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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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In re C.H., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
C.H.,  
  
Defendant and Appellant.

C069623

(Super. Ct. No.  
52006410)

Appellant C.H. appeals from the juvenile court’s judgment and dispositional order adjudging him a ward and ordering him home on probation. (Welf. & Inst. Code, §§ 602, 800.) He contends the juvenile court erred by (1) failing to hold a *Marsden*<sup>1</sup> hearing when appellant’s mother inquired about obtaining

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

new counsel, and (2) including a maximum period of confinement on the dispositional order.

We conclude (1) the juvenile court's obligation to hold a *Marsden* hearing was not triggered because there was no clear indication that appellant desired a substitution of trial counsel on the ground of counsel's alleged deficiencies; and (2) we agree with appellant and the Attorney General that the maximum period of confinement should be stricken from the dispositional order.

We will strike the maximum period of confinement from the dispositional order and otherwise affirm.

Recitation of the underlying facts regarding appellant's offense is unnecessary in light of his contentions on appeal. The facts relevant to his contentions are recited in the discussion.

#### DISCUSSION

##### I

Appellant contends the juvenile court was obligated to conduct a *Marsden* hearing based on comments made by his mother during a court appearance held prior to the disposition hearing. We disagree.

##### A

The following discussion took place on September 8, 2011:

"THE COURT: We're on the record in the matter of [appellant], 52-006410. [Appellant] is present in court out of custody, with Counsel Ms. Woodburn. Also present is [appellant's] mother.

"The matter is on today at the request of [appellant's] mother. So I'm not sure how you got this on calendar this day this time because I have 17 minors waiting out there to come in for drug court which starts pretty quickly. So it looks -- it says here *request for new counsel*. Is that the issue?

"[APPELLANT'S] MOTHER: Yes. I want to appeal the case. And I called the juvenile courts and they said, 'Well, what you have to do is you have to come up here to court.' She said the date. And I said, 'I have to go to court to appeal it? Can I get a new attorney or [a] different attorney? What do I?'

"I tried to call [appellant's] court appointed attorney on several occasions and didn't get a call back. And I was told I should get a new attorney, so I didn't know what to do. So that's why I called the juvenile court. They told me to go ahead and come into court today at 1:30 and then tell you why I needed that.

"THE COURT: Here's what I'm going to do. I'm going to put this over. You are currently scheduled for September 13th for disposition, and I'm going to continue this to that time which is currently set for disposition.

"Whether you have an appeal pending or not doesn't necessarily mean that the Court doesn't proceed with disposition.

"So a couple of things need to happen. I think you need to talk to Ms. Woodburn. And now that she knows what the issue is, she can discuss with you whether you are talking about an appeal

or whether you are talking about a motion of new counsel. Those are two different things.

"And they have several public defenders in their office that represent minors. That's an option that she can discuss with you, whether or not she can hand this off to someone else in her office. So I'm going to give you guys a chance to talk about that.

"[APPELLANT'S] MOTHER: That's not a problem.

"THE COURT: The other issue is that you are [appellant's] mom. He is the client. And so she really needs to discuss with [appellant] what his desires are. And if you guys have a conflict of interest, then address it at that time. So you are not technically the client. He is.

"[APPELLANT'S] MOTHER: I let them know that he was now 18. But when this happened he was 17, so she told me that I was in charge and whatever she wanted to say. And I said okay.

"THE COURT: So yes or no?

"[APPELLANT'S] MOTHER: However you want it done is fine with me.

"THE COURT: Okay. So I will just continue this to the 13th which is the day you have scheduled to come back to court anyway.

"And then I do have to say, of all the attorneys I have worked with, Ms. Woodburn is one of the easiest attorneys to get ahold of. So I am not sure what the problem is. She sits here in court with her clients texting her and she is responding to

them. So I will give her a chance to talk to you and then come back on the 13th at 10:00 in the morning. All right?

"[APPELLANT'S] MOTHER: Okay. Thank you.

"THE COURT: Okay." (*Italics in original.*)

The parties appeared on September 13, 2011. Appellant, his mother and appointed counsel were present. The matter proceeded to disposition. There was no mention of dissatisfaction with counsel, substitution of counsel, or appellant's intended appeal.

