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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

R. P.,

Defendant and Appellant.

C068225

(Super. Ct. No.  
JV131458)

Pursuant to a negotiated plea, minor R.P. admitted he committed an assault on Travis S., and admitted the accompanying gang enhancement. (Pen. Code, §§ 245, subd. (a)(1), 186.22,

subd. (b)(1).)<sup>1</sup> The juvenile court dismissed a great bodily injury allegation which had accompanied the admitted offense, as well as two additional allegations of assaults on separate victims, with the agreement the dismissed allegations could be considered at disposition. The juvenile court committed the minor to the Division of Juvenile Justice (now the Division of Juvenile Facilities) for a maximum period of confinement of five years and awarded 154 days of precommitment credit.

On appeal, the minor contends the matter must be remanded for the juvenile court to specify whether his offense was a felony or misdemeanor. The minor also contends the juvenile court failed to award him all of the precommitment credits to which he is entitled. We disagree with both contentions and affirm.

#### BACKGROUND

On June 22, 2010, a juvenile petition (Welf. & Inst. Code, § 602) was filed alleging the minor had committed robbery (§ 211), after he and his brother physically assaulted Sammy J. and took Sammy J.'s laptop computer. The minor admitted to the related offense of grand theft (§ 487) and was found suitable for deferred entry of judgment, electronic monitoring and home supervision.

On August 25, 2010, the minor and his brother attacked Dakar O. while he sat in a parked car outside school grounds.

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

The minor punched Dakar O. in the head and face, pulled him out of the car by his hair, and then kicked him in the head and body after he fell to the ground. When S.R. attempted to stop the assault, she was also hit in the head and body. S.R. was taken to the hospital for her injuries. The minor was taken into custody for these offenses on August 26, 2010.

A juvenile petition was filed on August 30, 2010, alleging the minor had committed felony assault on Dakar O. with an accompanying gang enhancement (§§ 245, subd. (a)(1), 186.22, subd. (b)(1)), felony assault on S.R. (§ 245, subd. (a)(1)), and misdemeanor disturbing a public school (Ed. Code, § 32210, subd. (a)).

On October 16, 2010, while detained in juvenile hall pending disposition on the allegations contained in the August 30, 2010, petition, the minor and another juvenile, both members of the Oak Park Bloods gang, attacked Travis S. -- a juvenile from another gang. Travis S. was struck in the head several times. The minor also picked Travis S. up and slammed him onto the concrete, then continued his attack as Travis S. was unconscious and lay bleeding heavily on the ground.

A juvenile petition was filed on October 19, 2010. The petition superseded and reiterated the allegations contained in the August 30, 2010, petition, and added a fourth count for felony assault on Travis S. with an accompanying gang enhancement and an enhancement for personal infliction of great bodily injury (§§ 245, subd. (a)(1), 186.22, subd. (b)(1), 12022.7). The juvenile court ordered the minor detained.

On December 13, 2010, the minor entered into a negotiated plea wherein he admitted count four as a felony assault on Travis S. and admitted the accompanying gang enhancement. All the remaining allegations contained in the petition were dismissed, to be considered at disposition.

A contested disposition hearing was held on March 18, 2011. The deferred grand theft charge from the June 22, 2010, petition was sustained as a felony. The juvenile court also sustained count four from the October 19, 2010, petition for the felony assault on Travis S. and found the assault to be gang related. The juvenile court committed the minor to the California Department of Corrections and Rehabilitation - Division of Juvenile Facilities, with custody credit for 154 days (which encompassed the time the minor was detained from the date of the assault on Travis S. to the date of the disposition hearing). The juvenile court set the maximum period of confinement as five years for the assault and gang enhancement. No time was attributed to the grand theft charge from the June 22, 2010, petition but the minor was ordered to pay \$325 in restitution to Sammy J.

#### DISCUSSION

##### I

#### Declaration of Offense as Felony or Misdemeanor

The minor contends that remand is required because the record fails to disclose the juvenile court recognized its discretion to declare the assault offense a misdemeanor.

Although the People concede the issue, we do not accept the concession.

Assault is generally punishable as either a felony or a misdemeanor. (§ 245, subd. (a)(1).) Welfare and Institutions Code section 702 states in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." In *In re Manzy W.* (1997) 14 Cal.4th 1199 (*Manzy W.*), the juvenile court failed to formally declare whether the offense was a misdemeanor or felony. (*Id.* at pp. 1203-1204.) The Supreme Court held that remand for compliance with section 702 is required where the juvenile court fails to make the required felony/misdemeanor declaration of a wobbler offense and the record fails to show the court was aware of its discretion to impose a misdemeanor sentence. (*Id.* at pp. 1206-1209.)

Relying on *Manzy W.*, the minor contends that remand is required because the juvenile court failed to declare whether the assault on Travis S. was a felony or a misdemeanor. *Manzy W.* is of no assistance to the minor.

*Manzy W.* did not involve a negotiated settlement for admission to a wobbler offense as a felony. Here, however, the minor's admission was part of a negotiated settlement with the People whereby he admitted to the assault offense as "a felony," and did expressly admit it as such, in exchange for the dismissal of other counts. *Manzy W.* has no application in these circumstances. Remand is not required.

## II

### Precommitment Credits

The minor also contends that the judgment must be modified to award him an additional 51 days of precommitment credit for that time he spent in custody (commencing on August 26, 2010) on the assault allegations that were later dismissed. We disagree.

The minor is entitled to precommitment credit for any time spent in custody *attributable to the offense for which he was ultimately committed to DJF.* (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) He is not entitled to precommitment credit for the time he spent in custody prior to the assault for which he was committed, as it "obviously was not attributable to proceedings related to the assault." (*In re Ricky H.* (1981) 30 Cal.3d 176, 185 (*Ricky H.*)).

The argument made by the appellant and rejected by the Supreme Court in *Ricky H.* is substantively the same as the argument the minor makes here. In *Ricky H.*, a juvenile was detained on two separate petitions (Welf. & Inst. Code, § 602), the first for several burglaries, and the second for assault and escape which occurred while he was still detained and awaiting disposition on the burglaries. (*Ricky H.*, *supra*, 30 Cal.3d at p. 180.) At a joint dispositional hearing, the juvenile court set a maximum period of confinement of three years based on the assault charged in the second petition, and ordered all other counts to run concurrently. (*Id.* at pp. 181-182.) On appeal, the Supreme Court explained that the juvenile was not entitled to precommitment credit for the time he spent in custody from

the date he was detained for burglaries to the date of the assault and escape because that time was not attributable to the term imposed.<sup>2</sup> (*Id.* at p. 185.)

Here, no confinement or term, concurrent or otherwise, was imposed for the assaults on Dakar O. and S.R., for which the minor was initially detained on August 26, 2010. The only term imposed was for the assault on Travis S., which did not occur until October 16, 2010. Thus, he is not entitled to any precommitment credit prior to October 16, 2010 - the date of the offense for which he was committed.

DISPOSITION

The order of the juvenile court is affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.

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<sup>2</sup> The court noted the juvenile would be entitled to credit for the time spent in custody from the date of his detention for burglaries to the date of the assault/escape only against any portion of his term attributable to the burglaries that were the subject of the first petition. (*Ricky H., supra*, at p. 185 & fn. 7.) But since the juvenile court elected not to aggregate the period of physical confinement based on the burglary counts in the first petition, but instead set the maximum term with reference only to the assault charge, the juvenile was entitled to credit against the maximum term only for those days of confinement that followed his detention on the assault petition. (*Id.* at p. 185.)