant "to achieve a significant period of sobriety before he transitions back into the community" and that he would have access to weekly 12-step meetings and

³ Section 202, subdivision (e), provides:

"(e) As used in this chapter, 'punishment' means the imposition of sanctions. It does not include retribution and shall not include a court order to place a child in foster care as defined by Section 727.3. Permissible sanctions may include any of the following:

"(1) Payment of a fine by the minor.

"(2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.

"(3) Limitations on the minor's liberty imposed as a condition of probation or parole.

"(4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.

"(5) Commitment of the minor to the Division of Juvenile Facilities, Department of Corrections and Rehabilitation."

individual substance abuse counseling in juvenile hall. While appellant was in custody, the probation department would place him on the waiting list for the Tamayo House, to provide him a support system following his release.⁴

At the dispositional hearing, the juvenile court rejected this recommendation. The judge told appellant he had gotten a “huge break” when the prosecutor allowed him to admit the misdemeanor escape charge, because this had taken away the option of committing appellant to the Department of Corrections and Rehabilitation Division of Juvenile Facilities (DJF), which the judge viewed as an appropriate disposition.⁵ After describing appellant’s 2010 offense as a “vicious assault,” the judge stated, “[Y]ou’ve been given all kinds of opportunities to undo that, and your response has been to thumb your nose at the court. You’re nearly 18. And frankly, it’s time for the Court to handle it as if you were a person nearly 18 who has received all kinds of opportunities.” The court then stated its intention to impose a term of “540 days to 750 days to be served in any penal institution, including the MADF when he reaches the appropriate age, should he still be in custody at that time. Of course, when he turns 18 in July he can make a request that he transfer to MADF, if he so desires.” Appellant’s attorney argued in favor of probation’s recommended plan, but the court ordered the 540 to 750-day term, directing that “[t]here will be no early release, parole, things of that nature. . . . Upon the completion of his sentence, probation is to be revoked and the matter dismissed.”

Under section 208.5, subdivision (a), a minor may be housed in a facility for juvenile offenders until he or she is 19 years old, at which point, “upon the

⁴ Tamayo House appears to be a group housing facility for former foster youth and young adults run by a non-profit agency. (Social Advocates of Youth, *The Mary and José Tamayo Village* <<http://www.saysc.org/programs/the-mary-and-jose-tamayo-village/#>> [as of July 2, 2013]).

⁵ Section 733, subdivision (c), prohibits commitment to DJF where “the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.” Appellant’s present offense, escape, is not listed in the specified statutes. His initial offense, robbery, would have permitted commitment to DJF. (§ 707, subd. (b)(3).)

recommendation of the probation officer,” he or she must be moved to county jail unless the court orders continued juvenile detention.⁶ Appellant turned 18 on July 16, 2012, and will turn 19 on July 16, 2013, roughly 17 months into his minimum commitment term of 18 months. He argues that because he will be transferred to county jail when he turns 19, facing a minimum of one month and possible eight months of custody, the dispositional order improperly includes a commitment to county jail.

A number of cases address whether and when a juvenile court may order a county jail commitment for a ward who is over the age of 17 but still under the jurisdiction of the juvenile court.

In re Jose H. (2000) 77 Cal.App.4th 1090, 1096, involved a ward who committed his offense at 17 years of age, turned 18 before disposition and was ordered to serve 120 days in county jail. Reversing the county jail commitment, the *In re Jose H.* court explained: “We are constrained by the express language of the applicable statutes to hold that the juvenile court is not authorized to commit a ward to county jail. The juvenile court is a creature of statute, and remains unique and different from the adult court system. Should the Legislature see fit to expand the range of dispositional alternatives to include county jail for 18-year-old wards, they will do so.” (*Id.* at p. 1099.)

⁶ Section 208.5, subdivision (a), provides in full: “Notwithstanding any other law, in any case in which a minor who is detained in or committed to a county institution established for the purpose of housing juveniles attains 18 years of age prior to or during the period of detention or confinement he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. If continued detention is ordered for a ward under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age, the detained person may be allowed to come into or remain in contact with any other person detained in the institution subject to the requirements of subdivision (b). The person shall be advised of his or her ability to petition the court for continued detention in a juvenile facility at the time of his or her attainment of 19 years of age. Notwithstanding any other law, the sheriff may allow the person to come into and remain in contact with other adults in the county jail or in any other county correctional facility in which he or she is housed.”

