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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re E.P., a Person Coming Under the
Juvenile Court Law.

C066859

THE PEOPLE,

(Super. Ct. No.
JD10363)

Plaintiff and Respondent,

v.

E.P.,

Defendant and Appellant.

Is it an abuse of discretion to sentence to the Department of Juvenile Justice (DJJ) a 14 year old who admitted he stabbed another teenager 10 times with a screwdriver and nearly killed him, threatened his mother with a knife, was expelled from middle school, was truant at a continuation school, had

committed a number of other crimes, and who abused drugs and alcohol? Defendant E.P. contends that, despite the seriousness of the crimes, the trial court abused its discretion by failing to consider less restrictive alternative placements such as boot camp or a group home. We disagree.

Having reviewed the entire record, we can find no abuse of discretion. We accept the Attorney General's concession that the probation conditions must be stricken because once a ward is committed to the DJJ, the DJJ has sole responsibility for the ward and the juvenile court's supervision of the minor ends. Moreover, we conclude the trial court properly sentenced defendant to the maximum term of seven years four months. The probation conditions are stricken, and in all other respects, the judgment is affirmed.

FACTS

The factual basis for defendant's plea was summarized in the probation report. On August 15, 2010, defendant stabbed Alex Marquez, a 16 year old he did not know, over 10 times in the torso with a screwdriver in a public bathroom at a park. Defendant punctured the victim's lung and pericardial sac surrounding his heart, requiring emergency surgery. The victim spent several days in the intensive care unit. His mother reports that the unprovoked attack had a profound and deleterious effect on her son's personality.

During a search of defendant's bedroom, the police found a four-inch folding knife.

DISCUSSION

A decision to commit a juvenile to the DJJ is reviewed for an abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) "An appellate court '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 Jose T.* (2010) 191 Cal.App.4th 1142, 1147.)

Defendant acknowledges that the court did not have to give reasons for committing him to the DJJ as long as the record contains sufficient evidence to support the commitment. (*In re Ismael A.* (1989) 207 Cal.App.3d 911, 914–915.) The court was at liberty to consider the totality of the circumstances. (*In re John H.* (1978) 21 Cal.3d 18, 27.) "The purposes of juvenile wardship proceedings are twofold: to treat and rehabilitate the delinquent minor, and to protect the public from criminal conduct. [Citations.] The preservation of the safety and welfare of a state's citizenry is foremost among its government's interests, and it is squarely within the police power to seek to rehabilitate those who have committed misdeeds while protecting the populace from further misconduct." (*In re Jose C.* (2009) 45 Cal.4th 534, 555.) "[J]uvenile courts are required to consider 'the circumstances and gravity of the offense committed by the minor, and . . . the minor's previous delinquent history.' [Citations.]" (*In re G.C.* (2007) 157 Cal.App.4th 405, 409.)

Defendant recognizes the seriousness of the offense he committed but argues nonetheless that the court did not satisfy the rehabilitative purpose of the juvenile justice system by failing to consider less restrictive alternatives to placement with the DJJ. He excises a few nuggets of favorable evidence from a mountain of evidence that he remains aggressive, out of control, and unrepentant, all vices exacerbated by his substance abuse. The totality of circumstances therefore constitutes more than ample evidence to support the trial court's decision to commit him to the DJJ and to refute defendant's argument that the court abused its discretion.

We need not belabor the gravity of defendant's conduct. Suffice it to say that an innocent young man nearly lost his life when defendant, unprovoked, attacked him with a screwdriver and thrust it into his torso at least 10 times. While it may be hard to imagine that a 14 year old is capable of such unmitigated violence, the court reasonably exercised its discretion to protect the public from such a troubled young person with a propensity toward escalating violence.

Nor was this an isolated event. Defendant was verbally and physically aggressive with his mother and younger brother. He hit his mother with a metal-studded belt and with kitchen tools, and threatened her with a knife. His mother told the probation officer that she could not control defendant and she could not maintain him in their home. At the dispositional hearing, she stated that he had abused drugs for three years and also drank alcohol. He tested positive for THC on at least nine occasions.

Five days after he stabbed the victim in this case, the Woodland police cited him for disorderly conduct and public intoxication. Defendant's father lives in Mexico and was not present to help supervise his son.

In addition, his school performance was abysmal. He was expelled from his middle school and frequently was absent from the continuation school he attended after his expulsion. In the 2010/2011 school year, he was absent eight out of the twelve days he was enrolled. Those eight absences included suspension days for defiance, disruptive behavior, and theft, as well as two days he was truant. He also had numerous violations of probation, including a suspension for allegedly pushing a teacher.

