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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re D.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
D.L.,
Defendant and Appellant.

A142659

(San Francisco City and County
Super. Ct. No. JW146120)

D.L. participated in a robbery less than three weeks after successfully completing probation imposed for his participation in two prior robberies. The People filed a Welfare and Institutions Code section 602, subdivision (a),¹ wardship petition and the juvenile court found the alleged robbery count to be true. The court subsequently imposed probation, to be served out of the home at Boy’s Republic.

D.L. contends on appeal that the juvenile court abused its discretion because it did not order in-home probation. We find no merit in D.L.’s argument and affirm.

BACKGROUND

In May 2013, D.L, then 13 years old, was involved in two robberies involving five teenagers. In the first robbery, three males approached the victim. One of the assailants

¹ Further statutory citations are to the Welfare and Institutions Code, unless indicated otherwise.

(not D.L.) grabbed his pants in the belt buckle area, simulated a gun and took a cell phone and wallet from the victim's pockets. After the victim reported the robbery to the police, two juvenile suspects, one of whom was D.L., were observed and taken into custody. The third suspect was apprehended nearby, with a replica .45-caliber pistol in his hand. When he was arrested, D.L. had a cell phone and an iPod in his pockets.

In the second robbery, three assailants, one of whom indicated he had a weapon, approached four victims. The assailants took cell phones, money, and an iPod from the victims, all four of whom positively identified the three suspects who were apprehended.

The People filed a juvenile wardship petition, resulting in two sustained counts of grand theft (Pen. Code, § 487, subd. (c)) for D.L. D.L. was placed on in-home probation with GPS monitoring. He fully complied with all orders and conditions of his probation. D.L.'s case was dismissed and wardship was successfully completed on April 17, 2014.

During the early morning hours of May 6, 2014, Tony Sanchez left a bar where he had been drinking and went down the stairs to the BART station at 16th Street and Mission Street. The station was closed and Sanchez turned to go back up the stairs, but three males confronted him. One of the males demanded Sanchez's jacket and cell phone. Sanchez handed over these items, as well as his wallet, which contained about \$730. The three males then ran up the stairs and out of the BART station.

James Lucero, a City of San Francisco Department of Public Works employee, was cleaning streets that night and saw the three males come up the stairs from the BART station and walk away on 16th Street. Lucero went to the stairs and saw Sanchez, who said he had been robbed. Lucero called 911 to report the robbery and told the dispatcher the direction the young men had gone. Several minutes later, Lucero saw San Francisco Police Officer Alaer Manrique arrest the three individuals, all of whom were minors and one of whom was D.L. One of the minors had Sanchez's phone and another had \$591 hidden in his shoe. D.L. had none of Sanchez's property in his possession.

On May 7, 2014, the People filed a section 602, subdivision (a), juvenile wardship petition naming D.L. and alleging one count of second degree robbery (Pen. Code,

§ 211/212.5, subd. (c)). On June 3, 2014, following a contested jurisdiction hearing, the court found the allegation true.

The probation department filed a report with the court on June 13, 2014, recommending an out-of-home placement for D.L.: “The undersigned believes that more intervention is needed at this time. The undersigned does not believe that an ankle monitor, . . . case management and sending the minor back into the same environment with the same co-minors are going to prevent him from participating in another robbery.” The report noted that after the court found the robbery allegation true, D.L. stated that “he was just going to stick to his story about not being involved in the last robbery because he had none of the victim’s items on his person.” The probation department’s case plan report, filed on June 17, 2014, noted: “The minor seems to have no remorse about victimizing others. He seems to have no concern about the impact robbery has on the people he victimizes.” D.L. later expressed remorse in a letter to the court before the disposition hearing.

On July 28, 2014, D.L. filed a proposed release plan, arguing that he should remain at home on various terms and conditions. Attached to the proposed plan was a neuro-psychological evaluation by Dr. Hugh Molesworth.

The court held a disposition hearing on July 29, 2014. Dr. Molesworth testified that he considered 23 risk factors associated with recidivism and found four present in D.L.’s case: a history of violence, peer delinquency, risk taking and impulsivity, and low empathy and remorse. Dr. Molesworth believed his treatment plan, which included psychotherapy, could help address D.L.’s issues while he remained at home. He believed that there were factors in D.L.’s life that promoted rehabilitation, such as his involvement in the Samoan community center, his positive response to intervention and his progress in his special education program.

Dr. Molesworth thought D.L. had a “low to moderate” risk of reoffending if he remained in his home on probation. D.L. had done well during his previous probationary term, but his arrest a few weeks after he was released from probation was a “concern.” D.L. would need monitoring if he remained at home, and Dr. Molesworth conceded that a

group home would also provide “structure and monitoring.” However, Dr. Molesworth thought it less likely that a group home program would be tailored to D.L.’s specific needs. While individual therapy could be provided in a group home, multisystem therapy (which he recommended) probably could not because it involved the entire family.