In re Kenny A. (2000) 79 Cal.App.4th 1, 3, also involved a ward who had turned 18 before disposition. The probation department recommended that he serve 180 days in county jail. (*Id.* at p. 4.) The court committed him to juvenile hall for 180 days, explaining that when he arrived at juvenile hall he “will then be committed to the county jail, and remanded to the custody of the Department of Corrections.” (*Id.* at pp. 4-5.) *In re Kenny A.* refused to permit the “procedural subterfuge” of committing the ward to juvenile hall when the juvenile court’s remarks demonstrated that it intended the disposition to be a county jail commitment. (*Id.* at p. 8.)

In re Charles G. (2004) 115 Cal.App.4th 608, 611-612, took a different view of a juvenile court’s order committing the ward to juvenile hall with the understanding he would be transferred immediately to county jail. The juvenile court in that case ordered the ward confined “ ‘in an authorized facility[,]’ ” stating that it “could not ‘make a direct commitment to the county jail’ ” but—because the ward was 20 years old at the time he violated probation—“not[ing] that section 208.5 authorizes the probation officer to exercise discretion to . . . ‘remove [the ward] from juvenile hall to the county jail.’ ” (*Id.* at pp. 617-619.)

In re Charles G. rejected the argument that the juvenile court improperly committed the ward directly to county jail, holding that “sections 202 and 208.5 authorize the court to order the ward to be confined in a juvenile facility and then, upon recommendation of the probation officer, immediately delivered to a local adult facility to serve the period of confinement.” (*In re Charles G., supra*, 115 Cal.App.4th at p. 612.) Disagreeing with *In re Kenny A.*, *In re Charles G.* held that although the juvenile court cannot commit a ward over the age of 17 directly to county jail, “it does not follow that the court cannot commit a ward 19 years of age or older to a juvenile detention facility with the understanding that, because the probation officer so recommends, the ward will be delivered to the sheriff for confinement in county jail pursuant to section 208.5. Such a disposition is *not* a ‘procedural subterfuge’ to ‘condone an unauthorized disposition by the juvenile court.’ ” (*In re Kenny A., supra*, 79 Cal.App.4th at p. 8.) It is a legitimate application of the statutory scheme that allows the now-adult ward to be housed in a

juvenile detention facility until the age of 19, at which time he or she must be delivered to a local adult facility unless the court orders continued detention in the juvenile facility. (§ 208.5.) When the court (1) commits a ward 19 years of age or older to a juvenile facility, (2) knows the probation office recommends that the ward be delivered to an adult detention facility, and (3) declines to exercise the court’s discretion to order continued housing in the juvenile facility, the disposition is faithful to both section 202, subdivision (e)(4), and section 208.5.” (*In re Charles G.*, *supra*, 115 Cal.App.4th at pp. 618-619.)

In re Ramon M. (2009) 178 Cal.App.4th 665, 670, 674-675, demonstrates that *In re Charles G.* has no application outside the context of a ward who is 19 years of age or older and, therefore, subject to the statutory provision for transferring wards of that age to adult facilities. *In re Ramon M.* found error in the juvenile court’s order committing an 18-year-old ward to serve 365 days in “ ‘juvenile hall or the appropriate facility.’ ” (*In re Ramon M.*, *supra*, at p. 670.) The ward had been detained in county jail and asked the court to place him in juvenile hall, but the court denied this request. (*Ibid.*) *In re Ramon M.* held that because the juvenile court lacked statutory authority to commit an 18-year-old directly to county jail, “the juvenile court's order should have been more specific, directing the probation department to place him only in an appropriate *juvenile* facility.” (*Id.* at p. 675.) Distinguishing *In re Charles G.*, the *In re Ramon M.* court noted that because Ramon was under the age of 19 at the time of disposition, “the provision for transferring wards over that age does not enter into our decision here.” (*In re Ramon M.*, *supra*, at p. 675)

It is abundantly clear that the court in the present case lacked authority to commit appellant directly to county jail. Respondent urges that the court did not do so: According to respondent, the court’s order does not require that appellant ever be transferred to county jail but only allows for that option once appellant turns 19. In our view, the situation is somewhere in between these alternative interpretations. Unlike in the cases described above, the order neither directly commits appellant to jail nor contemplated an *immediate* transfer to jail. It could not have done so, as appellant was only 17 years old at disposition. But the court’s remarks make clear that it intended for

appellant to serve time in county jail when he attained the “appropriate” age. This was improper. Once confined to juvenile hall, appellant would be subject to transfer to county jail once he turned 19—if the probation officer so recommended, and if the trial court did not order continued detention in a juvenile facility. The juvenile court, at disposition in the case of a 17-year-old ward, could not direct the future placement of the ward when he turned 19.

