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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re E.F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.F.,

Defendant and Appellant.

A136665

(Solano County
Super. Ct. No. J41505)

I.

INTRODUCTION

This is an appeal from a juvenile court order placing appellant E.F. (the minor) in a residential treatment facility over 50 miles from his family residence after the juvenile court found that he committed misdemeanor sexual battery upon his mother. (Pen. Code, § 243.4, subd. (e)(1).) On appeal, the minor contends that the commitment was an abuse of discretion because the court did not adequately consider less restrictive alternatives. We conclude the juvenile court acted within its discretion and therefore affirm the placement order.

The minor also argues that the juvenile court erred in setting the maximum term of confinement at one year because the maximum term for misdemeanor sexual battery is six months. (Pen. Code, § 243.4, subd. (e)(1).) The minor further argues that he is entitled to a total of 95 days of custody credits as opposed to the 86 days awarded by the

juvenile court. As conceded by the Attorney General, both of these arguments have merit. Accordingly, the matter is remanded to the juvenile court for a revised dispositional order.

II.

FACTS AND PROCEDURAL HISTORY

On June 11, 2012, the minor's mother reported to the Fairfield Police Department that on the previous evening, the 14-year-old minor had approached her in the kitchen and told her that he needed to tell her something. Before she could answer, the minor grabbed her vaginal area over her pajama shorts. She pushed the minor away and yelled at him. Afterward, she went into her bedroom and closed the door. Fifteen minutes later, the minor opened her door and walked in. She told him to leave or she was going to call the police. The minor left her bedroom.

A police officer interviewed the minor. He admitted touching his mother in her vaginal area, but he did not know why he did it. He later admitted to his probation officer that he touched his mother's vaginal area and also admitted that he viewed pornography on a regular basis on the family computer.

The minor's mother further reported that about three weeks earlier, she was dressing her four-year-old daughter and told her daughter not to let anyone touch her vaginal area. Her daughter told her that the minor had already touched her there. When the minor was interviewed, he admitted that he touched his four-year-old sister's buttocks about three weeks earlier, but he denied touching his sister's vaginal area.

The minor's mother also stated that three or four years earlier, while the family was living in Tennessee, the minor touched her daughter's vaginal area and attempted to sodomize his younger brother. She stated that her husband, the minor's stepfather, who was now deceased, witnessed both incidents and reported them to the local police.

Following up on this previous incident, the social worker contacted the Tennessee Department of Children's Services. That department confirmed that there was a referral dated August 30, 2010, in which the minor was alleged to have sexually abused his two younger siblings. Both allegations were found to be true. The minor was removed from

the home and placed in the temporary care of family members. Ultimately, a juvenile sex-offender treatment program was identified and approved as the appropriate placement for the minor; however, the minor and his family relocated to California without notifying the Tennessee authorities prior to their departure. The minor's stepfather died shortly thereafter.

On July 2, 2012, following a contested jurisdictional hearing, the minor was declared a ward of the court under Welfare and Institutions Code section 602¹ after the juvenile court found the minor had committed misdemeanor sexual battery. (Pen. Code, § 243.4, subd. (e)(1).) On July 17, 2012, the juvenile court ordered that the minor undergo a psychosexual evaluation.

On August 2, 2012, Dr. Kimberly Smith, a clinical psychologist, issued a psychosexual report. She believed the minor could be treated in the community "provided he is strictly monitored, attends treatment regularly, progresses in treatment and does not have unsupervised access to minors." Dr. Smith recommended that if these conditions could not be met, the minor should be placed in a residential sex-offender treatment program. In making this recommendation Dr. Smith evaluated risk factors such as (1) the minor having been "detected for prior sexual offenses" spanning over a number of years with both male and female victims, (2) the fact that the instant offense was "impulsive and opportunistic" indicating a lack of ability to control his sexual urges, and (3) the minor's lack of "credible remorse." She concluded that based on these risk factors, the minor presented a moderate risk for sexual reoffense.

Dr. Smith did not believe the minor could safely reside at home with his younger siblings since he had not yet completed sexual offender treatment. The minor's mother stated that there were no family members who could provide a child-free environment who were able or willing to care for the minor. The only option she could offer was to have the minor return to El Salvador, where he was raised for the first 12 years of his life by his grandparents. However, the minor's mother acknowledged that the minor's

¹ All undesignated statutory references are to the Welfare and Institutions Code.

grandparents were elderly, they had previously been unable to control his behavior, and the minor would not receive treatment in this situation. In the report prepared for the dispositional hearing, several community-based residential placements were considered and rejected because “the minor would not receive sex offender treatment in either placement.”

