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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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

C073174

THE PEOPLE,

(Super. Ct. No. 69180)

Plaintiff and Respondent,

v.

A. W.,

Defendant and Appellant.

A. W. (the minor) appeals from an order by the juvenile court declaring the minor a ward of the court (Welf. & Inst. Code, § 602)<sup>1</sup> and placing him on one year of formal probation. The minor contends the court abused its discretion by denying his request for a non-wardship disposition under section 725, subdivision (a). We affirm.

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<sup>1</sup> Undesignated section references are to the Welfare and Institutions Code.

## FACTUAL AND PROCEDURAL BACKGROUND

In April 2012 the juvenile division of the San Joaquin County District Attorney's Office filed a section 602 petition alleging that the 15-year-old minor committed battery with serious bodily injury, a felony (count 1; Pen. Code, § 243, subd. (d)); assault by means likely to produce great bodily injury, a felony (count 2; Pen. Code, § 245, subd. (a)(4)); and battery, a misdemeanor (count 3; Pen. Code, § 242). The alleged victim in counts 1 and 2 was Perla H.; the alleged victim in count 3 was Jose H.<sup>2, 3</sup>

At arraignment, the juvenile court found the minor ineligible for deferred entry of judgment and released him to the custody of his mother under home supervision and house arrest in Tracy. The court ordered him to remain under home supervision pending the contested jurisdictional hearing.

In June 2012 the prosecutor filed an amended petition, realleging count 2 as a violation of Penal Code section 245, subdivision (a)(1).

Between the time the minor was released to home supervision and the time of the hearing, the minor repeatedly violated the terms of the home supervision order. On June 20, 2012, the minor's mother told the juvenile court that the minor was leaving the house without her knowledge; at her request, the court placed the minor on electronic monitoring probation. The minor then moved in with his father in Stockton. After that, the minor left his father's house for several days without permission, then returned to his mother's house in Tracy and stopped attending school in Stockton. On September 18, 2012, a probation officer saw the minor and another minor walking down the street

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<sup>2</sup> As to counts 1 and 2, the petition alleged a street gang enhancement. (Pen. Code, § 186.22, subd. (b).) On the prosecutor's motion, the juvenile court later struck the gang enhancements in the interest of justice.

<sup>3</sup> Although the victim in count 3 was identified as Jose H., at the contested jurisdictional hearing he identified himself as Jose L.

without a parent or other supervision, and at a time when the minor was supposed to be in school. The juvenile court imposed a zero tolerance policy as to the minor's home supervision/house arrest.

In October 2012 a contested jurisdictional hearing began on the amended petition (further amended to charge count 1 as a misdemeanor and count 2 as a misdemeanor violation of Pen. Code, § 245, subd. (a)(4)).

The evidence at the hearing showed the following:

Perla H. and her younger brother, Jose L., were approached by a group consisting of the minor and five other minors. A member of the group, Christopher C., walked over to Jose L. and asked if he was a "Sureño." Jose L. answered truthfully that he was not. Christopher C. slapped a soda out of Jose L.'s hands, saying "Fuck scraps" and "[T]his is North Cali." The minor also said, "This is North Cali." The minor tried to punch Jose L. but missed.<sup>4</sup> Perla H. told the group that Jose L. was not a gangbanger and asked them to leave him alone. Perla H. and Jose L. tried to walk away.

A girl in the minor's group grabbed Perla H.'s hair and started punching her; when Perla H. fought back, the other two girls in the group joined the assault, punching, kicking, and pulling hair. Perla H. was left dizzy, confused, and injured enough to require a hospital visit. The beating stopped only after Jose L. got parents from a nearby school to help. After going home and telling their aunt what happened, the victims were taken to the police station to report it, then to the hospital.

The police officer who interviewed the victims testified that "scrap" is a derogatory term for a Sureño gang member, commonly used by Norteño gang members. "This is North Cali" is a Norteño territorial claim.

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<sup>4</sup> Jose L. identified the minor in court as his would-be assailant.

The juvenile court sustained count 3 of the petition (misdemeanor assault on Jose L., a lesser included offense of misdemeanor battery), but found counts 1 and 2 not to be true. The court ordered the probation department to prepare a social history report and to discuss whether probation under section 725, subdivision (a) (hereafter § 725(a)) was appropriate.<sup>5</sup>

The dispositional hearing was set for December 19, 2012. In the meantime, the court placed the minor temporarily under the care of the probation officer. Before the dispositional hearing occurred, the minor violated the terms of his probation by walking around in Tracy without permission or supervision.

The probation department's dispositional report recommended adjudging the minor a ward of the juvenile court and imposing probation, including 60 hours of community service. Unaccountably, the report did not discuss a section 725(a) disposition.

The report stated that the minor lived with his mother and other adults. Mother and father had been separated since 2006; the minor's siblings lived with father in Stockton. The minor preferred living with his mother because he disliked living in Stockton. Mother was unemployed and on disability; her mental health had been a problem in the past and greatly impacted the marriage.

The minor struggled academically, but behaved well in class. He had a history of special education and an active Individualized Education Plan.

According to the mother, the minor "grew up in the projects" and had been around gang members all his life. He had never been initiated into a gang but associated with Norteños who were former childhood friends.

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<sup>5</sup> Section 725(a) provides for probation not to exceed six months under the supervision of the probation officer, without adjudging the minor a ward of the juvenile court.