Respondent urges that this appeal is not ripe because it is not certain at this point that the court would not permit appellant to remain at juvenile hall after his 19th birthday. But the vice of the order is its apparent attempt to prejudge just this issue, to make the transfer to jail at that time automatic. It was within the court’s discretion to order a term of confinement that would extend beyond appellant’s 19th birthday, but not to dictate the results of the procedure called for in section 208.5. As in *In re Ramon M.*, the court’s order should have directed the probation department to place appellant in an appropriate juvenile facility, without reference to the county jail. (*In re Ramon M.*, *supra*, 178 Cal.App.4th at p. 675.) The order shall be modified to strike the language “any penal institution including MADF.”⁷

II.

Appellant additionally contends that even if he could serve his entire term in juvenile hall, the court abused its discretion in imposing a lengthy fixed term disposition. He contends this disposition is unauthorized by statute and contrary to the rehabilitative purpose of the juvenile justice system.

In keeping with its stated purpose of providing for “the protection and safety of the public and each minor under the jurisdiction of the juvenile court” (§ 202, subd. (a)), the

⁷ Respondent states that the People “do not object to the court ordering modification of the written dispositional order to provide for a term of 540 to 750 days of detention in a juvenile facility, subject to the provisions of section 208.5(a).” This suggested language would have no different effect than simply striking the offending language from the present order. The order will necessarily be subject to the provisions of section 208.5.

juvenile court law provides that “[m]inors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, 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. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter.” (§ 202, subd. (b).)

As our Supreme Court has explained, juvenile proceedings are “primarily rehabilitative, disallowing punishment in the form of retribution. [¶] Significant differences between the juvenile and adult offender laws underscore their different goals: The former seeks to rehabilitate, while the latter seeks to punish. The determinate sentencing law, which governs sentencing of adult offenders who have committed a crime for which a ‘statute specifies three possible terms,’ requires the trial court to choose a set term (Pen. Code, § 1170, subd. (b))—a lower, middle, or upper term—from the adult tripartite sentencing scheme. The determinate sentencing law ‘provides for *fixed terms* designed to punish.’ (*In re Christian G.* (2007) 153 Cal.App.4th 708, 715, italics added.) In contrast, juveniles are committed ‘for *indeterminate terms* designed to rehabilitate.’ (*Ibid.*, italics added.)” (*In re Julian R.* (2009) 47 Cal.4th 487, 496-497.)

In re Ronny P. (2004) 117 Cal.App.4th 1204 rejected a challenge similar to appellant’s here. In that case, the minor argued that the juvenile court lacked authority to impose a minimum period of confinement (120 days) in a camp. Like appellant, the minor argued the minimum period of confinement undermined the rehabilitative objectives of the juvenile law by diminishing the minor’s incentive to progress toward rehabilitation. (*Id.* at pp. 1206-1207.) *In re Ronny P.* held that although not expressly authorized by statute, the order was “authorized by the broad discretion afforded to juvenile courts to make dispositional orders and impose conditions under Welfare and Institutions Code section 730.” (*Id.* at p. 1207.)

