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

In re A.S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.S.,

Defendant and Appellant.

C068445

(Super. Ct. No.
JV114162)

In January 2010, the minor A.S. admitted to committing the crime of minor in possession of a firearm (former Pen. Code, § 12101; now § 29800). The juvenile court found that the minor was a person described within the meaning of Welfare and Institutions Code section 602¹ and committed him to the Sacramento County Boy's Ranch.

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

Following several subsequent petitions, a second amended subsequent petition was filed in February 2011 alleging that the minor committed assault by means of force likely to produce great bodily injury with a great bodily injury allegation (Pen. Code, §§ 245, subd. (a)(1); 12022.7 (count 1)); battery on a person with whom he had a dating relationship (Pen. Code, § 243, subd. (e)(1)(count 2)); unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a) (count 3)); receiving stolen property (Pen. Code, § 496d, subd. (a) (count 4)); reckless driving while fleeing from a pursuing peace officer (Veh. Code, § 2800.2, subd. (a) (count 5)); resisting an officer (Pen. Code, § 148, subd. (a)(1) (counts 6 and 7)); and assaulting an officer (Pen. Code, § 245, subd. (a)(1) (count 8)).

The minor admitted the assault by means likely to produce great bodily injury charge in count 1; the great bodily injury enhancement and the remaining charges were dismissed with the agreement that they could be considered at disposition. Following a contested disposition hearing, the juvenile court found the minor to be a ward of the court and committed him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) for a maximum of three years. The juvenile court subsequently filed an amended commitment form stating the current offense was an offense enumerated in section 707, subdivision (b).

On appeal, the minor contends the decision to commit him to the DJJ violated due process because it was done without a complete social study, without considering evidence offered by

the minor regarding the DJJ, and lacking substantial evidence of probable benefit to him. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Instant Offenses

Count 1

On October 17, 2010, juvenile hall staff saw the minor quickly pacing through the day space area with clenched fists while staring at different residents. The minor approached another resident, W.W., who was seated and watching television. The minor struck W.W. in the face with closed fists, and continued to punch him when he fell to the ground. The attack did not stop until the minor was pulled off by staff and pepper sprayed. The minor then began to run around the room and look for another resident to fight. Staff had to pepper spray the minor again and restrain him on the ground with handcuffs. The minor told staff he wanted to make an example out of W.W., because he talked about the minor, and "was the biggest one in here," who acts "tough and punks little ones." W.W. sustained an orbital fracture to his right eye as a result of the assault.

Count 2

On September 30, 2010, the minor choked his girlfriend and scratched her on the neck and shoulder area. The minor assaulted her for not making the bed and for talking to his younger brother.

Counts 3 Through 7

On October 9, 2010, Sacramento police officers checked a car's license plate and learned it had been carjacked in Contra

Costa County. A high speed pursuit ensued until the car crashed. The car's driver, the minor, fled on foot. The officers chased the minor and took him into custody. The minor said he bought the car for \$600 from a person in Oak Park, paying for it after getting a SSI check for \$850.

Count 8

On November 1, 2010, the minor became agitated after juvenile hall staff directed him to go to school. The minor refused to go and questioned the staff's directives. After staff tried to counsel him, the minor became very agitated. He stood up, took off his shirt, and challenged staffers while walking towards other tables. Staff sprayed him with chemical agents after he refused directives to get down. Staff then tried to restrain the minor, who fought back. Two staffers sustained injuries during the incident.

Background Information

The minor was born in December 1992. His juvenile court history before the instant offenses is as follows:

In July 2003, the People filed a petition in the juvenile court alleging the minor came within section 602 by committing burglary of a commercial building and theft. The matter was transferred to Contra Costa County later that month.

In June 2006, the Contra Costa County Juvenile Court placed the minor on six months probation for "petty theft and brandishing in a fight." In October 2006, he was adjudged a ward of the court in Contra Costa County for giving false information to a peace officer and grand theft from a person.

In April 2007, he was committed to the care and custody of the probation department after escaping from an institution. The minor was placed in the Youthful Offender Program for one year in October 2008 after absconding from three different placements. He was transferred to his mother's care in Sacramento County in October 2009.

