Filed 7/22/19 In re D.S. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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| In re D.S., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>D.S.,<br>Defendant and Appellant. | A155918<br><br>(Alameda County<br>Super. Ct. No. JV02690802) |

Appellant D.S. admitted one count of assault with force likely to produce great bodily injury based on an incident in which he and two other minors knocked a man to the ground near the Hayward BART station, punched and kicked him, and took his wallet. The juvenile court ordered appellant placed at Camp Sweeney, a dispositional order which appellant contends was an abuse of discretion. We affirm.

## BACKGROUND[1]

At approximately 6:32 p.m. on October 7, 2018, Victor H. was walking near the Hayward BART station when he was assaulted by appellant, then 17 years old, and two other minors, who knocked him to the ground, punched and kicked him, and took his

[1] The facts of the offense are drawn from the dispositional report.

wallet containing $1,000 in cash. The incident was captured on surveillance video, which showed appellant stomping the victim with his left foot and kicking him with his right foot after one of appellant's cohorts fled with the wallet. Officers responded and found the victim covered in dried blood and with what appeared to be a broken nose. He required multiple stitches to his forehead and inside his lip. Appellant was later identified by a high school resource officer, and admitted participating in the assault.

On October 16, the Alameda County District Attorney filed a subsequent juvenile wardship petition (Welf. & Inst. Code, § 602) alleging that appellant committed second degree robbery (Pen. Code, § 211) (count 1) and assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) (count 2). With respect to both counts, the petition alleged that appellant personally inflicted great bodily injury on the victim (Pen. Code, § 12022.7, subd. (a)).

The next day, appellant admitted count 2 and the prosecution dismissed count 1 as well as the great bodily injury enhancement with respect to both counts.

A contested dispositional hearing was held on November 15. In advance of that hearing, a dispositional report was prepared by Deputy Probation Officer Michael Stults. The report indicated that appellant had a previous arrest for robbery in June of 2016 based on an incident in which he had stolen an iPhone from a 73-year-old man on Amador Street in Hayward. Appellant ultimately admitted a misdemeanor charge of possession of stolen property, was placed in a group home, and successfully completed a term of probation in June of 2017. Appellant had seven siblings, one of whom had been committed to Camp Sweeney in April of 2018 after committing a robbery. The report put appellant in a "Moderate" category for reoffending within the next year, and recommended that he be removed from his home and placed at Camp Sweeney:

"This matter was screened for Camp Sweeney and found appropriate. The youth is near the age of majority and the opportunity for him to rehabilitate under the Juvenile Jurisdiction is running out. Camp can provide a structured environment for the minor to achieve his high school education. The youth could benefit from a credit recovery program and therapy to address the underlying issues that led to the delinquent behavior.

"A strong consideration for returning home with wraparound services was thoroughly discussed as the minor indicated that he had successfully completed a grant of probation. However, the seriousness of the offense and the fact that the youth needs more intensive services for rehabilitation, suggest that the youth returning home would be contrary to the youth's rehabilitation under the juvenile jurisdiction."

Three witnesses testified at the hearing: Michael Fleming, appellant's probation officer with respect to his previous offense, Michael Stults, the probation officer who had prepared the report, and Collette Spears, appellant's mother.

Stults testified that on October 24, he met with the "SOS" committee consisting of himself, a representative of the guidance clinic, and two supervisors. The committee's purpose is to decide "whether a youth's case is an appropriate case for placement." He also testified, consistent with his report, that consideration was given at that meeting to return appellant home with wrap-around services, but that the committee ultimately decided to recommend placement at Camp Sweeney. Stults testified that Camp Sweeney was recommended because of appellant's previous history, and the availability through Camp Sweeney of a credit recovery program whereby appellant would be able to complete high school.

At the conclusion of the hearing, the juvenile court adjudged appellant a ward of the court, ordered that he be removed from his parents' custody and committed to the care, custody, and control of the probation officer, and approved his placement at Camp Sweeney. This appeal followed.

## DISCUSSION

Appellant's only argument is that the juvenile court abused its discretion in ordering him placed at Camp Sweeney.

### Applicable Law

"The purpose of juvenile delinquency laws is twofold: (1) to serve the 'best interests' of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and 'enable him or her to be a law-abiding and productive member of his or her family and the community,' and (2) to 'provide for the protection and safety

of the public . . . .' " (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615, quoting Welf. & Inst. Code, § 202, subds. (a), (b) & (d).) Welfare and Institutions Code section 202 was amended in 1984 to shift "its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express 'protection and safety of the public.' " (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396 (*Michael D.*); see also *In re Javier A.* (1984) 159 Cal.App.3d 913, 958.) At disposition, the juvenile court must act consistently with these purposes. (*In re Schmidt* (2006) 143 Cal.App.4th 694, 716.)

