

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

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

B255001

THE PEOPLE,

(Los Angeles County
Super. Ct. No. VJ43716)

Plaintiff and Respondent,

v.

B.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Fumiko Wasserman, Judge. Affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

B.D., a minor, appeals from an adjudication of the juvenile court finding he committed one count of misdemeanor theft (Pen. Code, § 484, subd. (a)), declaring him a ward of the court pursuant to Welfare and Institutions Code section 602¹, and ordering him home on probation. B.D. contends the court abused its discretion in denying his request for nonwardship probation. We conclude B.D. has failed to demonstrate an abuse of discretion and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 26, 2013, a section 602 petition was filed charging B.D., a 13-year-old minor, with one count of misdemeanor petty theft (Pen. Code, § 484, subd. (a)). B.D. was alleged to have taken property, without paying, from a Macy's department store. At arraignment, B.D. denied the allegations and was released to his parents.

The probation officer's report described the statement made by Marvin Pivaral, the store's loss prevention officer who observed B.D.'s conduct and detained him. Mr. Pivaral stated, on May 22, 2013, he saw B.D. put on a Ralph Lauren vest, with a value of \$125 (other portions of the record place the value at \$425), walk around the store for about 15 minutes and then leave the store without paying. He detained B.D. and notified the Downey Police Department. The probation officer also reported that B.D. said he never had any intent to steal the vest, but simply forgot he had it on when he left the store. B.D.'s mother believed him and called him a "good kid" though she also expressed some doubt about whether B.D. meant to steal the vest.

The report stated B.D. had no known substance abuse or mental health problems, no gang affiliation, and no prior record. B.D.'s school record was noted as "poor" with his most recent grades being five F's and one D minus, as well as "excessive" absences and tardies and one suspension for cell phone use. The probation officer recommended nonwardship probation.

¹ All further undesignated section references are to the Welfare and Institutions Code.

At the adjudication hearing, Mr. Pivaral testified. He said that shortly after 6:30 p.m. on May 22, 2013, he saw B.D. with another minor in the denim department at Macy's. He put on a Ralph Lauren vest (it was camouflage with an American flag on the back) and walked around the store for about 15 minutes. Mr. Pivaral saw B.D. walk past numerous registers. He never looked at the price tag and never made any attempt to pay before leaving the store. Mr. Pivaral conceded on cross-examination that B.D. never made any attempt to hide the vest in the shopping bag he was carrying. Mr. Pivaral detained B.D. outside the store and contacted the Downey Police Department.

Officer Gerardo Villa of the Downey Police Department also testified to reporting to the Macy's that evening and speaking with B.D.

The defense moved to dismiss based on insufficient evidence pursuant to Penal Code section 701.1. The motion was denied.

B.D. testified and explained he had gone shopping with a friend to buy some clothes. His mother had given him \$200. They bought some pants at the Pacsun store and then went to Macy's. B.D. said he and his friend saw the camouflage vest and thought it was "funny-looking" so he put it on. He was going to buy it, but when he looked in his shopping bag he realized he had lost one of the pairs of pants he had just purchased and he got upset. He and his friend decided to backtrack where they had been to look for them. B.D. said he forgot he was wearing the vest when he walked out of the store.

B.D.'s mother also testified and confirmed that she had given her son money to buy some clothes.

Defense counsel requested nonwardship probation pursuant to section 725, subdivision (a), noting that since the filing of the petition, B.D.'s school attendance and grades had been improving and he was cooperating with a good attitude in counseling. Counsel also argued B.D. had no intent to steal, had no record, the theft was minor, and B.D. was basically a good kid at home with close family relationships despite his parents' divorce.

The court found the allegations in count 1 true and sustained the petition. The court found B.D.'s testimony was not credible, and that he needed court supervision. The court noted it had read and considered the probation officer's report. The court granted B.D. one day of predisposition credit, declared B.D. a ward of the court, ordered him home on probation, and released him to his mother.

This appeal followed.

DISCUSSION

The sole issue is whether the court abused its discretion in declaring B.D. a ward of the court instead of ordering nonwardship probation as its disposition pursuant to section 725, subdivision (a).