The probation department filed a social study with the juvenile court in November 2010. The minor lived with his mother's live-in boyfriend, the father of the minor's half sibling. Both of the minor's parents were incarcerated; the mother was incarcerated in state prison with a tentative release date of January 2011. The mother's boyfriend indicated the minor behaved well at home, helping with chores and returning home at a reasonable hour every night. There was no evidence the minor was using drugs or alcohol, or was involved in gang activity.

The minor said he is very respectful of his mother's boyfriend, whom he refers to as his father. He denied drug use and gang involvement. The minor said he was not attending counseling and was not on any prescription medications. He had graduated from high school while attending Sacramento County Boy's Ranch. He had been placed on detention for refusing to attend school in October and November 2010.

The minor's family had 28 referrals to Children's Protective Services (CPS) in Contra Costa County and Sacramento County between 1995 and 2009. The referrals were for general neglect, severe neglect, physical abuse, sexual abuse, and

substantial risk, and included substantiated referrals for general neglect of the minor in October 2001 and November 2005, and for physical abuse in December 2000.

The probation department noted that a full Positive Achievement Change Tool (PACT) had not been completed because the case was transferred from another county.

In March 2011, minor's counsel filed a motion to take judicial notice of documents related to the 2004 consent decree and the November 2010 Sixteenth Report of the Special Master in the *Farrell* litigation.² The trial court considered the documents and denied the motion, finding that the contents of those documents were primarily hearsay and the minor had not identified a valid hearsay exception.

At the contested disposition hearing, the minor read a letter asking the court not to have sympathy for him but to "understand that like a lot of us have had hard times in life and at that time did not know how to deal or cope with when facing that situation." He asked the juvenile court for one more chance to prove himself and take into consideration the time he served in custody.

Testifying, the minor related that he had no incident reports at the youth detention facility for 152 to 157 days, which earned him honor status. He got his high school diploma there and was enrolled in online kinesiology classes at

² *Farrell v. Cate* (Super. Ct. Alameda County, 2004, No. RGO3079344).

Sacramento City College. The minor was the first person in his family to get a high school diploma, and he wanted to get a degree in kinesiology. He was acting as a mentor to his peers, participated in anger management classes, and his faith had become an import source of support for him.

The minor never lived with his biological father. His mother used drugs when he lived with her. He witnessed his mother being abused and was himself physically abused. The minor was removed from his mother's custody in 1999 or 2000 and shuffled between family members since then. He and his seven siblings were split up as a result of their mother's neglect.

The minor claimed he had just learned his 10-year-old cousin had died on the day he assaulted W.W. W.W. was a larger resident who picked on the smaller kids and had threatened to beat the minor if he did not give up his desserts. The minor felt he had to strike first in light of the other resident's bullying and because he was in pain over his cousin's death.

The minor felt his year at juvenile hall was a wakeup call that allowed him to get the tools to deal with feelings he kept inside himself since childhood. The minor, who was diagnosed with bipolar disorder and ADHD, was taking Seroquel to help his moods. He started taking the drug on November 5, after his most recent assault. He did not like the drug's side effects, but may continue taking it after his release.

The minor's counsel argued that the juvenile court should continue the minor's incarceration at the youth detention facility for nine months or have him serve time "in the local

jail." The People asserted that the minor would benefit greatly from the services and structure the DJJ can offer him.

The juvenile court found the youth detention facility was not designed or intended for long-term treatment and did not have all of the services the minor needed. In its extensive deliberations, the juvenile court considered the minor's best interests, as well as what is best for society's protection. In light of the minor's escalating criminal activity, even when confined in juvenile hall, and the programs available at the DJJ, the juvenile court committed the minor to the DJJ.

DISCUSSION

I

The minor argues the probation officer failed to prepare an adequate social study for the dispositional hearing and, thus, we should reverse the disposition.

The minor's failure to object in the juvenile court to the adequacy of the supplemental report forfeits the issue for appeal. (*In re Christopher S.* (1992) 10 Cal.App.4th 1337, 1344.)

His contention is also without merit. The minor asserts the probation department's report contained only "cursory information" about the minor's family situation and was submitted without a complete PACT assessment of his treatment needs and risk of reoffending. According to the minor, the juvenile court had no information about the minor's mental health diagnoses, why he was prescribed an antipsychotic drug, whether he was taking any other medications, what mental health

treatment he was receiving at juvenile hall, and what programs were available at the DJJ.

