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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL R.,

Defendant and Appellant.

C068313

(Super. Ct.
No. JV131352)

On May 20, 2010, a Wal-Mart employee tried to detain the minor, Michael R., after catching him shoplifting a BB gun. The minor stabbed the man six times in the chest and abdomen. The juvenile court declared the minor a ward of the court (Welf. & Inst. Code, § 602)¹ after he admitted the assault with a deadly weapon and that he personally inflicted great bodily injury (Pen. Code, §§ 245, subd. (a)(1); 12022.7).

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

Even though the maximum term of confinement that the minor could have received was seven years, the juvenile court limited his commitment to the Department of Juvenile Facilities (DJF) to three years. In committing the minor to DJF, the court calculated that he was entitled to 314 days' credit for time served in juvenile hall. After receiving a request for clarification from the DJF, the juvenile court modified the minor's commitment (§§ 726, 727) to state that the 314 days' credit applied only to the seven-year maximum term of confinement and did not reduce the term for which he was actually committed.

On appeal, the minor contends (1) his commitment was modified without notice or good cause, and (2) the juvenile court erred in refusing to apply the credits to his actual commitment.

We conclude that the minor's claim regarding lack of notice is forfeited because he did not object on that ground during the juvenile court hearing. We also conclude that the juvenile court did not err in applying the credits only to the seven-year maximum term of confinement. Accordingly, we affirm the judgment.

BACKGROUND

Following a contested disposition hearing, the juvenile court declared the minor a ward of the court and committed him to the DJF for no more than three years even though his maximum term of confinement was seven years. The court found that the

minor was entitled to 314 days' credit for confinement in juvenile hall.

About a month later, the DJF liaison wrote a letter to the juvenile court asking whether the 314 days' credit applied to the actual three-year commitment or to the seven-year maximum term of confinement. The letter further stated: "The 314 days, if credited against the commitment time of 3 years, would reduce the commitment to 2 years and 2 months. We believe this would greatly effect [sic] the ability of [DJF] to accomplish it's [sic] goal of treatment and rehabilitation."

At a hearing on DJF's request, the juvenile court stated that rehabilitation was one of the goals of the DJF commitment. The court expressed its inclination to apply the precommitment credits only to the seven-year maximum term.

Counsel for the minor objected to the letter as expert testimony without a proper foundation, and claimed the proposed ruling would deprive the minor of the credits he had earned. Counsel argued the letter did not indicate that DJF could not rehabilitate the minor in two years and two months. Minor's counsel also asserted that most DJF rehabilitation plans could be accomplished within two years.

The juvenile court overruled the objection and amended the commitment order to state that the precommitment credits applied only to the seven-year maximum term of confinement.

DISCUSSION

I

Lack of Notice

The minor contends his commitment was modified without proper notice or a showing of good cause.

The minor did not object on grounds of lack of notice, and was present at the hearing along with his father and counsel. His contention regarding lack of notice is forfeited on appeal. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.)

II

Modification of Commitment Order

Juvenile courts retain the power to modify commitment orders even after the minor is in the custody of DJF. Section 726, subdivision (c), acknowledges "the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727" until he or she turns 21 years old (§ 607, subd. (a)), or 25 years old if the person has been committed to the DJF for a crime "listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707" (§ 607, subd. (b).) Section 727, subdivision (a), authorizes the juvenile court to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support" of a ward, "subject to further order of the court."

Nonetheless, the juvenile court's power to modify commitment orders is not unlimited. The juvenile court may not modify a commitment order when the modification interferes with the DJF's authority to regulate juvenile rehabilitation. (*In re*

Owen E. (1979) 23 Cal.3d 398, 404-405.) For example, a juvenile court may not modify a commitment in order to thwart the DJF's decision to deny parole (*id.* at pp. 400, 406) or impose probation conditions on a ward after commitment to DJF. (*In re Allen N.* (2000) 84 Cal.App.4th 513, 516.) Likewise, a juvenile court cannot "vacate a proper commitment to [DJF] unless it appears [DJF] has failed to comply with law or has abused its discretion in dealing with a ward in its custody." (*Owen E.*, *supra*, at p. 406.)

Here, the DJF informed the juvenile court that applying the credits to reduce the minor's DJF confinement to two years and two months would greatly affect its ability to rehabilitate him. Thus, the juvenile court's confirmation of the original three-year commitment did not undermine DJF's opportunity to rehabilitate the minor. Moreover, the juvenile court's order clarified an ambiguity in that order. As a consequence, the juvenile court's modification of its commitment order was within its authority under sections 726 and 727.

III

Credits

The minor contends the order modifying his commitment improperly deprived him of the 314 days' credit against his DJF commitment. We disagree.

The Welfare and Institutions Code "unambiguously provides that the juvenile court has discretion to set a maximum term of physical confinement, based on the facts and circumstances of the case, so long as that term does not exceed the maximum

period that could be imposed on an adult convicted of the same offense.” (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1183, citing § 731, subd. (b).) Section 726, subdivision (c), entitles a minor to have his or her maximum term of confinement reduced by any time spent in precommitment confinement such as juvenile hall. (*In re Eric J.* (1979) 25 Cal.3d 522, 536 & fn. 2.)

Because the juvenile court has broad discretion to commit minors for a term that is shorter than that for which an adult might be sentenced, the court must separately determine the appropriate term in the delinquency proceeding. This means that the court must both determine the statutory maximum term of confinement and select the appropriate term for the minor’s commitment. (§ 731, subd. (c).) In imposing the appropriate commitment period, the juvenile court may select a term that is less than the adult minimum term for the same offense. (*In re A.G.* (2011) 193 Cal.App.4th 791, 806; *In re R.O.* (2009) 176 Cal.App.4th 1493, 1495, 1500; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1542; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1183; but see *In re Joseph M.* (2007) 150 Cal.App.4th 889, 896 [juvenile court cannot impose less than the adult minimum term by staying enhancement].)

In *Eric J.*, the California Supreme Court held that a minor’s precommitment credits must be applied against the maximum term of confinement to ensure that this term is equivalent to the adult maximum term of imprisonment for the offense. (*Eric J.*, *supra*, 25 Cal.3d at p. 536 [explaining that

precommitment credits "must be credited against the total time the minor may be held within the jurisdiction of the juvenile court"].) Credits are applied against the maximum term of confinement in order to comply with the statutory directive that the maximum term of confinement does not exceed the adult maximum term for the same offense. (*Ibid.*) Thus, when a minor's term of confinement is less than the statutory maximum term of confinement, that term cannot be reduced through precommitment credits. (*Ibid.*) Here, the minor's actual term of confinement was less than the maximum term of confinement. Accordingly, the juvenile court did not err in applying the precommitment credits only to the seven-year maximum term of confinement.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.