Once the juvenile court has determined the minor is a person described by section 601 or 602, it has broad discretion to order an appropriate disposition. (§ 725; see also *In re Walter P.* (2009) 170 Cal.App.4th 95, 100 [juvenile court is vested with "broad discretion" to "serve its rehabilitative function and further the legislative policies of the juvenile court system"].) We review the court's disposition order under the deferential abuse of discretion standard. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

When the juvenile court declines to declare the minor a ward of the court under subdivision (a) of section 725, it is limited to ordering a six-month term of probation. Under subdivision (b) of section 725, the court has discretion to declare the offending minor a ward of the court, determine appropriate placement, and order broader terms of probation. (§ 725, subd. (b) ["If the court has found that the minor is a person described by Section 601 or 602, it may order and adjudge the minor to be a ward of the court."].) "In determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, 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.)

Here, B.D. argues that his offense was minor, he had no prior record, he had improved school attendance since the filing of the petition, and the probation officer's

report recommended nonwardship probation. This is true, but that does not automatically translate into a showing the court abused its discretion in declaring B.D. a ward of the court.

“The purpose of the juvenile court is to protect both the minor under its jurisdiction and the public, and to preserve and strengthen the minor’s family ties whenever possible. [Citations.] Central to the juvenile court’s mission are the care, treatment, guidance, and rehabilitation of the delinquent juvenile.” (*In re Walter P.*, *supra*, 170 Cal.App.4th at p. 99; see also § 202, subd. (a).) The probation officer’s report included B.D.’s mother’s statement that, while she believed B.D. was a “good kid” she had some reservations about whether he intended to steal the clothing. The report showed B.D. had school delinquency issues. The record contains sufficient evidence to support the court’s exercise of discretion in declaring B.D. a ward of the court, and releasing him to the home of his mother subject to the terms of probation. The record does not show the juvenile court acted arbitrarily or irrationally in so ordering.

DISPOSITION

The order of wardship is affirmed.

GRIMES, J.

I concur:

BIGELOW, P. J.

RUBIN, J. – Dissenting

I respectfully dissent.

Welfare and Institutions Code section 725 allows the juvenile court to choose one of two paths after it has heard evidence on the proper disposition of a delinquency case.¹ First, under subdivision (a), the court “may, without adjudging the minor a ward of the court, place the minor on probation.” Certain probation terms generally must be imposed under section 729.2, but these statutory terms are considered a floor, not a ceiling, and the court may impose additional probation terms in its discretion. (*In re Walter P.* (2009) 170 Cal.App.4th 95, 99-100.)

Second, the court “may order and adjudge the minor to be a ward of the court.” (§ 725(b).) In determining the judgment and order to be made in a delinquency case, the court shall consider the following factors in addition to other relevant 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.)

In determining whether to declare a minor a ward or to make a nonwardship order of probation, the trial court is granted broad discretion, and we review the trial court’s judgment under the abuse of discretion standard. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

I tread lightly into the swamp of abuse of discretion because I acknowledge the trial judge is in a much better position to assess the needs of a minor than is an appellate court. In that light, the greatest of deference to the trial court is appropriate in these cases. (*Hurtado v. Statewide Home Loan Co.* (1985) 167 Cal.App.3d 1019, 1022-1025, disapproved on other grounds by *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479, fn. 4.) Nevertheless, appellate courts have reversed delinquency disposition orders for abuse of discretion. (See, e.g., *In re Joey G.* (2012) 206 Cal.App.4th 343, 348-349 [inadequacy of

¹ All further undesignated statutory references are to the Welfare and Institutions Code. Section 725 subdivisions (a) and (b) are referred to respectively as sections 725(a) and 725(b).

probation report in determining whether to treat minor as a ward or dependent child]; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 577-579 [commitment to California Youth Authority].) Although not fully on point, in *In re Edy D.* (2004) 120 Cal.App.4th 1199, 1202, our colleagues in Division 4 reversed an order which had denied probation under section 725(a), where the basis of the trial court's ruling was that minor had inconvenienced witnesses by insisting on a hearing.

That the trial court's discretion is broad does not preclude an appellate court from finding discretion has been exceeded in any particular case. In the context of determining the reasonableness of probation conditions that a court may impose under section 725(a), the court in *In re Walter P., supra*, 170 Cal.App.4th 95, 100 reminded: "The juvenile court's discretion to fashion probation conditions of a nonward is not, however limitless." (See also *In re Trevor W.* (2001) 88 Cal.App.4th 833, 838-839 [juvenile court could not impose incarceration term of probation for nonward minor adjudged under § 725(a)].)

