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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Derrick W., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

Derrick W.,

Defendant and Appellant.

A141276

(Contra Costa County
Super. Ct. No. J13-01176)

On October 24, 2013, the Contra Costa District Attorney (District Attorney) filed a delinquency petition pursuant to section 602 of the Welfare and Institutions Code, alleging that Derrick W., a minor, had committed two felony counts of second degree robbery, unlawfully taking personal property by force or fear. (Pen. Code, §§ 211, 212.5, subd. (c)).¹ The charges stemmed from an October 22, 2013, incident in which the minor—in the company of a group of juvenile males—approached two younger high school students walking home from school and demanded that one student empty his pockets. After receiving \$5.00 from the boy, the minor and other juveniles followed the two students, and Derrick later ordered the second student to empty his pockets as well. When the boy refused, one of the juveniles with Derrick reached into the boy’s pocket and took his cell phone. In an ensuing altercation, the second student was knocked to the

¹ All statutory references are to the Penal Code unless otherwise specified.

ground and his glasses were broken. Derrick then returned the \$5.00 to the first student and fled the scene.

On November 1, 2013, the petition was amended to include a misdemeanor charge of grand theft from a person (§ 487, subd. (c)). On that same date, Derrick pled no contest to the misdemeanor count, and the court dismissed the two felonies. Thereafter, the minor was placed on home supervision with juvenile electronic monitoring pending disposition. However, on November 21, 2013, Derrick was again detained in juvenile hall after being suspended from school for allegedly attempting to compel a female student to perform a sexual act on him, a violation of his home supervision contract. No additional charges were filed based on this second incident.

At the December 6, 2013, dispositional hearing with respect to the sustained misdemeanor, the juvenile court declared Derrick a juvenile court ward, removed him from the custody of his mother, and ordered him into an out-of-home placement where he could receive therapy, counseling, and treatment.² The minor was placed at Environmental Alternatives, Warner Mountain (Environmental Alternatives), on January 6, 2014. Thereafter, on January 30, 2014, the Contra Costa County Probation Department (Probation) filed a notice of probation violation indicating that Derrick had been terminated from the program for failing to follow program rules. Derrick was re-detained in juvenile hall on February 3, 2014.

On February 13, 2014, Derrick admitted to the probation violation. At the contested dispositional hearing on February 28, 2014, Probation recommended that the minor be continued in a therapeutic placement. Derrick's attorney, in contrast, argued in favor of a six-month ranch commitment, which the minor could begin immediately, in lieu of continued out-of-home care, which would require Derrick's detention in juvenile hall while a new placement was found. The juvenile court followed Probation's

² Derrick filed a timely notice of appeal from this first dispositional order on December 12, 2013, and his appellate counsel asked this court for an independent review of the record to determine whether there were any arguable issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436. By separate opinion filed today, we affirm that judgment. (*In re Derrick W.* (Nov. 25, 2014, A140525).)

recommendation, continuing the minor in out-of-home care. Derrick was detained in juvenile hall pending placement. His March 3, 2014, notice of appeal again brings the matter before this court.

I. DISCUSSION

Derrick’s sole contention in this second appeal is that the juvenile court erred by failing to calculate his maximum time of confinement (MTC) and his credits for time served on the record. He asks that the proceedings be remanded so that his MTC and secure custody credits can be determined by the juvenile court. The Attorney General concedes the error and also asks for remand. We concur that the juvenile court erroneously failed to specify the minor’s MTC and secure custody credits, and adopt the remedy suggested by the parties.

When the juvenile court removes a minor from parental custody as the result of an order of wardship, Welfare and Institutions Code section 726 mandates that the court “must specify the maximum confinement term, i.e., the maximum term of imprisonment an adult would receive for the same offense.” (*In re David H.* (2003) 106 Cal.App.4th 1131, 1133; see also Welf. & Inst. Code, § 726, subd. (d); Cal. Rules of Court, rule 5.795(b) [if a minor is declared a ward and removed from parental custody “the court must specify and note in the minutes the maximum period of confinement under section 726”].) In the present case, the parties agree that—although the juvenile court ordered Derrick to remain in out-of-home care during the February 28, 2014, dispositional hearing—it did not specify the minor’s MTC in either its oral pronouncement or its written order as required by both statute and court rule. This was error.

Moreover, because the period of physical confinement under the Juvenile Court Law may not exceed the maximum term of imprisonment for an adult convicted of the same offenses, predispositional custodial credits “must be given to the extent the minor’s total period of confinement would otherwise exceed the statutorily defined ‘maximum term of imprisonment’ for one convicted as an adult.” (*In re Deborah C.* (1981) 30 Cal.3d 125, 140; see also *In re J.M.* (2009) 170 Cal.App.4th 1253, 1256; *In re Lorenzo L.* (2008) 163 Cal.App.4th 1076, 1079 [juvenile court may not delegate duty to calculate

predispositional secure custody credits].) Here, Derrick was detained in juvenile hall prior to his first dispositional hearing on December 6, 2013, after that dispositional hearing pending his placement at Environmental Alternatives on January 6, 2014, and prior to his second dispositional hearing on February 28, 2014, after his termination from Environmental Alternatives. However, at Derrick's second dispositional hearing, the juvenile court failed to calculate the predispositional custody time to be credited against the minor's MTC. This, again, was error.

II. DISPOSITION

The case is remanded to allow the juvenile court to calculate Derrick's MTC and secure custody credits and to prepare an amended dispositional order specifying each. In all other respects, the judgment is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.