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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re JOSHUA M., a Person Coming  
Under the Juvenile Court Law.**

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**JOSHUA M.,**

**Defendant and Appellant.**

**A138167**

**(Alameda County  
Super. Ct. No. SJ13202860)**

The Alameda County District Attorney filed a wardship petition alleging that appellant had committed felony counts of robbery (Pen. Code, § 211) and receiving stolen property (Pen. Code, § 496). The charges arose out of two incidents that occurred approximately one hour and fifteen minutes apart on January 24, 2013. Appellant attacked two different victims, from each of whom he stole an iPhone. In an infield lineup, the second victim positively identified appellant as the assailant, but the first victim could not do so, although she did say appellant’s grey hoodie was similar to the clothing her assailant had been wearing.

Pursuant to a negotiated resolution, appellant admitted a violation of Penal Code section 487, subdivision (c), which the parties stipulated was a lesser included offense of the robbery charge in count one of the wardship petition. The court dismissed the receiving stolen property charge.

On February 21, 2013, the probation department filed a dispositional report recommending that appellant be declared a ward of the court while continuing to reside with his mother. Appellant reported that his parents had been physically abusive towards one another. When appellant was three years old, both of his parents had been incarcerated, and he had been left in the care of a neighbor who “ ‘was on crack.’ ” Appellant was placed in foster care for almost three years, but he was later reunited with his mother, who had made progress in dealing with her substance abuse problems. His mother had a criminal history including five misdemeanor convictions and one felony conviction for grand theft (Pen. Code, § 487, subd. (c)).

At the February 26, 2013 disposition hearing, the court indicated it was not pleased with the probation department’s recommendation that appellant continue to reside in his mother’s home. Appellant’s trial counsel proposed that, if the court were not inclined to follow the probation department’s recommendation, it should refer appellant to the Family Preservation Unit (FPU). Counsel further proposed that if the court was not inclined to refer appellant to the FPU, it should order the “guidance clinic report” recommended in the dispositional report.

The court ordered appellant removed from his mother’s home pursuant to Welfare and Institutions Code section 726, subdivision (a)(3) and imposed conditions of probation. Appellant’s trial counsel asked why the court was not inclined to refer the matter to the FPU, and the court explained that appellant’s mother had “stomp[ed] in and out of the courtroom two times,” that the mother had numerous aliases, and that there were “about six pages of mother issues in the back of this report[.]” The court also cited the seriousness of the crime and stated its belief that the only way to prevent appellant from becoming a criminal was to get him out of his mother’s home as fast as possible.

Appellant filed a motion to reconsider on March 11, 2013, and the court reversed its ruling and requested a supplemental dispositional report from the probation department. It put the matter over for disposition.

The probation department submitted a memorandum to the court recommending that the court uphold its original dispositional order. The department had considered

appellant's aunt<sup>1</sup> as a possible kinship placement, but it determined her home was not suitable because of both her arrest record and her partner's more extensive arrest record.

At the second disposition hearing on April 12, 2013, appellant's trial counsel asked the court to consider following the probation department's initial recommendation to place appellant with his mother, noting that the department's new recommendation was inconsistent with the initial one. Counsel also noted that the probation department had not done anything to investigate the suitability of placement with appellant's sister, other than running her rap sheet and that of her partner. Counsel pointed out that although arrests were indicated, there was no information as to whether or not any convictions resulted.

The prosecutor argued that appellant's offenses were of a serious nature, specifically noting that his first victim had been a 67-year-old woman. She also mentioned appellant's mother's hostility to the probation department and her unwillingness to be open about her son's history or to provide background information on either her family or the people with whom her son regularly associated. The prosecutor expressed reservations about whether mother would be willing to cooperate with the probation department "in assisting the supervision of the minor, getting him back on track, getting him in whatever programs are appropriate as well as being candid with probation with respect to whether or not he's following his curfew and following other terms and conditions of probation that are appropriate to properly rehabilitate the minor."

The court agreed with the prosecutor, finding placement with mother would be inappropriate "for many of the reasons that the district attorney just indicated on the record." The court stated it did not believe appellant would get the kind of support he needed if he remained at home and noted no suitable relative placements had been identified. It also stated that it had been favorably impressed with the Rites of Passage program, which the probation department had recommended as appellant's placement. The court therefore reinstated its original dispositional order.

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<sup>1</sup> Appellant's trial counsel later informed the court that the person in question was actually appellant's sister, not his aunt.

Appellant filed a notice of appeal on March 20, 2013.<sup>2</sup>

Appointed counsel has submitted a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, certifying that he has been unable to identify any issues for appellate review. Counsel has also submitted a declaration affirming that he has advised appellant of his right to file a supplemental brief raising any points which he wishes to call to the court's attention. No 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.

#### DISCUSSION

We may reverse the juvenile court's dispositional order only upon a showing the court abused its discretion. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.) “ “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.]” (*Id.* at p. 1330.)

The juvenile court properly took into account the facts surrounding appellant's actions when it considered the gravity of the offense. (See *In re Robert H.*, *supra*, 96 Cal.App.4th at pp. 1329-1330.) It was certainly within the juvenile court's discretion to conclude that the offense was so serious it required that appellant be placed in the Rites of Passage program. (See *id.* at p. 1330 [given seriousness of the offense, juvenile court did not abuse its discretion in committing minor to Division of Juvenile Justice].) Furthermore, while appellant had no prior delinquency record, even if these offenses “represented his first step off the path of virtue, it was a giant one.” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 474, fn. omitted.)

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<sup>2</sup> The notice of appeal was filed before the court vacated its original dispositional order and issued a subsequent judgment. It is therefore premature. (Cal. Rules of Court, rule 8.406(a).) We may treat a premature notice of appeal as timely filed (Cal. Rules of Court, rule 8.406(d)), and we grant appellant's request that we do so here. This is especially appropriate in this case, as court's subsequent dispositional order simply reinstated the initial one.

We have conducted an independent review of the entire record for potential error and find none. (*People v. Kelly, supra*, 40 Cal.4th at p. 119.) We therefore affirm the judgment.

DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.