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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re C.G., a Person Coming Under the
Juvenile Court Law.

PEOPLE,
Plaintiff and Respondent,
v.
C.G.,
Defendant and Appellant.

A141678

(San Mateo County
Super. Ct. No. JV81137

This is an appeal in juvenile delinquency proceedings involving minor C.G. from the dispositional order and findings entered by the juvenile court on March 27, 2014. Minor raises one primary legal issue on appeal. He contends this order and the underlying findings must be reversed because they are premised on an invalid order. Specifically, minor contends that, because we reversed the court's September 24, 2013 dispositional order, pursuant to which he was committed to a juvenile camp and ordered to obey all of the camp's rules and regulations, the court's subsequent order finding him in violation of Camp rules, terminating his Camp commitment in favor of therapeutic detention at the Youth Services Center, and setting his maximum term of confinement at five years and four months must be reversed. We agree reversal of this order is required in light of our September 24, 2014 nonpublished appellate decision. However, we

decline minor's request to vacate certain of the juvenile court's underlying findings for reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2013, a juvenile wardship petition was filed pursuant to Welfare and Institutions Code section 602 (the petition) alleging that minor committed an attempted residential burglary and conspiracy to commit attempted residential burglary.¹ Following a contested jurisdictional hearing, the juvenile court found true the allegations against minor set forth in the petition.

A dispositional hearing was held on September 24, 2013. Following this hearing, the juvenile court continued minor as a ward, removed him from the custody of his parent, and committed him to the San Mateo County Juvenile Rehabilitation Facilities Camp Glenwood Program (Camp) without specifying a maximum term of confinement.

On October 30, 2013, minor filed a timely notice of appeal of the September 24, 2013 dispositional order, as well as the court's underlying findings. In addition, on April 21, 2014, minor filed a related petition for writ of habeas corpus that was subsequently consolidated with his direct appeal. (*In re C.G.*, Nos. A140135, A141593, 2014 Cal. App. Unpub. LEXIS 6846.)

Subsequent to minor's filing of this notice of appeal, on January 8, 2014, the juvenile court issued a Correction to Findings and Orders. In doing so, the court amended the September 24, 2013 order — the subject of minor's October 30, 2013 notice of appeal — to specify a maximum term of confinement of six months. However, about two months later, the court then issued another Correction to Findings and Orders, by which the court again modified the September 24, 2013 order to delete the six-month maximum term of confinement. The court did not specify an alternative maximum term.

¹ All subsequent statutory references are to the Welfare and Institutions Code unless otherwise noted.

In the meantime, on March 6, 2014, the probation department filed a notice of probation violation pursuant to section 777 alleging that, on or about March 3, 2014, minor had failed to obey several Camp rules and regulations. The department also filed a detention report indicating that minor's maximum term of confinement should be two years and two months. However, just over two weeks later, on March 21, 2014, the department filed another report stating that the minor's maximum term of confinement should in fact be five years and four months, as per the "prosecutor's calculations," and thus recommended the court issue a "jurisdictional correction" to set forth this corrected term.

The court accepted the department's recommendation and, on March 27, 2014, in connection with a combined jurisdictional and dispositional hearing on minor's alleged probation violation, issued a "jurisdictional correction" stating that the "correct maximum confinement time is five (5) years and four (4) months."

Also at this combined jurisdictional/dispositional hearing, minor admitted violating probation by failing to obey all Camp rules and regulations. Specifically, minor admitted using benzodiazepines without a prescription in violation of Camp Rule 12.² The court thus found the alleged probation violation true and adopted the probation department's recommendations to terminate the September 24, 2013 order committing minor to Camp and to detain him in the Youth Services Center for therapeutic detention for 226 days with credit for 45 days for good behavior and 24 days for time served.³ The court then dismissed the remaining allegations against

² The probation report reflects that, on March 4, 2014, during a routine Camp locker search, staff found a box with minor's name carrying a strong marijuana odor. Minor and other Camp residents were thus given urine tests, with minor's test being positive for benzodiazepines. Minor later admitted to his probation officer that he had taken this drug without a prescription during the Christmas holiday while he was away from Camp on a home pass.

³ The department's recommendation to terminate minor's Camp commitment was based on the finding that "[minor] presents too much of a risk to the safety and security of the institution," and would "receive needed services such as substance abuse treatment and continuing education at the Youth Services Center." According to the

minor with the understanding, acknowledged by counsel, that the allegations could nonetheless be considered for purposes of disposition. On April 25, 2014, minor filed a timely notice of appeal of the March 27, 2014 order and findings (including his admission of the probation violation).

A few months later, on September 8, 2014, this court issued a decision with respect to minor's consolidated first appeal and habeas corpus petition (A140135, A141593) in which we held as follows. First, after concluding the prosecutor and the juvenile court had failed to comply with the requirements of the so-called Deferred Entry of Judgment (DEJ) program,⁴ we reversed the dispositional order of September 24, 2013, and remanded the matter for further proceedings pursuant to section 790 et seq.