Section 730, subdivision (b), provides that when a minor who has been made a ward under section 602 “is. . . committed to the care, custody, and control of the probation officer, the court may make any and all reasonable orders for the conduct of the

ward. . . . The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” The *In re Ronny P.* court reasoned, “Welfare and Institutions Code section 730 does not expressly authorize the imposition of any minimum period of confinement in camp. However, Welfare and Institutions Code section 730 has been broadly interpreted to authorize a juvenile court to order a juvenile confined to juvenile hall for a period of time as a condition of probation. (*In re Lance W.* [1985] 37 Cal.3d [873,] 896–899; *In re Ricardo M.* (1975) 52 Cal.App.3d 744, 750-751.) The purpose of such a confinement order is to impress upon the juvenile the seriousness of the misconduct, without the imposition of a more serious commitment. (*In re Ricardo M.*, *supra*, 52 Cal.App.3d at p. 749.) The confinement order informs the juvenile that continued misconduct will lead to even more serious consequences and thus encourages rehabilitation. (*Ibid.*) In our view, a similar rationale supports an order for a minimum period of camp confinement.” (*In re Ronny P.*, *supra*, 117 Cal.App.4th at p. 1207, fn. omitted.)

The order in the present case is analogous to that in *In re Ronny P.* in that it requires appellant to serve a minimum period of confinement, albeit a longer one than involved in that case. We agree with the *In re Ronny P.* court that such a minimum term can serve rehabilitative purposes by impressing upon the minor the seriousness of the conduct underlying the commitment. This was particularly true here, where appellant’s new offense demonstrated his failure at a less restrictive placement. The court stated that it was imposing this term because of the seriousness of appellant’s original offense and the fact that he was almost 18 and had been given “all kinds of opportunities” and “your response has been to thumb your nose at the court.” Contrary to appellant’s argument, the order built in an incentive for appellant to work toward rehabilitation by providing for a range in the term of commitment.

Appellant contends that the length of the commitment—18 to 25 months—demonstrates that the purpose of the order was punishment rather than rehabilitation. It was within the court’s discretion to aggregate the terms for the offenses in the present

petition and the previously sustained petition. (*In re Adrian B.* (2000) 85 Cal.App.4th 448, 454.) Since the court here made clear that it was considering appellant's original offenses in determining the appropriate disposition, the length of the term imposed must be considered with that in mind. " 'After a new petition is sustained under section 602, . . . the court may consider the juvenile's entire record before exercising its discretion at the dispositional hearing and may rely on prior sustained section 602 petitions in determining the proper disposition and maximum period of confinement.' " (*In re Adrian B.*, *supra*, quoting *In re Michael B.* (1980) 28 Cal. 3d 548, 553.) At a minimum, considering only the previously sustained robbery offense, the maximum term would be five years. (Pen. Code, § 213, subd. (a)(1)(B)(2).) This is considerably longer than the term the trial court imposed at disposition. As we have said, while "punishment in the form of retribution" is impermissible in juvenile proceedings (*In re Julian R.*, *supra*, 47 Cal.4th at p. 496.), "punishment that is consistent with the rehabilitative objectives" of the juvenile court law is appropriate. (§ 202, subd. (b).) The record reflects that rehabilitative services were available to appellant in juvenile hall: The probation report stated that in addition to being afforded an opportunity to maintain sobriety, appellant would "have access to weekly 12-step meetings and to individual substance abuse counseling in Juvenile Hall."

Appellant urges that Sonoma County does not intend wards to be housed in juvenile hall for long periods, and "does not purport to rehabilitate its residents," citing statements on the county's website. This material was not presented to the juvenile court, where appellant made no record of the asserted lack of rehabilitative services. It is appellant's burden to present a record affirmatively demonstrating error, and any uncertainty is resolved against him. (*People v. Green* (1979) 95 Cal.App.3d 991, 1001.)⁸

⁸ We note, however, that while the website does indicate that the "primary function of the Sonoma County Juvenile Hall is to provide temporary, safe, and secure detention for youths who are beyond the normal controls of the community," appellant's assertion that juvenile hall "does not purport to rehabilitate its residents" is based solely on the website's statement that one aspect of the juvenile hall's mission is to "[p]rovide

We accept appellant’s contention that juvenile hall is most often utilized as a temporary place of detention. The California Code of Regulations defines “juvenile hall” as “a county facility designed for the reception and temporary care of minors detained in accordance with the provisions of this subchapter and the juvenile court law.” (Cal. Code Regs., tit. 15, § 1302.) Section 850 directs the board of supervisors of every county to provide and maintain a suitable house or place for the “detention” of wards and dependent children of the juvenile court and of persons alleged to come within the jurisdiction of the juvenile court,” to be known as the county’s “juvenile hall.”

