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

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

THE PEOPLE,

Plaintiff and Respondent,

A142442

v.

**(Alameda County
Super. Ct. No. SJ14022618)**

B.S.,

Defendant and Appellant.

_____/

Appellant B.S. (minor) appeals from the juvenile court's dispositional order adjudging him a ward of the court and placing him on formal probation. The minor contends the court abused its discretion by denying his request to be placed on informal supervision pursuant to Welfare and Institutions Code section 654.2.¹ We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, the 14-year-old minor stole a cell phone from another student's handbag during school. The minor denied taking the phone and said he found it in a cardboard box. However, two students reported witnessing the minor walking with the stolen

¹ Unless noted, all further statutory references are to the Welfare and Institutions Code.

phone, and one witness saw the minor place the phone in the cardboard box. An officer from the Newark Police Department also found another stolen cell phone on the minor's person. The minor said he purchased the phone from another student, but that student denied possessing or selling the phone.

The People filed a section 602 wardship petition alleging the minor committed misdemeanor receiving stolen property (Pen. Code, § 496) and misdemeanor petty theft (Pen. Code, § 484, subd. (a)). The minor requested the matter be referred to probation for a section 654.2 report to determine the minor's eligibility and suitability for informal supervision. In support of his request, the minor claimed letters from his teachers demonstrated informal supervision was "sufficient to successfully rehabilitate" him. The supporting documents demonstrated some improvement at school, and stated the minor made an effort "to be an even better student" and "to correct his mistakes" in school. However, the documents also revealed the minor "[was] not working up to his potential," because he did not finish assignments and did not turn in homework. The court ordered the probation department to consider and make a recommendation regarding the minor's placement on informal supervision.

The probation department recommended denying the minor informal supervision. According to the probation department, the minor was not suitable for informal supervision given his disobedience at home, lack of academic achievement and negative behavior at school, and his drug and alcohol use. At home, the minor disobeyed his parents, did "not complete his chores," and was "not studying." If the minor "is doing something 'important' with his friends" then "he will disobey his father's command to return home." The minor failed half of his classes, and needed to attend summer school. His father described him as "lazy" and the minor admitted he "would rather watch television or take a nap" than do schoolwork.

The minor also had numerous disciplinary issues at school. During the most recent school year, the minor received 29 disciplinary reports including: (1) 14 for "disruption[;]" (2) nine for "defiance[;]" (3) two for "cut[t]ing [class;]" (4) one for "possession of [a] vapor pen[;]" (5) one for "sexual harassment[;]" (6) one for "non-dress

code[;]” and (7) one for “current incident of having the stolen iPhone[.]” In addition, the minor smoked marijuana and “consum[ed] hard liquor[.]” The minor had attended a six-month substance abuse program, but he continued to use drugs and alcohol. The minor admitted he smoked marijuana “once every three months or on special occasions,” and drank hard alcohol every two weeks.

At a hearing, the minor urged the court to grant informal supervision, emphasizing the nonviolent nature of the offense, the letters indicating his improvement at school, and the support from his parents. The minor also contended the probation report exaggerated his drug and alcohol use, and he argued the court should focus on the substance abuse program he attended and his honesty about his drug and alcohol use. After reviewing the probation report and school discipline profile, the court denied the minor’s request for informal supervision. The court explained, “there are many, many issues of failure to do his work, of disruption, defiance. So this seems to be an ongoing issue, and it’s not just from this one incident; that there are many, many problems that he’s been exhibiting at school, even including at home, that seem to be consistent with some of the issues that have to be addressed.”

At the dispositional hearing, the minor admitted the misdemeanor petty theft allegation (Pen. Code, § 484, subd. (a)). The court adjudged the minor a ward of the court and placed him on formal probation under the supervision of the probation department.

DISCUSSION

The minor contends the court abused its discretion by denying informal supervision. Section 654 “provides for informal probation in lieu of seeking a section 602 petition ‘or subsequent to dismissal of a petition already filed.’” (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 747 (*Charles S.*)) Section 654.2 permits the court to order informal supervision and states, “[i]f a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under [s]ection 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor’s parents or guardian, continue any hearing on a petition for six months and

order the minor to participate in a program of supervision as set forth in [s]ection 654.” (*In re Adam R.* (1997) 57 Cal.App.4th 348, 351, fn. 2 (*Adam R.*.) The court determines whether informal supervision is appropriate once a section 602 petition is filed. (§ 654; *Charles S.*, *supra*, 32 Cal.3d at p. 747.) If the court declines to place the minor on informal supervision, the court may “place the minor on [formal] probation, under the supervision of the probation officer, for a period not to exceed six months.” (§ 725, subd. (a).)