Second, we held that the juvenile court further erred in sustaining the allegation that minor committed the crime of conspiracy to commit attempted burglary, given that such crime is not cognizable under California law. As such, we reversed the sustained allegation as to this nonexistent crime. And lastly, relevant to the present appeal, we held that the juvenile court failed to discharge its mandatory duty under section 726, subdivision (d), to indicate, in the order or on the record, the maximum term of minor's confinement. (§ 726, subd. (d); *In re Julian R.* (2009) 47 Cal.4th 487, 491.) Accordingly, we held that if, on remand, the juvenile court should determine minor's

department's assessment, "Minor's overall level of risk to re-offend is 'high.' "

⁴ "The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)" (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

placement in the camp, in lieu of DEJ, is the proper disposition in this matter, it must then determine and specify his maximum term of confinement.⁵

On September 17, 2014, minor filed a motion to modify our September 8, 2014, decision, which we granted after deeming his motion a petition for rehearing. On September 24, 2014, we then issued a revised opinion in which we restated the three holdings set forth above, while clarifying in the disposition that the jurisdictional order and findings, as well as the dispositional order, were subject to reversal. We then remanded the matter to the juvenile court for further proceedings consistent with the opinions reached therein.⁶

DISCUSSION

Minor raises essentially one issue in the present appeal. Minor contends the juvenile court's March 27, 2014 dispositional order — including the court's finding that he committed a probation violation and consequent order to terminate his Camp commitment and detain him at juvenile hall for therapeutic detention — is void in light of our September 24, 2014 reversal of the court's September 2013 dispositional order. Minor reasons that the March 27, 2014 dispositional order (and underlying probation violation finding) must be reversed because it is premised on the now-invalid September 2013 dispositional order. Minor thus requests that we delete from his juvenile records “any reference to having sustained a probation violation in the Camp Glenwood program.” He also requests that we strike the juvenile court's “jurisdictional correction” in the March 27, 2014 order setting his maximum term of confinement at

⁵ Minor's habeas corpus petition (A141593, 2014 Cal. App. Unpub. LEXIS 6846), which raised issues related to the effectiveness of his assistance from counsel in light of his counsel's failure to alert the court to errors in complying with the DEJ program, was rendered moot by our decision to remand this matter for further proceedings pursuant to section 790 et seq.

⁶ At the parties' request, we take judicial notice of the record of minor's prior appeal in these proceedings (Nos. A140135, A141593, 2014 Cal. App. Unpub. LEXIS 6846).

five years four months.⁷ For reasons explained below, we agree to reverse the order and to remand the matter to the juvenile court for reconsideration in light of our September 24, 2014 decision. However, we reject minor's reasoning and request to vacate the court's determination, based on his knowing and voluntary admission in open court, that he committed a probation violation.

Minor bases his argument on appeal on *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1080, 1090-1091 (*Babak S.*), which he describes in broad terms as a decision reversing a subsequent dispositional order "because it was based on [an] invalid prior dispositional order." *Babak S.*, however, is wholly distinguishable from our case. There, the reviewing court reversed an order committing the minor to the California Youth Authority (CYA) after the juvenile court sustained a section 777 petition alleging that the minor had violated the terms of his probation. (*Id.* at p. 1080.) In doing so, the reviewing court held that the prior dispositional order was invalid because it purported to commit minor to CYA, while also to suspend his commitment so long as he complied with certain conditions. According to the court, "there is no statutory authority for a stayed or suspended commitment to the Youth Authority, [and] the latter error is jurisdictional." (*In re Babak S., supra*, 18 Cal.App.4th at pp. 1090-1091.)

Drawing a comparison to *Babak S.*, minor contends the March 2014 dispositional order and findings, entered after he admitted violating Camp rules, is invalid on jurisdictional grounds. He reasons that the juvenile court lost its authority to issue the

⁷ Minor also argues that the maximum term of confinement specified in the jurisdictional correction was not a valid exercise of the court's discretion because the court merely adopted the prosecutor's calculation without undertaking its own calculation. However, minor directs this court to nothing in the record reflecting juvenile court error. Rather, he merely argues there is "no indication" the court exercised its discretion and independently determined the maximum term of confinement in accordance with section 726, subdivision (d), rather than relying on the prosecutor's number. We decline to presume on appeal that the lower court failed to act in accordance with the law in the absence of any actual facts proving such failure. (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499 ("judgment or order of the lower court is presumed correct".))

dispositional order and to find him in violation of probation once this court reversed its earlier dispositional order and findings of September 2013. We disagree.

Unlike in *Babak S.*, the juvenile court in this case did not enter a dispositional order lacking any basis in statutory law. Rather, the juvenile court failed to comply with a statutory requirement under the provisions of section 790 et seq. to determine whether minor was eligible for DEJ before committing him to Camp (or another juvenile facility). This failure, in turn, prompted our decision on appeal to remand the matter to the juvenile court to correct this error. As the People point out, however, the fact that we have so directed the juvenile court does not necessarily render void all subsequent adjudications in minor's case, particularly where the court's noncompliance with section 790 et seq. was not, at least in any fundamental sense, jurisdictional error. (See *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1209 ["acts which do not comply with a particular statutory procedure or applicable rules . . . are not void in any fundamental sense but are, at most, voidable if properly raised by an interested party"].)

