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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

B.F.,

Defendant and Appellant.

C067549

(Super. Ct. No.
10JDSQ2597011)

Defendant B.F. appeals from a juvenile court order committing him to the Division of Juvenile Justice (DJJ), a division of the California Department of Corrections and Rehabilitation. He contends (1) the juvenile court lacked authority to commit him to DJJ because his crime was not enumerated in Welfare and Institutions Code section 707,

subdivision (b), and (2) the juvenile court abused its discretion in committing him to DJJ.¹

After briefing was completed in this case, the California Supreme Court decided *In re C.H.* (2011) 53 Cal.4th 94 (*In re C.H.*), resolving the issue presented in defendant's first contention here. Based on the Supreme Court's decision, we agree with defendant that the juvenile court lacked authority to commit him to DJJ because defendant was not adjudged to have committed an offense enumerated in section 707, subdivision (b). Accordingly, it is unnecessary to address defendant's second contention.

We will reverse the juvenile court's commitment order and remand for further proceedings regarding placement.

BACKGROUND

Defendant was born in 1994. When he was 11 years old he committed a lewd and lascivious act upon or with an eight-year-old boy. (Pen. Code, § 288, subd. (a).) The juvenile court declared defendant a ward of the court and placed him on probation, but defendant repeatedly violated the conditions of his probation. Defendant was placed in a series of group homes or programs, and his conduct resulted in the termination of his most recent placement.

Ultimately, the People petitioned to commit defendant to DJJ. Following a contested hearing, the juvenile court found

¹ Undesignated statutory references are to the Welfare and Institutions Code.

that no alternate service was available to defendant, that defendant was a danger to himself and the community, and that defendant would benefit from the reformatory discipline or other treatment provided by DJJ.

The juvenile court ordered defendant committed to DJJ for the maximum term of confinement of eight years, less credit for days served, based on defendant's violation of Penal Code section 288, subdivision (a). The juvenile court recognized that defendant did not commit an offense enumerated in section 707, subdivision (b). Nonetheless, the juvenile court determined that, pursuant to former section 733, subdivision (c), defendant could be committed to DJJ because his offense is described in Penal Code section 290.008.

DISCUSSION

Defendant contends the juvenile court lacked authority to commit him to DJJ because his crime -- a violation of Penal Code section 288, subdivision (a) -- was not enumerated in section 707, subdivision (b). We agree.

At the time of the dispositional hearing, section 731, subdivision (a)(4) provided that the juvenile court could commit a ward to DJJ if the ward committed an offense described in section 707, subdivision (b), and if the ward was not otherwise ineligible for commitment to DJJ under section 733. (Stats. 2007, ch. 257, § 2, p. 2814.) Penal Code section 288, subdivision (a) is not listed in section 707, subdivision (b). (Stats. 2008, ch. 179, § 236.)

However, at the time of the dispositional hearing, section 733, subdivision (c) provided that a ward shall not be committed to DJJ if the most recent offense is not described in section 707, subdivision (b), "unless the offense is a sex offense" set forth in Penal Code section 290.008, subdivision (c). (Stats. 2008, ch. 699, § 28.)² Penal Code section 288, subdivision (a) is listed in Penal Code section 290.008, subdivision (c). This was the basis for the juvenile court's commitment order.

Nonetheless, after briefing was completed in this case, the California Supreme Court held that a juvenile court lacked authority to commit a ward to DJJ under section 731, subdivision (a)(4) where the ward was never adjudged to have committed an offense described in section 707, subdivision (b), even if the ward's most recent offense was a sex offense set forth in Penal Code section 290.008, subdivision (c). (*In re C.H.*, *supra*, 53 Cal.4th at pp. 97, 108.) The Supreme Court's decision interpreted the same former versions of the statutes that are at issue here. (*Id.* at pp. 101-103, 107-108.) The Supreme Court concluded that the commission of an offense enumerated in section 707, subdivision (b) is a prerequisite for a juvenile court's authority to order DJJ commitment. (*Id.* at p. 102.)

Based on the holding in *In re C.H.*, *supra*, 53 Cal.4th 94, the order of the juvenile court committing defendant to DJJ must

² Section 731, subdivision (a)(4), and section 733, subdivision (c), were amended in 2012. (Stats. 2012, ch. 7, §§ 1-2.)

be reversed. (*Auto Equity Sales, Inc. v. Superior Court* (1962)
57 Cal.2d 450, 455.)

DISPOSITION

The portion of the juvenile court's dispositional order committing defendant to DJJ is reversed. The matter is remanded to the juvenile court for further proceedings regarding placement.

_____ MAURO _____, J.

We concur:

_____ RAYE _____, P. J.

_____ ROBIE _____, J.