Nevertheless, there are circumstances when juvenile hall can be used as a post-disposition placement. Section 730, subdivision (a), authorizes the juvenile court to commit a minor adjudged to be a ward under section 602 to “a juvenile home, ranch, camp, or forestry camp. If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall.” We are aware of no statutory upper limit on a commitment to juvenile hall.

Appellant made no showing in the juvenile court that there was an appropriate county facility the court should have considered in lieu of juvenile hall. His suggestion then was that he be sent to juvenile hall for approximately six months until he turned 18 and then transitioned to “a living situation that would be independent,” with the support of probation. On appeal, he contends the commitment to juvenile hall was improper because Tamayo House was an available county placement. Although no record on this

necessary care and support so that residents leave the institution better, or no worse than when they entered.” Appellant ignores other aspects of the mission statement, including the mission to “[p]rovide academic, psychological, psycho-educational, recreational and other services, which will promote personal growth and enable residents to develop the skills and values necessary to succeed.” As appellant recognizes, the Sonoma County Juvenile Hall offers programs including, in addition to “[s]ecure physical care,” “[a]ssessment and treatment services,” “[a] Behavior Management System designed to foster personal responsibility,” and “[a] comprehensive school program implemented in cooperation with the Sonoma County Office of Education.” (Sonoma County, *Juvenile Facilities* <http://www.sonoma-county.org/probation/juvenile_facilities/juvenile_hall.htm> [as of July 3, 2013].)

point was developed in the trial court either, it appears that Tamayo House is not a county program but rather a group housing facility for former foster youth and young adults run by a non-profit agency. (Social Advocates of Youth, *The Mary and José Tamayo Village* <<http://www.saysc.org/programs/the-mary-and-jose-tamayo-village/#>> [as of July 3, 2013].) Appellant does not explain how the juvenile court could have ordered a commitment to Tamayo House; the probation report portrays it as a supportive environment at which it hoped to assist appellant in securing a place *after his release* from a period of confinement.

As we have described, the juvenile court, at disposition, expressed frustration with prior proceedings that had resulted in the court's inability to impose the disposition it truly felt appropriate, a commitment to DJF. The court made clear its view of the seriousness of appellant's original offense and his subsequent violations and relapses. It is evident that the court intended a disposition that would come as close as possible to the DJF commitment it would have preferred. None of this, however, renders the length of the commitment an abuse of discretion. The court believed appellant's conduct required a significant period of secure confinement. Camp placements were no longer an option; according to the probation report, appellant's behavior demonstrated he was "no longer amenable to services within the Probation Camp milieu." In effect, the court's hands were tied: Juvenile hall was the only available option for the secure placement the court believed appellant required.

III.

The parties agree that the juvenile court failed to set appellant's maximum period of confinement as required by section 726, subdivision (c), or to calculate his secure custody credits. Section 726, subdivision (d), requires the court to "specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." The maximum period of imprisonment "means the longest of the three time

periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.” (§ 726, subd. (d).) The court may elect to “aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602,” in which case the maximum term of imprisonment “shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1.” (§ 726, subd. (d).) “If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the ‘maximum term of imprisonment’ is the longest term of imprisonment prescribed by law.” The maximum period of confinement must be noted in the written minutes. (Cal. Rules of Court, rule 5.795(b).)

The juvenile court is also required to calculate the number of days credit the minor is entitled to for time spent in custody before the dispositional hearing. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067; Pen. Code, § 2900.5.) Here, the court stated at the dispositional hearing that appellant had “approximately 1,611 days of stat time,” but neither explained the basis of its calculation nor stated the precise number of credits. The record reflects that appellant was detained for the robbery on October 1, 2010, and remained in a secure placement until he was released on camp aftercare on July 29, 2011. He was detained again on October 7, 2011. The record does not indicate how long appellant remained in secure custody before the furlough that preceded his detention on January 25, 2012.

The matter must be remanded for calculation of appellant’s secure custody credits and determination of his maximum period of confinement under section 726.

DISPOSITION

The matter is remanded to the juvenile court for calculation of secure custody credits and determination of the maximum period of confinement. The dispositional order committing appellant to “any penal institution including MADF” is stricken. In all

other respects, the dispositional order is affirmed.

Kline, P.J.

We concur:

Lambden, J.

Richman, J.