While we agree with minor that, pursuant to our September 24, 2014 opinion, the juvenile court must make a threshold determination as to whether he should be granted DEJ before committing him to Camp or another restrictive juvenile facility, once the juvenile court has properly discharged this statutory duty, we see no reason to bar it from considering its previously adjudicated findings of fact to the extent they remain relevant. As our appellate colleagues in the Fifth District have explained, albeit under different circumstances:⁸ "An order directing that a minor be made a ward of the juvenile court is necessarily predicated upon circumstances existing *at the time of adjudication*, but it does not end there. Wardship, or jurisdiction over the person of a

⁸ In the case, *In re Katherine R.*, our colleagues rejected the People's argument that the juvenile court lacked jurisdiction to make a final order revoking wardship because the juvenile's filing of an appeal of the original wardship order under section 601 divested the juvenile court of jurisdiction. (*In re Katherine R.* (1970) 6 Cal.App.3d 354, 356.) In doing so, the reviewing court also rejected the People's attempt to draw "a jurisdictional analogy, as appellants do, between an appeal from a wardship adjudication and a stay of proceedings pending a criminal appeal." (*Id.* at p. 356.)

minor, is a continuing condition or status for the welfare of the child and *changed circumstances must be considered in any proceeding concerning the child's status, even though such changed circumstances may develop during the pendency of an appeal.*"⁹ (*In re Katherine R.* (1970) 6 Cal.App.3d 354, 356 [italics added]; see also *In re Stephen S.* (1981) 126 Cal.App.3d 23, 31 ["Dependency is a continuing status for the welfare of the child and changed circumstances must be considered in any proceeding concerning the child's status, even though such changed circumstances develop subsequent to the order declaring the minor a dependent child and during the pendency of the appeal"].) To this end, we again remand this matter to the juvenile court to determine whether minor should be granted DEJ, and, if not, to redetermine an appropriate disposition for minor.¹⁰

⁹ We note that, under section 800, subdivision (a), a minor may appeal a judgment in a proceeding under section 601 or 602 and, pending the appeal, the court has discretion to grant or refusal to order the minor's release. Further, California Rules of Court, rule 5.595 provides that the court "must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child." As these provisions reflect, there is no requirement of a stay in wardship proceedings once the minor has filed an appeal from a court order or judgment.

¹⁰ As previously stated, the juvenile court sustained the allegation that minor committed attempted residential burglary in its September 2013 dispositional order only after the matter was properly adjudicated at a contested hearing at which minor was present and represented by counsel. The court's subsequent finding in the March 27, 2014 order that minor violated the terms of his probation, in turn, followed his admission in open court of taking a prescription drug without a prescription in violation of Camp rules after he was fully apprised of, and waived, his rights to contest the matter. Recommending that the court terminate minor's Camp commitment based upon this violation, the department stated in its report that "[minor] presents too much of a risk to the safety and security of the [Camp]," and would "receive needed services such as substance abuse treatment and continuing education at the Youth Services Center." The department also assessed that "Minor's overall level of risk to re-offend is 'high.'" The juvenile court, having adopted the department's recommendation to terminate minor's Camp commitment in favor of therapeutic detention at the Youth Services Center, need not wholly disregard these circumstances at any future dispositional hearing. As our appellate colleagues have aptly noted, "[t]he significance of subsequent misconduct in juvenile cases is that it may reveal the ineffectiveness of a current disposition in achieving the statutory objectives of rehabilitating the minor and protecting the public. . . . [¶] . . . [A] failure of the lesser disposition [thus] calls for a complete reassessment of dispositional issues in light of then-prevailing

DISPOSITION

The March 27, 2014 dispositional order is reversed and the matter is remanded to the juvenile court for reconsideration in light of the opinions of this court expressed herein and in our September 24, 2014 nonpublished opinion. (*In re C.G.*, No. A140135, A141593, 2014 Cal. App. Unpub. LEXIS 6846.) Further, if as a result of the proceedings on remand, minor is granted DEJ, the March 27, 2014 order shall be vacated (and the September 24, 2013 findings and order will remain vacated). However, if minor is denied DEJ, the juvenile court's March 27, 2014 adjudication with respect to minor's admitted probation violation may be reinstated, subject, of course, to minor's right to appeal the denial of DEJ. (See *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123-1124; *In re D.L.* (2012) 206 Cal.App.4th 1240, 1245-1246.) The juvenile court shall also reconsider the maximum term of minor's confinement in light of our September 24, 2014 reversal of the sustained allegation that he committed the non-existent offense of conspiracy to commit attempted residential burglary.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.

circumstances.” (*In re Ronnie P.* (1992) 10 Cal.App.4th 1079, 1089-1090. See also *In re Antonio A.* (1990) 225 Cal.App.3d 700, 706 [juvenile probation is not revoked upon sustaining a supplemental petition; rather, the entire underlying order is subject to modification “ ‘as the judge deems meet and proper’ ”].)