On cross-examination, Dr. Molesworth opined that “negative peer influence” appeared to be the foremost factor causing D.L. to reoffend so soon after his prior probation was terminated. Other factors included poor decision making, failure to resist negative influences and a lack of parental supervision.

The court noted that whether at home or in a group home, the four recidivism factors noted by Dr. Molesworth in D.L.’s case would be present, but that D.L. would be more closely supervised in a group home. After hearing argument, the court stated: “[D.L.], you did perform well while you were on probation. It’s very honestly disturbing to me that notwithstanding having been on probation for [an] entire year working with your probation officer during that year that then right after your probation was terminated, less than three weeks, you reoffended and committed another robbery. You weren’t willing to accept responsibility for that robbery.

“Initially you didn’t express—I think the lack of remorse is very disturbing. Those lack of core values. That is something that generally has to be learned in early life. I’m not suggesting [D.L.] can’t learn that value. But that is something that is generally taught early in life at home, acceptance of responsibility and empathy, remorse, guilt, when you’ve done something wrong. And the absence of that is very disturbing and I think is one of the strongest indicators of potential recidivism.

“[D.L.] has expressed at this point some remorse for this. . . . But it’s very disturbing that it’s taken quite so long. . . . I was really struggling with your case because you did do well on probation. But in the end, you failed or we failed or probation failed to succeed in rehabilitating you because then you committed the exact same offense again, which indicates to me that being at home on probation wasn’t enough. So I think I have to defer to probation’s recommendation that [D.L.] be placed out of home.”

The court declared D.L. a ward of the court and committed him to the probation officer for placement outside the home. On August 28, 2014, D.L. was placed at Boy's Republic.

D.L. timely filed a notice of appeal on August 1, 2014.

DISCUSSION

“Under section 202, juvenile proceedings are primarily ‘rehabilitative’ (*id.*, subd. (b)), and punishment in the form of “retribution” is disallowed (*id.*, subd. (e)). Within these bounds, the court has broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public. (*Id.*, subd. (e).)” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) D.L. contends that the court abused its discretion when it imposed out-of-home probation rather than in-home probation. We disagree.

In determining the disposition in a section 602 wardship proceeding, the court must 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.) A court may exercise its discretion to remove a minor from the family home “only when necessary for his or her welfare or for the safety and protection of the public.” (§ 202, subd. (a).) “ ‘ “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.” ’ ” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) “An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination.”² (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

Here, there was no dispute that D.L. had performed well on probation after his prior offenses. However, less than three weeks after the court terminated probation for the prior offenses, D.L. reoffended in an identical fashion. Thus, even though D.L. met all the orders and conditions of his prior at-home probation, it is clear the prior term of

² The practical differences between review for substantial evidence and for abuse of discretion are “not significant.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

probation did not rehabilitate D.L. and prevent the instant offense. That fact alone is substantial evidence that more than in-home probation was needed for both D.L.'s own future welfare and for the safety and protection of the public. D.L. had shown repeated willingness to engage in offenses that could easily result in violence, with resultant injury to the victims, his co-offenders, or himself. Dr. Molesworth's report and testimony provides additional evidence that an out-of-home placement was appropriate in D.L.'s case—four recidivism factors were present, including a lack of remorse, and there was up to a “moderate” risk that D.L. would reoffend on at-home probation.

D.L. fails to acknowledge that substantial evidence supports the juvenile court's disposition in his case when he argues that “no reasonable person would have believed that an out-of-home placement was necessary to protect either [D.L.] or the public.” Instead, D.L. relies on the presence of factors that weigh in favor of again imposing in-home probation: (1) his prior performance on probation; (2) his performance in custody prior to the disposition hearing; (3) his school record; (4) his extracurricular activities; (5) his lack of substance abuse; (6) a supportive family; and (7) Dr. Molesworth's assessment that D.L. was at very low risk for committing a violent offense (while at a low-to-moderate risk for committing a new offense). He argues that his prior term of probation did not include a therapy component, but Dr. Molesworth's report identified D.L.'s needs and “[a] longer period of probation, giving [D.L.] time to mature, together with supervision, peer oversight, and targeted therapy had an overwhelming likelihood of success.”

The court did not ignore factors that weighed against out-of-home probation. It stated it was “really struggling” with D.L.'s case, primarily because of his prior performance on probation. The court weighed factors favoring in-home probation against opposing factors, primarily D.L.'s initial lack of remorse and reoffense so soon after having been released on probation. The court then concluded that out-of-home probation was appropriate in D.L.'s case. D.L.'s argument essentially asks us to reweigh the evidence and substitute our judgment for that of the juvenile court, but that is not our role. (*People v. King* (2010) 183 Cal.App.4th 1281, 1320.) Substantial evidence

supports the juvenile court's decision to place D.L. out of the family home. There is nothing arbitrary, capricious or patently absurd in how the court reached its decision or in the decision itself. There was no abuse of discretion.

DISPOSITION

The juvenile court's disposition order is affirmed.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.