Whenever a minor comes before a juvenile court for disposition, he or she is entitled to have the court look at their entire record, including a current social study. (*In re Deon W.* (1998) 64 Cal.App.4th 143, 147; §§ 280, 702, 706; Cal. Rules of Court, rule 5.785 (hereafter rule 5.785).) "The probation officer must prepare a social study of the child, which must contain all matters relevant to disposition, including any parole status information, and a recommendation for disposition." (Rule 5.785(a).)

Where there is substantial compliance with the social study requirement, i.e., the court has information before it sufficient to make a proper disposition of the case, "the error complained of is not of constitutional dimension" and the court's order will not be set aside unless the error results in prejudice to the minor. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 615, which the same court declined to follow on other grounds in *Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 115, fn. 20.)

"While there are no precise requirements outlined in the code or case law as to the contents of the social study, drawing an analogy from what the juvenile court must consider in making a disposition, the probation officer's report should address, in addition to other relevant and material evidence, the age of the minor, his social, personal and behavioral history, the circumstances and gravity of the offense committed by the minor,

and the minor's 'previously delinquent history.' [Citation.]
The social study should also include 'an exploration of and
recommendation to the wide range of alternative facilities
potentially available to rehabilitate the minor.' [Citation.]"
(*In re L.S.* (1990) 220 Cal.App.3d 1100, 1104.)

The juvenile court had a probation report detailing the
minor's current and past offenses, his education, his parents'
incarceration, the views of his caretaker before detention, as
well as some information on his child welfare history. The
minor's testimony supplied further information on child welfare
history and home life, as well as his mental condition and how
it improved after taking medication. The juvenile court had
sufficient information upon which to make an informed
disposition order; any lack of information in the probation
department's social study was harmless error.

II

The minor contends the juvenile court violated its
discretion by not taking judicial notice of the evidence he
submitted concerning the *Farrell* litigation. In rejecting the
minor's motion for judicial notice, the juvenile court held that
while it could take notice of the existence of the judicial
opinions and court documents in the *Farrell* litigation, it could
not take notice of the truth of any factual assertions contained
therein. Our review of the documents show they contain numerous
hearsay declarations regarding the DJJ.

A juvenile court "may take judicial notice of facts asserted in findings and orders in a prior juvenile court proceeding but cannot take judicial notice of the entire juvenile court file. [Citation]' [Citation.]" More specifically, "'a court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file. A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments.'" [Citation.]" (*In re Amber D.* (1991) 235 Cal.App.3d 718, 724.)

The juvenile court was well within its discretion to decline to take judicial notice of the *Farrell* litigation documents submitted by the minor.

III

The minor claims there is insufficient evidence supporting the juvenile court's finding that he would benefit from the services available at the DJJ.

"The decision of the juvenile court may be reversed on appeal only upon a showing that the court abused its discretion in committing a minor to [the DJJ]. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We 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. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law. [Citations.]” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395; see *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) Those purposes include the “protection and safety of the public”; to that end, punishment is now recognized as a rehabilitative tool. (§ 202, subds. (a), (b); *In re Asean D.*, *supra*, at p. 473; *In re Michael D.*, *supra*, at p. 1396.)

“To support a [DJJ] commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate.” (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

The minor presented a clear danger to society. His record contains numerous criminal offenses, starting with an arrest in 2003 when he was 10 years old, and being declared a ward of the juvenile court in 2006 at age 13. His crimes continued and escalated during his most recent commitment, where he committed an aggravated assault on a resident as well as a subsequent assault on a staff member.

The minor’s testimony establishes no more than a recent effort to reform himself, in which he admittedly benefitted from a structured environment and medication. A DJJ commitment

provides the minor the structured environment he needs to rehabilitate himself, and, unlike juvenile hall, is designed for the long-term commitment warranted by the seriousness of his offenses and his rehabilitative needs.³ Since the minor indicated he might not take his medication upon release, commitment to the DJJ insures he continues to do so.

The minor needs structure. Less restrictive confinement has led only to more serious offending. In short, he is the ideal candidate for a DJJ commitment. The commitment order was not an abuse of discretion

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

MURRAY, J.

³ The minor never objected to the juvenile court's finding that juvenile hall was not intended for long-term commitments and lacked the programs found in the DJJ.