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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re IVAN H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN H.,

Defendant and Appellant.

B241723

(Los Angeles County
Super. Ct. No. FJ49434)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert J. Totten Judge. Affirmed.

Marta I. Stanton, 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, Assistant Attorney General, Steven D. Matthews and Analee
J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Ivan H., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered following determinations he committed 12 acts of vandalism (Pen. Code, § 594, subds. (a) & (b)(1) (counts 1 – 7 & 9 – 13) in a petition filed October 25, 2011); possessed a billy and committed four acts of vandalism (former Pen. Code, § 12020, subd. (a) (count 1) & Pen. Code, § 594, subds. (a) & (b)(1) (counts 2 – 5), respectively, in petition A filed November 29, 2011); committed eight counts of vandalism (Pen. Code, § 594, subds. (a) & (b)(1) (counts 2, 6 – 10 & 12 – 13) in petition B filed November 29, 2011); and committed vandalism and possession of a firearm by a minor (Pen. Code, § 594, subds. (a) & (b)(1) (count 1) & former Pen. Code, § 12101, subd. (a)(1) (count 2), respectively, in a petition filed January 4, 2012). The court ordered appellant placed in camp. We affirm the order of wardship.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687, 697), the evidence, the sufficiency of which is undisputed, established that about December 2010, and about January, March, April, July, and August 2011, appellant committed a total of four acts of vandalism (as alleged in petition A filed on November 29, 2011). About August 23, 2011, appellant possessed a “billy” within the meaning of former Penal Code section 12020, subdivision (a)(1) (hereafter, the billy offense) (as alleged in the same petition).

About April, May, July, and August 2011, appellant committed a total of 12 acts of vandalism (as alleged in the petition filed on October 25, 2011). About September 2011, appellant committed a total of eight acts of vandalism (as alleged in petition B filed on November 29, 2011). About December 31, 2011, appellant committed vandalism and possession of a firearm by a minor (hereafter, the firearm offense) (as alleged in the petition filed on January 4, 2012). As to the firearm offense, the evidence established that about 1:45 a.m. on December 31, 2011, deputies saw appellant tagging and, as they approached appellant, he discarded a spray can and a loaded .22-caliber handgun.

In defense of the charge of the billy offense, Maria S., appellant's mother, testified that about the fall of 2011, she was watering her backyard when she saw her dogs playing with a baton. She threw it into appellant's room. Two weeks later, deputies recovered the baton from the room.

ISSUE

Appellant claims the trial court abused its discretion by refusing to reduce the billy offense to a misdemeanor.

DISCUSSION

The Trial Court Properly Denied Appellant's Penal Code Section 17, Subdivision (b) Motion.

1. Pertinent Facts.

On March 15, 2012, following adjudications, the court determined appellant committed the offenses alleged in the petition filed on October 25, 2011, and in the petitions filed on November 29, 2011, as previously discussed. Appellant then moved the court to reduce the billy offense to a misdemeanor.

The court indicated the matter had not reached the disposition stage but the court thought appellant's motion was fair. The court indicated Maria S. had testified that dogs were playing with the billy, and the court suggested the billy may have been retained as a matter "of interest." The prosecutor opposed appellant's motion, arguing the court should consider the circumstances of the incident, the fact appellant possessed a deadly or dangerous weapon, appellant's history, and his other crimes.

The court indicated it would defer ruling on appellant's motion until after the resolution of the petition filed on January 4, 2012. The court stated, "This minor's social and behavioral conduct would go towards reducing it to a misdemeanor. If the possession [of] a firearm [allegation] is found to be true, I think it goes towards the court's reluctance or willingness to reduce this to a misdemeanor."

Appellant argued the trial court, when determining whether to grant appellant's motion, could not consider facts that occurred after the billy offense. The court indicated it was entitled to consider who appellant was socially in the community, "how he presents himself, how he is performing, if he is a danger to the community, [and if he is] somebody who warrants [that the court grant his motion]." The court stated it was entitled to consider "all that happened before [appellant came] . . . to court."

Appellant later acknowledged the court was not limited to considering only appellant's actions that occurred prior to, or on, the date of the billy offense. Appellant nonetheless argued that if the court considered events that occurred after the billy offense, the court would be "punishing [appellant] for stuff that occurred after the date of that commission simply because it wasn't adjudicated on the day that this came in for arraignment, per se." (*Sic.*) The court continued the case.

On March 21, 2012, the court, following an adjudication, found that appellant committed vandalism and the firearm offense as alleged in the petition filed January 4, 2012. The court later stated: "This young man is just a scourge. He has had opportunities, he had people reach out to him for his passion of playing the [accordion], find him resources so he could participate in those things at no cost Those are people who have reached out to him, and he has just ignored and he treated them with disrespect. . . . [¶] . . . [¶] He . . . poses a substantial risk to the community, having a weapon, a firearm in his possession while tagging."