In making its dispositional order, the court must "consider 'the broadest range of information' in determining how best to rehabilitate a minor and afford him adequate care." (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329 (*Robert H.*), quoting *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) In addition to any other relevant and material evidence, the court should also consider "(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." (Welf. & Inst. Code, § 725.5.)

The juvenile court may impose punishment, but the disposition must evidence probable benefit to the minor and that less restrictive alternatives would be ineffective or inappropriate. (Welf. & Inst. Code, § 202, subd. (e); *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) While the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*In re Teofilio A.*, supra, at p. 577.)

**Standard of Review**

We review the juvenile court's dispositional order for abuse of discretion. (*Robert H., supra,* 96 Cal.App.4th at pp. 1329–1330; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473; see also *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465, [" ' " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " ' "].) "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." (*Michael D., supra,* 188 Cal.App.3d at p. 1395; accord, *Robert H., supra,* 96 Cal.App.4th at pp. 1329–1330; *In re Asean D., supra,* 14 Cal.App.4th at p. 473.) Substantial evidence is " 'evidence which is reasonable, credible, and of solid value . . . .' " (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.) In determining whether there was substantial evidence to support the disposition, we must examine the record presented at the disposition hearing in light of the purposes of the juvenile court law.

**The Juvenile Court Did Not Abuse Its Discretion**

Appellant's argument that the juvenile court abused its discretion, which spans a little over three pages and cites no authority in support of its conclusion, is not entirely clear.[2] He asserts that "the probation officer failed to consider [appellant's] individual needs and develop a fully supervised, intensive wrap-around program which would have allowed him to remain in his home and treat his particularized needs," noting that appellant had "caring and involved parents" and had previously successfully completed a grant of probation. Appellant also briefly argues that the juvenile court failed to consider placement in a foster home as an alternative to Camp Sweeney.

Turning to the second contention first, when asked whether there was any discussion by the SOS committee about "a placement versus going to Camp," Stults replied "I don't think so." However, appellant's counsel did not present any argument for a foster placement below, nor does he offer any such argument on appeal. And appellant points to no evidence in the record to support an argument that foster placement would have been more appropriate than Camp Sweeney. Under these circumstances, he has failed to demonstrate an abuse of discretion.

To the extent appellant argues that the trial court failed to consider in-home placement, he mischaracterizes the record. As noted, the probation report expressly states that in-home placement with wrap-around services was given "strong

[2] Appellant did not file a reply brief.

consideration" and was "thoroughly discussed," although ultimately rejected. And Stults testified, consistent with his report, that "strong" consideration was given to returning appellant home with wrap-around services, but that alternative was rejected in favor of placement at Camp Sweeney. And appellant's counsel argued in closing that he should be returned home, in part because he had a supportive family. The possibility of in-home placement was thus squarely before the court. Although the court did not expressly discuss an in-home placement in its ruling, its failure to do so is not an abuse of discretion. (See *In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577 ["if there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal"].)

And the record contains substantial evidence in support of the juvenile court's placement of appellant at Camp Sweeney. As the court noted during closing argument, although appellant had successfully completed probation after his previous offense, that disposition had been unsuccessful in the sense that appellant had gone on to commit another significantly more serious offense, this time resulting in significant injuries to the victim. According to the dispositional report, appellant was in a "Moderate category for reoffending within the next year." He was also near the age of majority, such that it was the juvenile court's last opportunity to provide the higher level of structure and more intensive services offered by Camp Sweeney before he was no longer within the court's jurisdiction. The juvenile court acknowledged and considered the supportive nature of appellant's relationship with his parents, but noted that with respect to Camp Sweeney, "[p]arental involvement is a big part of what they do and they encourage family visits. [¶] The goal is to get you home as soon as possible while providing a high level of structure." And Stults testified that Camp Sweeney would enable appellant to finish high school, which he was not otherwise on track to do because of "low credits." The juvenile court's placement of appellant at Camp Sweeney was not an abuse of its discretion.

**DISPOSITION**

The dispositional order is affirmed.

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Richman, J.

We concur:

_____
Kline, P. J.

_____
Stewart, J.

*People v. D.S.* (A155918)