“[T]he purpose of section 654.2 informal supervision program is to avoid a true finding on criminal culpability which would result in a criminal record for the minor,” (*Adam R.*, *supra*, 57 Cal.App.4th at p. 352) but “[a]n order at disposition for informal supervision is the exception, rather than the rule, and it is the rare case in which this will be appropriate. The court should not make such an order unless it finds the order is appropriate, sufficient to protect the child, and in the child’s best interest.” (Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2015) § 2.123[2], p. 2-362.) The appellate court may reverse a juvenile court’s dispositional order for formal probation only upon a showing the court abused its discretion. (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135 (*Khamphouy S.*.) We do not reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881.) We “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.” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330, quoting *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.) To determine whether support exists for the court’s order we review the whole record “in the light most favorable to the order[.]” (*Khamphouy S.*, *supra*, 12 Cal.App.4th at p. 1134.)

The minor contends the court abused its discretion because it “failed to consider all the relevant evidence, including the evidence establishing [the minor’s] behavior at school had improved.” We disagree. Section 654.2 does not discuss what evidence the court must consider when determining whether informal supervision is appropriate. (*In re Armondo A.* (1992) 3 Cal.App.4th 1185, 1190.) To determine the appropriate

disposition in a wardship proceeding, “the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.) However, “[w]e do not interpret . . . section 725.5 to mean the court must specifically discuss each of the enumerated factors at the time of disposition. The Legislature used the term ‘consider’ in the language of that section. The court fulfills this obligation when it carefully examines and takes into account the factors stated.” (*In re John F.* (1983) 150 Cal.App.3d 182, 185.)

Here, the court considered the section 725.5 factors. First, the court considered the minor’s age because it read the probation report, which included the minor’s age, birthday, and grade. Second, the court contemplated the circumstances and gravity of the minor’s offense. The probation report discussed the circumstances and gravity of the offense, and the court heard the minor’s argument on the relatively minor nature of the offense and how it was “not a pressing issue regarding violence or misconduct in the community. This was something that happened at school.” Lastly, the court considered the minor’s lack of delinquent history when it reviewed the probation report, which stated the offense was the minor’s “first referral to Alameda County Probation Department.” In addition, the court examined the minor’s 29 disciplinary reports and knew about the substance abuse program he attended. While the court acknowledged it did not think the minor would be “a major problem on probation,” it concluded standard probation would be appropriate to “help his other issues he may have[.]” The court explained, “there are many, many issues of failure to do his work, of disruption, defiance. . . . [T]here are many, many problems that he’s been exhibiting at school, even including at home, that seem to be consistent with some of the issues that have to be addressed.” We conclude the court properly considered the section 725.5 factors, and did not abuse its discretion in denying informal supervision.

We reject the minor’s claim that the court erred by focusing only on the probation report. Section 706 provides, “the court shall hear evidence on the question of the proper disposition to be made of the minor,” as well as receive evidence of the probation report

and any other relevant or material evidence that may be offered. Here, the court heard evidence on the question of informal supervision. The court also received additional evidence, such as the teacher's letters, and it reviewed the probation report and disciplinary reports. "[We] cannot assume that the [juvenile] court judge, who presided over the dispositional hearing and heard [the minor's] arguments, gave them no consideration or completely failed to evaluate [the minor's] suitability for [informal supervision]. Moreover, the silence of the judge regarding his reasons for making a . . . commitment has never been held to violate statutory or constitutional requirements." (*In re Ricky H.* (1981) 30 Cal.3d 176, 183-184.)

The minor also argues the court "accepted without examination" the probation officer's "conclusory statements" about his "home life and relationship with his parents, that were contradicted by the facts and the officers['] own reporting." The record does not support this argument. As we have discussed, the minor and his father made statements directly supporting the probation officer's conclusions. Although the minor argues for an alternative interpretation of the evidence, it is not our responsibility to reweigh the evidence and determine the appropriate placement for the minor. (*Khamphouy S.*, *supra*, 12 Cal.App.4th at p. 1135.) We conclude the court did not accept conclusory statements without examination because it reviewed the probation report, the disciplinary reports, and heard arguments from the minor.²

Lastly, the minor contends he should have been given an opportunity "to succeed on informal supervision and avoid a criminal record" because this was his first referral to the probation department, and because he has a stable and supportive family and home life. Nothing requires the court to offer informal supervision to the minor. (*In re Eddie M.* (2003) 31 Cal.4th 480, 507 [the court has broad discretion to determine the appropriate placement for a juvenile in order to protect the public].) While section 654.2's purpose is to avoid criminal records for juveniles, the court must also "consider

² We are not persuaded by the minor's contention that the probation report exaggerated his drug and alcohol use. The minor admitted he smoked marijuana recently and that he "[drinks] hard alcohol once or twice every two weeks."

the safety and protection of the public and the best interest of the minor . . . ” (§ 202, subd. (d).) Here, the court reasonably concluded formal probation would better address the issues and problems the minor exhibited at school and home. We conclude the court did not abuse its discretion in denying the minor’s request for informal supervision.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.