At one point, the court, discussing the firearm offense, stated, "While we're talking, family you may want to be very thankful it was this deputy and her partner who approached . . . [appellant]. They approach, he pulls his gun out of his waistband while they are approaching him, while they have got their guns pulled. It is as a result of their good judgment and their sense that . . . [appellant] is not dead."

Appellant later renewed his motion. The court stated, "At this point, I disagree." Appellant reiterated his arguments but the court indicated it was entitled to consider all of appellant's behavior, especially on the issue of whether appellant had reformed.

Appellant also argued as follows. The billy was brought into the home, removed from the home, then “placed back in the home unknowingly.” The billy was not used and, instead, was “just . . . kind of thrown around inside the home.” The court noted Maria S. had testified to the effect the billy was in appellant’s room for two weeks before deputies came. The court denied appellant’s motion.

2. *Analysis.*

Appellant claims the trial court abused its discretion by refusing to reduce the billy offense to a misdemeanor. After recounting portions of Maria S’s testimony, appellant argues (1) the court indicated on March 15, 2012, that it was inclined to reduce the offense to a misdemeanor, (2) appellant’s prior record consisted of misdemeanor vandalism offenses, (3) his offenses were nonviolent, and (4) by denying appellant’s motion, the court improperly “punish[ed] appellant for conduct that occurred after the date of the commission simply because the adjudication was postponed.” (*Sic.*) For the reasons discussed below, we reject appellant’s claim.

There is no dispute the billy offense was a “wobbler.” (Pen. Code, § 17, subd. (b)(1) & (3), former Pen. Code, § 12020, subd. (a)(1).) Trial courts have broad authority in ruling on motions under Penal Code section 17, subdivision (b), to reduce a crime to a misdemeanor. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 (*Alvarez*.) Prior to ruling on the motion, the trial court may consider “ ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, rule 410 [fn. omitted].”¹ (*Id.* at p. 978.) The record of the trial court’s decision should “reflect a thoughtful and

¹ The omitted footnote quotes the rule, the applicable version of which in March 2012 was California Rules of Court, rule 4.410. Moreover, California Rules of Court, rule 4.409 states, “Relevant criteria enumerated in these rules must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise.”

conscientious assessment of all relevant factors including the *defendant's criminal history*. [Citations.]” (*Id.* at p. 979, italics added; cf. *People v. Statum* (2002) 28 Cal.4th 682, 686 [same]; see Welf. & Inst. Code, § 725.5.) We review the trial court’s ruling for abuse of discretion. (*Alvarez, supra*, 14 Cal.4th at p. 981.)

On March 15, 2012, the court determined, based on the petition filed on October 25, 2011, and based on petitions A and B filed on November 29, 2011, that appellant had committed a total of 25 acts of misdemeanor vandalism during 2010 and 2011, especially during the latter year. Later on March 15, 2012, the court suggested it might be appropriate to reduce the billy offense to a misdemeanor, but also suggested a different result might obtain if the court, following the later adjudication of the petition filed on January 4, 2012, determined appellant had committed the firearm offense.

On March 21, 2012, the court sustained the January 4, 2012 petition, finding appellant committed yet another act of vandalism and the firearm offense. The trial court presumably knew that, to the extent that this act of vandalism and appellant’s previous acts of vandalism merely damaged property, they were nonviolent offenses. As to the vandalism and firearm offenses alleged in the petition filed on January 4, 2012, appellant committed them concurrently and the firearm was loaded. Appellant presented a serious danger to himself, to any passersby who might have attempted to stop his vandalizing acts, and to the deputies who approached him. In light of the previously discussed authorities concerning the factors, including the defendant’s criminal history, that a trial court considers when deciding a Penal Code section 17, subdivision (b) motion, we can conceive of no valid reason why a trial court should be precluded from considering that portion of a defendant’s criminal history that occurred after the offense that is the subject of the defendant’s motion. Appellant cites no authority for the proposition the trial court was so precluded.

Appellant suggests the court, by denying appellant's motion, "punish[ed] appellant for conduct that occurred after the date of the commission simply because the adjudication was postponed." (*Sic.*) To the extent appellant is arguing the trial court's reliance on the firearm offense to deny his motion as to the billy offense improperly punished him for the fact the adjudication of the firearm offense allegation was postponed, the argument lacks merit. The trial court, when considering appellant's motion, would have been entitled to consider the firearm offense whether the adjudication of the firearm offense allegation occurred on March 15 or March 21, 2012. Nothing in the record demonstrates that on March 15, 2012, when the trial court made ambivalent remarks about appellant's motion, the trial court had decided it would disregard, when considering appellant's motion, whether the firearm offense allegation was true. In light of the previously cited authorities, appellant has failed to demonstrate the trial court abused its discretion by refusing to reduce to a misdemeanor his offense of possession of a billy.

DISPOSITION

The order of wardship is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.