B

A trial court's obligation to conduct a *Marsden* hearing in order to permit a defendant to state his reasons for dissatisfaction with his attorney arises "only when there is at least some clear indication by the defendant, either personally or through counsel, that the defendant wants a substitute attorney." (*People v. Sanchez* (2011) 53 Cal.4th 80, 84, 87-88, 90.) A proper and formal legal motion is not required, but there must be at least some clear indication by defendant that he wants a substitute attorney. (*Id.* at pp. 87-88.)

Here, appellant never spoke to the juvenile court about his representation by appointed counsel and neither he, nor his counsel, indicated there was any grievance or desire for substitution of counsel. Appellant nonetheless argues his mother effectively raised the claim on his behalf.

A third party generally does not have the authority to require the trial court to conduct a *Marsden* inquiry. (*People v. Martinez* (2009) 47 Cal.4th 399, 418-419.) *Marsden* was

intended to afford protection to the defendant's right to counsel as guaranteed by the Sixth Amendment -- a right that is personal to the defendant and cannot ordinarily be asserted vicariously. (*Id.* at p. 419.) Appellant nonetheless cites *In re Ann S.* (1982) 137 Cal.App.3d 148, arguing that it creates an exception for parents of minors. But that case is not on point because it involved whether the parent, as a separately aggrieved party, had standing to appeal the denial of a request for substitute counsel brought by the minor herself in a juvenile dependency case. (*Id.* at p. 150.)

In any event, even if mother could assert a request for new counsel on appellant's behalf, mother's comments did not amount to a "clear indication" that appellant desired a substitution of trial counsel on the ground of counsel's alleged deficiencies. (See *People v. Martinez, supra*, 47 Cal.4th at p. 418.) The juvenile court began the discussion by asking mother if the issue was a request for new counsel, and mother said yes. But then mother explained that she wanted to appeal and appointed counsel was not returning her calls. She said she was told she should get a new attorney and that is why she called the juvenile court. The juvenile court explained that an appeal and a request for new counsel are two different things, that the appointed counsel was usually very responsive and mother should try to talk to counsel again, that counsel could then discuss with appellant and mother the best way to proceed, and that appellant was the client and counsel needed to find out what appellant wanted to do. Mother represented that appellant was

18 years old. The juvenile court asked mother what she wanted to do, and mother replied, "However you want it done is fine with me." Mother's comments did not amount to a "clear indication" that she was seeking substitute counsel on behalf of appellant based on appointed counsel's alleged deficiencies. Accordingly, the juvenile court's duty to make a *Marsden* inquiry was not triggered.

Moreover, even if a clear request for substitute counsel had been made at the September 8, 2011 hearing, the juvenile court did not deny any such request. Instead, the juvenile court continued the matter so that appellant and his mother could decide how they wanted to proceed. A trial court is permitted to continue a *Marsden* inquiry to a later date, especially due to time constraints. (*People v. Vera* (2004) 122 Cal.App.4th 970, 981-982.) In this case, the juvenile court continued the matter to the scheduled September 13, 2011 hearing, five days later. The fact that appellant, his counsel and his mother did not mention any complaints about counsel or a request for new counsel at the September 13 hearing indicates abandonment of the issue. (*Ibid.*)

## II

Appellant further contends the juvenile court erred when it included a maximum term of confinement in its dispositional order. The Attorney General agrees, and we do too.

Appellant was released to the custody of his parent subject to court probation. Therefore, the juvenile court had no statutory authority to specify a term of imprisonment. (*In re*

*Matthew A.* (2008) 165 Cal.App.4th 537, 541; *In re Ali A.* (2006) 139 Cal.App.4th 569, 573.) Accordingly, we will strike that portion of the order specifying a maximum term of confinement. (*In re Matthew A.*, *supra*, 165 Cal.App.4th at p. 541.)

DISPOSITION

The maximum confinement term set by the juvenile court is stricken. In all other respects, the judgment is affirmed.

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MAURO, J.

We concur:

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NICHOLSON, Acting P. J.

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BUTZ, J.