

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOHN R., a Person Coming Under the
Juvenile Court Law.

B236523
(Los Angeles County
Super. Ct. No. FJ49207)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Robin Miller Sloan, Judge. Affirmed as modified.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews,
Supervising Deputy Attorney General, and Analee J. Brodie, Deputy Attorney General,
for Plaintiff and Respondent.

Appellant John R. was adjudged a ward of the court pursuant to Welfare and Institutions Code section 602,¹ and ordered home on probation. He contends the juvenile court erred in setting the maximum term of confinement because he was committed to the custody of his parents. We agree, and modify the dispositional order to strike any reference to the maximum term of confinement.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

At about 8:30 p.m. on May 13, 2011, Edwin Ixquir was near an alleyway talking on his cell phone. Appellant approached Ixquir on a bicycle and held a four inch long knife to Ixquir's hand. Appellant told Ixquir in English and Spanish to give him the cell phone or that he would take it from him, adding that he would cut off Ixquir's hand if he did not comply. Ixquir let go of the phone and appellant took it.

On July 22, 2011, the Los Angeles County District Attorney's Office filed a juvenile wardship petition pursuant to section 602. The petition alleged that appellant committed the crime of second degree robbery (Pen. Code, § 211) and further alleged that in the commission of the robbery appellant personally used a deadly and dangerous weapon, a knife (Pen. Code, § 12022, subd. (b)(1)). Appellant denied the allegation the same day.

On September 27, 2011, the juvenile court heard the adjudication. The court sustained the petition as to the robbery, but found the weapon allegation not true and dismissed it. The court declared the offense to be a felony and appellant to be a person described by section 602 and a ward of the court. The court ordered appellant be placed home on probation, declared the maximum period of confinement to be five years, and gave appellant one day of predisposition custody credit. Appellant timely appealed.

DISCUSSION

Appellant argues that the juvenile court's order should be corrected to delete any reference to a maximum term of confinement for appellant's disposition of home on

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

probation because section 726, subdivision (c), providing for the imposition of a maximum term of confinement, does not apply to him. Respondent argues that pursuant to *In re Ali A.* (2006) 139 Cal.App.4th 569 (*Ali A.*), a juvenile court's order erroneously setting the maximum term of confinement for a minor home on probation has no legal effect, and thus the dispositional order should be affirmed.

We agree with appellant that section 726, subdivision (c) does not apply in this case. Section 726 provides that “[i]f the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” (§ 726, subd. (c).) By its express terms, section 726, subdivision (c) does not apply to appellant because he was never removed from the physical custody of his parents. In other words, when a juvenile is committed to the custody of his parents, the juvenile court is not statutorily required to include a maximum term of confinement in its dispositional order. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541 (*Matthew A.*); *Ali A.*, *supra*, 139 Cal.App.4th at p. 573.)

In *Matthew A.*, *supra*, 165 Cal.App.4th 537, “[t]he juvenile court declared appellant . . . a ward of the court after finding that he had committed a first degree burglary . . . [and] placed appellant home on probation, and set a maximum term of confinement of six years.” (*Id.* at p. 539.) Reasoning that “the necessary predicate for specifying a term of imprisonment” did not exist because the “[a]ppellant was not removed from his mother’s physical custody,” the court struck the specification of a term of imprisonment from the order. (*Id.* at p. 541.) In other words, “[t]he statute did not empower the court to specify a term of imprisonment.” (*Ibid.*) In *Matthew A.*, this district noted that while courts specifying a maximum term of confinement in such cases “may have the best of reasons, such as ‘sending a message’ to the juvenile that the

transgression was serious,” “if the Legislature thought that this should be done, it would have been easy to write the statute to permit this practice.” (*Ibid.*)

Matthew A., supra, 165 Cal.App.4th 537 is directly applicable to the instant case. Even though appellant was not removed from his parents’ custody, the juvenile court specified a maximum term of confinement. As the juvenile court had no statutory authority to do so, the maximum term should be stricken from the order. Nonetheless, in *Ali A., supra*, 139 Cal.App.4th 569, the juvenile court “sustained a charge of attempted robbery against the minor, declared him a ward of the court, and committed him to the custody of his parents under the supervision of a probation officer.” (*Id.* at p. 571.) At the end of the disposition hearing, the court stated that “[t]he maximum confinement term is three years,” and held that section 726, subdivision (c) did not apply. (*Ali A.*, at pp. 572–573.) However, although the Third Appellate District in *Ali A.* recognized that “the maximum term of confinement contained in the current dispositional order is of no legal effect,” it reasoned that the minor was not prejudiced by the inclusion of the maximum term of confinement, and affirmed the juvenile court’s order. (*Id.* at p. 574.)

Although *Ali A., supra*, 139 Cal.App.4th 569 addressed circumstances similar to the instant case, we find the reasoning in *Matthew A., supra*, 165 Cal.App.4th 537 is more compelling, and that appellant is entitled to a dispositional order that accurately reflects the punishment that may legally be imposed upon him at the time of disposition.

DISPOSITION

The order of wardship is modified by striking the order setting a five-year maximum term of confinement. In all other respects, the order of wardship is affirmed. The juvenile court is directed to correct the minute order of the disposition hearing accordingly.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.