On September 4, 2012, the court committed the minor to the “care, custody and control of probation for placement in a suitable foster home or institution” where he could receive sex offender treatment. The juvenile court set the maximum time of confinement at one year and awarded the minor 86 days of custody credits. On September 13, 2012, the minor was placed in the Children’s Home of Stockton. The Children’s Home of Stockton is described in the minor’s opening brief as a “non-profit, state-licensed agency that provides 24-hour residential care and treatment to over 150 severely emotionally disturbed and disadvantaged children and adolescents per year.”

II.

DISCUSSION

A. Consideration of Less Restrictive Alternatives

On appeal, the minor claims “the juvenile court did not properly consider the lesser restrictive alternatives mandated pursuant to section 727.1, the statute pursuant to which he was placed.” Section 727.1, subdivision (a) explicitly states that the court must choose a placement “based upon selection of a safe setting that is the *least restrictive* or *most family like*, and the most appropriate setting that is available and *in close proximity* to the parent’s home, consistent with the selection of the environment *best suited to meet the minor’s special needs and best interests.*” (Italics added.) The minor claims the requirements of section 727.1 were ignored because “this first-time offender was placed far away from his family in the Children’s Home of Stockton, a residential psychiatric-level treatment facility.”

“We review a [juvenile court’s] commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court. [Citations.]” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473 (*Asean D.*); *In re Todd W.*

(1979) 96 Cal.App.3d 408, 416.) “An appellate court will not lightly substitute its decision for that rendered by the juvenile court. 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. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law. [Citations.]” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) As described in section 202, those purposes include rehabilitation, treatment, guidance, punishment as a rehabilitative tool, and protection of the public. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 575-576 (*Teofilio A.*))

The record in this case belies the minor’s claim that the juvenile court failed to consider less restrictive community-based alternatives to placing him in the inpatient treatment facility far away from his family. Indeed, at the disposition hearing, the minor’s counsel objected to the minor being placed in a residential facility and indicated that he preferred to “live with a family member in the community” where he could “attend sex offender treatment.” However, counsel acknowledged that she could not identify any family member without small children who was willing and able to offer the minor a placement.

On appeal, the minor emphasizes that Dr. Smith believed the minor could be safely treated in a community-based placement closer to home. However, the restrictions placed by Dr. Smith on such a placement caused the Department to reject several possible community placements and the minor’s counsel did not identify a viable alternative.² In identifying the proper disposition, the juvenile court indicated that “I don’t see any good alternatives” and found that placement in a residential facility where the minor could receive sex offender treatment was the most appropriate disposition for

² As noted, Dr. Smith believed the minor could be safely treated in the community “provided he is strictly monitored, attends treatment regularly, progresses in treatment and does not have unsupervised access to minors.” Dr. Smith recommended a residential sex-offender treatment program if those conditions could not be met.

the minor, eventually authorizing the minor's placement at the Children's Home of Stockton.

While the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule that the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577; see also *In re Eddie M.* (2003) 31 Cal.4th 480, 507; *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473.) "[I]f there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal." (*Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577.) So long as there is some evidence that the court considered and reasonably rejected less restrictive alternative dispositions, the juvenile court's order must be upheld. (*Ibid.*) Applying these principles, we conclude the juvenile court acted within its discretion by placing the minor at the Children's Home of Stockton.

B. Necessity for Remand for Modification of Dispositional Order

As conceded by the Attorney General, the matter must be remanded to the juvenile court to correct the maximum term of confinement and correct the custodial custody credits awarded the minor.

As the minor points out, section 726 sets the outermost limit of a minor's physical confinement at the maximum term of imprisonment that could be imposed on an adult.³ Here, the juvenile court set the maximum term of confinement as one year. This was error. The maximum term of imprisonment for misdemeanor sexual battery is six months. (Pen. Code, § 243.4, subd. (e)(1).) Accordingly, we remand the case to the juvenile court to correct the maximum term of confinement.

³ Section 726, subdivision (d) provides in pertinent part that "[i]f the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall 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 minor further argues that he is entitled to a total of 95 days of custody credits. The juvenile court awarded the minor 86 days of custody credit. However, as the Attorney General concedes, the minor was entitled to an additional nine days of custody credit for the time he spent at juvenile hall before his placement in the Children's Home of Stockton. Accordingly, upon remand, the court should revise the dispositional order to reflect a total of 95 days of custody credits.

IV.
DISPOSITION

The dispositional order placing the minor at the Children's Home of Stockton is affirmed. However, the matter is remanded for correction of the maximum term of confinement and the accurate number of custody credits.

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.