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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re N.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

N.B.,

Defendant and Appellant.

A136160

(Alameda County
Super. Ct. No. SJ12190321)

I.

INTRODUCTION

Appellant N.B., a minor, appeals from a dispositional order entered after he was found to come within the provisions of Welfare and Institutions Code section 602. He contends on appeal that the juvenile court erred in three, separate ways in its jurisdictional finding, and in the disposition of the case: (1) finding true that appellant committed both second degree robbery and receiving stolen property; (2) imposing two conditions of probation requiring that appellant “[b]e of good citizenship and good conduct,” and that he “be of good behavior and perform well” at school and work; and (3) calculating his predisposition custody credits at 52 days when the total should have been 53 days. We find all three of these claims have merit.

The Attorney General concedes the three errors, contending, however, that appellant is entitled to 70 days of conduct credits, not 53 days. Therefore, we reverse the

true finding on the allegation that appellant committed the crime of receiving stolen property, and order it stricken. We also strike the two challenged probation conditions, and order that the dispositional order be modified to reflect an award of 70 days of custody credit.

II.

PROCEDURAL AND FACTUAL BACKGROUNDS

A petition was filed by the Alameda County District Attorney seeking to have appellant adjudged a ward of the court (Welf. & Inst. Code, § 602, subd. (a)), alleging one count of second degree robbery (Pen. Code, § 211), and one count of receiving stolen property (Pen. Code, § 496). Both counts are based on a single incident involving the taking of an iPhone from another person on May 26, 2012.¹

A contested jurisdictional hearing was held on the petition on June 21, 25, and July 2, at the conclusion of which the allegations that appellant had committed the crimes alleged in the petition under sections 211 and 496 were found true. The matter was continued to July 17 for a dispositional hearing.

The undisputed facts at the jurisdictional hearing showed that on May 26, appellant and another individual took an iPhone from another minor who was riding on a BART train near Pittsburg. While it is unclear who actually grabbed the phone, appellant or his partner, appellant was later observed trying to conceal the phone while still on the train. The phone was later recovered and returned to the victim.²

A dispositional hearing was held on July 17. The court found that the minor's best interests warranted removal from his mother's custody, despite reasonable efforts having been made to eliminate the need for such removal. The court ordered appellant into the care and custody of the probation department for placement in a suitable foster home or institution. In addition to those conditions of probation announced by the judge during

¹ All further dates are in the calendar year 2012, unless otherwise indicated.

² Because the facts underlying the juvenile court's true findings are not challenged on appeal, and are not directly relevant to the errors raised on appeal, we include only a brief description of the event underlying this case.

the hearing, the court imposed the “standard conditions” of probation issued by the county probation department. Thereafter, the minute order of the dispositional hearing included the requirements that appellant: (1) “Be of good citizenship and good conduct;” and (2) “Attend classes or job on time and regularly; be of good behavior and perform well.” Appellant was also awarded 52 days of credit for time in custody.

III.

DISCUSSION

As noted above, appellant contends that the juvenile court erred in three, separate ways in its jurisdictional findings and in the disposition of the case: (1) the court found true both that appellant committed second degree robbery and received stolen property of the same property, specifically, the victim’s iPhone; (2) it imposed two unconstitutionally vague conditions of probation requiring that appellant “[b]e of good citizenship and good conduct,” and that he “be of good behavior and perform well” at school and work; and (3) the predisposition custody credits of 52 days awarded by the court should have been 53 days.

Also as noted above, the Attorney General has conceded all three errors. In fact, respondent concedes that appellant is entitled to 70 days custody credit; more credit than the 53 days sought by appellant.

As to the first issue, we agree that appellant could not have been found to have committed both a robbery and receiving stolen property of the same item; the victim’s iPhone. (*People v. Ortega* (1998) 19 Cal.4th 686, 694, overruled on other grounds in *People v. Reed* (2006) 38 Cal.4th 1224, 1228-1229; *People v. Jaramillo* (1976) 16 Cal.3d 752, 756.) This limitation likewise has been applied to juvenile court proceedings. (*In re Kali D.* (1995) 37 Cal.App.4th 381, 385, disapproved on other grounds in *People v. Allen* (1999) 21 Cal.4th 846, 861, fn. 16.) Therefore, we will order the true finding as to the

receiving stolen property reversed, and further order it stricken from the dispositional order.³

Because we are reversing one of the true findings, we must also order that the juvenile court amend its dispositional order reducing the maximum period of confinement for the robbery from the current aggregate of five years eight months to five years. As to the two challenged conditions of probation, we shall order them stricken. (*People v. Zachery* (2007) 147 Cal.App.4th 380, 388.)

Lastly, the Attorney General concedes that appellant was entitled to 70 days of custody credit instead of the 52 days awarded as part of the dispositional order. In light of this commendable concession, we will order that the dispositional order be modified by the juvenile court to reflect the correct number of credit days.

IV. DISPOSITION

We hereby order the following:

1. The true finding on the receiving stolen property allegation (Pen. Code, § 496) is reversed, and it shall be stricken from the jurisdictional and dispositional orders of the juvenile court. In light of this reversal, the juvenile court is directed to modify its orders reflecting that appellant's maximum period of confinement is five years.

2. The probation conditions requiring appellant to (1) "Be of good citizenship and good conduct;" and (2) "Attend classes or job on time and regularly; be of good behavior

³ The parties disagree as to whether the proper action is to simply order the true finding stricken, or reversed. We conclude that the better course of action is both to reverse the finding, and order it stricken. (*In re Alejandro G.* (2012) 205 Cal.App.4th 472, 482.)

and perform well,” are ordered to be stricken from the minutes of the dispositional hearing.⁴

3. The dispositional order is ordered modified to reflect a total of 70 days of custody credit.

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.

⁴ The Attorney General is correct in that, while the minutes contain these two probation conditions, the transcript of the dispositional hearing does not, except for the court’s vague reference to “the standard conditions of probation.” Therefore, this court may order that the error be corrected by striking the two challenged probation conditions. (Pen. Code, § 1260; *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Parenthetically, if these two conditions are indeed “standard conditions” of probation in juvenile matters in Alameda County, we urge the juvenile court to see that they are similarly stricken from those standard conditions used by the probation department.