Defendant complains that the trial court glossed over his potential and failed to appreciate how the system had failed him. In a 2009 psychological assessment, the psychologist had recommended intensive treatment, including supportive therapy, for at least a year. She also recommended that he participate in a mentor program.

He insists he showed promise when he received services. In December 2009 he received therapeutic behavioral services with EMQ Families First. He received "Wraparound" services from April 14, 2010, to September 1, 2010. But his level of violence and aggression increased, and his own mother urged the court to impose a placement where he could be rehabilitated.

It is true that two prior counselors gave tepid assessments of his progress. While they were willing to state he was making

progress, they provided no tangible evidence he was able to curb his violent propensities. Yet defendant emphasizes that he was not violent while incarcerated, he participated in programs while incarcerated, and he is purportedly gifted in mathematics.

The juvenile court considered the totality of all these circumstances, including defendant's self-professed strengths. The court concluded: "[T]his court -- is very reluctant to place anyone at D.J.J. until other avenues have been exhausted. The Court is very familiar with [defendant]. I've seen him now on a fairly regular basis for probably the last sixteen, seventeen months, and I thought there, for a time, that we were making progress, that [defendant] was making progress.

"The ferocity of this particular attack with a Phil[l]ips head screwdriver is of very grave concern to this court. The information in the probation officer's report is that the victim is very lucky to be alive."

We read the record very differently than defendant. Defendant asserts the trial court abused its discretion by failing to consider other alternative placements. While the court did not expressly consider a boot camp or a group home as defendant would have liked, the court did express its hesitation to place a youthful offender with the DJJ unless less-restrictive placements had been exhausted. Moreover, the court was intimately familiar with defendant, who had appeared before it for 16 or 17 months, and was aware of the treatment he had received. As a result, the court was not anxious to send a 14 year old off to the DJJ, but given the gravity and increasing

nature of the violence defendant perpetrated, the court exercised its discretion to protect the public and to offer the rehabilitative services available through the DJJ. There was no abuse of discretion.

Because defendant was properly sentenced to the DJJ, the probation terms must be stricken. The juvenile court no longer has jurisdiction over a minor once he is committed to the DJJ. Defendant's challenge to the conditions therefore is moot.

II

Defendant also complains that the court failed to consider a shorter term of confinement and, in fact, failed to state on the record that it realized it had the discretion to set the period of maximum confinement for a term less than the adult maximum for the same crime. He cites no authority to support the notion that the court was obligated to articulate its awareness of its discretion.

The Supreme Court in *In re Julian R.* (2009) 47 Cal.4th 487, 491-492 suggests otherwise. In *Julian*, the juvenile argued that the court was required to orally pronounce the maximum period of confinement, and if it failed to do so, the Court of Appeal should presume the court was either unaware or failed to perform its duty to do so. (*Id.* at pp. 493-494.) The Supreme Court pointed out the court had no statutory duty to announce the maximum term, and it rejected the minor's assertion that the failure to do so triggered a presumption of a dereliction of duty at odds with fundamental principles of appellate review. (*Id.* at p. 492.) By the same reasoning, the court did not have

a duty to acknowledge its discretion on the record and the failure to do so does not give rise to any presumption it abused its discretion.

Defendant does not suggest that the maximum was not properly calculated, only that the court did not consider the facts and circumstances of the crime to justify the term. Not so. The court stated that it had reviewed defendant's "entire file," which included the 2009 psychological assessment as well as the probation report. Both reports contained a description of defendant's prior offenses. Those offenses were aggregated with the current offense to arrive at the maximum term.

(Welf. & Inst. Code, § 726, subd. (c).)

For all the reasons we concluded the court did not abuse its discretion by committing defendant to the DJJ, we also conclude it did not abuse its discretion by imposing the maximum term of seven years four months. Not only had the court familiarized itself with all the written reports assessing defendant, but it stated on the record that it was very familiar with defendant because he had appeared regularly in juvenile court for 16 or 17 months. While defendant had been the beneficiary of lenient sentencing for some time, the court concluded that the gravity of the offense merited a more severe response. Given defendant's downward trajectory and the escalating use of violence, we certainly cannot say the juvenile court abused its discretion by committing him to the maximum term.

DISPOSITION

The judgment is affirmed.

_____ RAYE _____, P. J.

We concur:

_____ NICHOLSON _____, J.

_____ HOCH _____, J.