The minor denied any past mental health problems but said he had recently begun to suffer from panic attacks. He did not want to take medication. The minor's mother said she intended to get him into counseling.

The minor denied any guilt in the charged incident. He admitted he was there but said he did nothing.

The minor's mother did not believe he was guilty and thought he should not be placed on probation.

The probation officer thought the minor "did not appear to be criminally sophisticated, but seemed to be driven by peer influence and wanting to fit in." He appeared motivated to make better choices and had begun to take positive steps.

At the disposition hearing, the minor's counsel reminded the juvenile court that the probation department had been directed to prepare a section 725(a) evaluation for a non-wardship disposition. Counsel did not request a continuance to obtain a revised probation report but argued for a non-wardship disposition, asserting that the report showed the minor was doing well in school and the family could benefit from parenting education and counseling.

The prosecutor argued for a declaration of wardship because the minor was a Norteño associate, "pretty much . . . surrounded by gang members his whole life," who needed the services probation and wardship could provide to get him out of that way of life. Furthermore, despite the evidence against him, the minor continued to deny guilt and claimed he should not be on probation. Finally, even though the street gang allegations had been dismissed, the evidence showed that the minor's offense was "gang motivated."

The minor's counsel replied: (1) gang conditions could be imposed under a section 725(a) disposition, and (2) the evidence showed the minor was not involved with the "gang beat down," but "just happened to be there."

The juvenile court ruled that it would “follow the recommendations of the probation department on this matter.” The court then declared the minor a ward of the court and imposed one year of probation with various terms and conditions, including 60 hours of community service, counseling, substance abuse treatment, and avoidance of gang activities and associations.

## **DISCUSSION**

The minor contends the juvenile court abused its discretion by denying his request for a section 725(a) disposition. We disagree.

“The purpose of the juvenile court is to protect both the minor under its jurisdiction and the public, and to preserve and strengthen the minor’s family ties whenever possible. (Welf. & Inst. Code, § 202, subd. (a); *In re Wayne J.* (1979) 97 Cal.App.3d 776, 780 . . . .) Central to the juvenile court’s mission are the care, treatment, guidance, and rehabilitation of the delinquent juvenile. (§ 202, subd. (b).)” (*In re Walter P.* (2009) 170 Cal.App.4th 95, 99, fn. omitted (*Walter P.*).

“Except as provided in subdivision (b), any person who is under the age of 18 years when he or she violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.” (§ 602, subd. (a).) In the alternative, however, the juvenile court “may place the minor on probation for up to six months without adjudging the minor a ward of the court. (§ 725, subd. (a).)” (*Walter P., supra*, 170 Cal.App.4th at p. 99.)

“Pursuant to section 725, subdivision (a), the juvenile court must impose upon the minor the conditions specified in section 729.2, unless the court finds on the record that any of those conditions would be inappropriate. Those conditions (a) require the minor to attend a school program approved by the probation officer without absence; (b) require the minor’s parents or guardian to participate with the minor in a counseling or education program; and (c) require the minor to be at his or her legal residence between the hours of

10:00 p.m. and 6:00 a.m. unless accompanied by a parent or guardian. (§ 729.2.)”  
(*Walter P.*, *supra*, 170 Cal.App.4th at p. 99.)

“Section 725, subdivision (a) and section 729.2 do not, however, purport to limit the probation conditions the juvenile court may fashion to serve the court’s purpose of rehabilitation and preservation of family ties. Sections 725 and 729.2 thus serve as a floor, not a ceiling, for juvenile probation conditions. [Citations.]” (*Walter P.*, *supra*, 170 Cal.App.4th at pp. 99-100.)

“We review a juvenile court’s commitment decision for abuse of discretion, indulging all reasonable inferences to support its decision. [Citations.]” (*In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1320.) In applying this standard of review, we do not disturb the court’s findings when there is substantial evidence to support them. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.)

The juvenile court’s findings and commitment order are supported by substantial evidence and constitute a proper exercise of the court’s discretion. The minor had been “pretty much . . . surrounded by gang members his whole life” and associated with them to commit his current offense, apparently “driven by peer influence and wanting to fit in.” His parents had repeatedly proved unable to control him, even while he was on home supervision before and after the jurisdiction hearing. His mother, with whom he normally lived, disbelieved in his guilt and believed probation was unnecessary; in addition, she had a history of mental health problems and there was no evidence they had been successfully treated. The minor himself denied guilt and saw no need for probation. Under all the circumstances, the court was well within its discretion to find that only wardship and formal probation would suffice.

It is true, as the minor points out, that the juvenile court could have imposed antigang conditions and any others it deemed appropriate under a section 725(a) disposition (*Walter P.*, *supra*, 199 Cal.App.4th at pp. 99-100), and there was evidence which might have supported that disposition. But the fact that the court could have

chosen a different disposition does not show that the disposition it chose was an abuse of discretion.

So far as the minor contends the juvenile court erred by failing to obtain the probation department's assessment of a section 725(a) disposition, the contention is forfeited because trial counsel did not request a continuance to obtain such an assessment or argue that the court could not properly proceed without it. In any event, the probation report appears to have considered all the evidence that it would have considered in performing a section 725(a) assessment, and there is no basis on this record to conclude that had it made such an assessment it would have recommended that disposition rather than wardship.

The minor has shown no basis for reversal of the juvenile court's order.

**DISPOSITION**

The order appealed from is affirmed.

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RAYE, P. J.

We concur:

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NICHOLSON, J.

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HOCH, J.