With these principles in mind, I turn to the juvenile court's ruling here. After the court found the minor had committed petty theft by walking out of Macy's without paying for the vest, the court inquired about disposition. Minor's counsel asked for immediate disposition and argued in favor of nonwardship probation. Even though the probation report had recommended section 725(a) nonwardship and the People did not oppose it, the court concluded otherwise:

"I have reviewed the probation officer's report and I, also, see what his grades were previously, as well. I don't think 725 [§ 725(a)] is sufficient. [¶] He needs to be under this court's supervision [¶] So 725 is denied."

As the ruling discloses, the only express basis for adjudging minor a ward was his grades.

The Legislature has set out at least some of the criteria for making a section 725 determination. Section 725.5 list three factors. I take each one in order:

The age of the minor: The minor was 13. This is a factor that strongly supports nonwardship, especially in light of the holdings in *Miller v. Alabama* (2012)

567 U.S. ___, 132 S.Ct. 2455, and *Roper v. Simmons* (2005) 543 U.S. 551, on the relevance of youth as a mitigating factor.

The circumstances and gravity of the offense committed by the minor: Petty theft, to be sure, is a crime. An adult may be punished by incarceration in county jail for six months and a fine of \$1,000. Nevertheless, among all the offenses committed by minors, petty theft must be, to use the statutory language, fairly low on the gravity scale. Sadly, juveniles commit murders, rapes, armed robberies and other serious and violent crimes. This was not one of them. As for the underlying circumstances, this offense seemed to be more a spur of the moment, poor decision, and one certainly worthy of police and judicial intervention, but not at the level of a premeditated petty theft/commercial burglary. It was undisputed that the minor had earlier purchased other clothes at a store called PacSun with money his mother had given to him to go shopping. When he went into Macy's, he saw a "funny looking" vest which "had camouflage green and American flag on it. It was goofy looking." He decided to put it on and walked out the store. The store security officer said that when he apprehended minor, minor cooperated fully and did not try to hide the vest.

The minor's previous delinquent history: There was none.

Section 725.5 does not make exclusive the list of factors that the juvenile court must consider in making its section 725 determination and expressly authorizes the court to consider "other relevant evidence." The juvenile court "is required to examine the entire [and current] dispositional picture whenever the minor comes before the court for disposition." (*In re Jorge Q.* (1997) 54 Cal.App.4th 223, 238, superseded by statute, as recognized in *In re Jose T.* (2010) 191 Cal.4th 1142, 1150, fn. 6 (brackets in original).)

Here, the juvenile court had previously read the probation report for this matter. The report contained significant information about the minor. Among other things, the probation officer had reported minor's poor grades: At the time of the report, minor had all F's and one D. According to counsel, by the time of the disposition hearing, which was some 10 months after minor's arrest, minor's grades had improved to one B, two C's, one D and one F. Although even these grades may have been cause for concern,

they certainly reflected improvement, which the court implicitly acknowledged. A reasonable inference is that minor's contact with the police and juvenile court had motivated him at school.

As I have already observed, other than grades, the juvenile court cited nothing else in the record that would support its denial of nonwardship. The court had read the probation report but the probation report expressly recommended "the court order 725(a)" with certain probation terms. Among other things the probation officer reported, were:

1. Minor had a stable family life. He lived with his divorced mother and two siblings. He had every other weekend visitation with his father and got along with his father. Mother described the family as close and said they ate together. Minor was respectful at home. Mother was concerned about minor's grades. The family had no dependency referrals under section 300.

2. There was no indication of either alcohol or substance abuse. There was no known gang involvement, and minor had no tattoos. No apparent mental health problems were reported. In addition to the previously discussed grades, minor was suspended from school for one day for using a cell phone. Minor expressed a desire to graduate high school and go to college.

The only thing arguably remarkable about minor were his grades, something that sadly may not be so remarkable at all. But his grades were improving and section 729.2 mandates that among the terms required under delinquency probation is that the minor attend "a school program approved by the probation officer without absence."

The record reveals here conduct among the least serious in the wide range of criminal offenses that can bring a minor before the juvenile court. I conclude that based on that record, the juvenile court exceeded its discretion. I would reverse and direct the juvenile court to find minor is not a ward and to conduct further proceedings under section 725(a).

RUBIN, J.