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

In re J.V., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.V.,

Defendant and Appellant.

C075046

(Super. Ct. No. JV134554)

In January 2013, minor J.V., age 16, admitted he was within the juvenile court's jurisdiction based on carrying a loaded firearm in public. (Pen. Code, § 25850, subd. (a).) In exchange, three related counts were dismissed. The minor was committed to juvenile hall for 60 days with 64 days' credit for time served, followed by 30 days' electronic monitoring and 30 days' home supervision. The minor received permission to reside with an aunt and her spouse, who was appointed his guardian.

In February 2013, a petition was filed alleging the minor had violated his probation by failing to remain at home or an approved location.

In March 2013, a subsequent petition was filed alleging the minor was within the juvenile court's jurisdiction based on his committing a robbery. (Pen. Code, § 211.) The petition alleged one of the principals was armed with a firearm (Pen. Code, § 12022, subd. (a)) and the offense was a serious felony (Pen. Code, § 1192.7, subd. (c)). At a detention hearing that month, the minor was removed from his aunt and uncle's home and detained in juvenile hall.

In July 2013, a petition was filed alleging the minor violated his probation by committing the March robbery.

Following a contested jurisdiction hearing in August 2013, the Sacramento County Juvenile Court found both petitions related to the robbery were true. The minor admitted the petition alleging failure to remain at home was true. The juvenile court found in-state programs were unavailable or inadequate to meet the minor's needs and ordered him placed at the Woodward Academy in Iowa with a maximum confinement time of six years.

On appeal, the minor contends the out-of-state placement ordered was an abuse of the juvenile court's discretion because no in-state options had been tried and there was no evidence in-state facilities were unavailable or inadequate within the meaning of Welfare and Institutions Code section 727.1, subdivision (b)(1).¹ We affirm.

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

FACTS

Original Petition²

On November 27, 2012, an officer stopped the minor while riding his bicycle. Because the minor was acting nervous and was unable to follow the officer's instructions, the officer conducted a patdown search that yielded a loaded .38-caliber firearm whose serial number had been removed. The minor denied knowledge of the firearm.

Subsequent Petition

On March 21, 2013, at 5:20 a.m., the minor was the lookout during a robbery of a Sacramento convenience market. A mask covered the minor's face and the sleeve of his hooded sweatshirt covered his hand. The minor used his foot and hip to hold open the market's door. He conversed on a cell phone the entire time the robber was in the store. The minor admitted he was the person holding the door during the robbery but denied knowing a robbery was occurring. Instead, he believed the robber just was getting a pack of cigarettes. After the robbery, the minor ran away in the same direction as the robber.

DISCUSSION

Out-of-state Placement Was Not an Abuse of Discretion

The minor contends the juvenile court abused its discretion when it ordered an out-of-state placement because no in-state options had been tried, and there was no evidence in-state facilities were unavailable or inadequate within the meaning of section 727.1, subdivision (b)(1). We disagree.

² Because the original petition was resolved by plea, our statement of facts is taken from the probation officer's juvenile intake/social study report.

A.

Background

In 2009, the minor's mother suffered from a stroke and depression and had leukemia that was in remission. In February 2012, the cancer returned and she passed away. The minor's father had prior convictions of felony possession of cocaine base for sale (1993) and misdemeanor willful discharge of a firearm (1998). He also had four outstanding warrants for driving on a suspended license. By 2012, the father was a transient who was required to register as a narcotics offender.

The minor lived with his 20-year-old sister who had guardianship of his three younger brothers but not of the minor. The sister reported the minor would come and go as he pleased, would return home to shower and eat, would not listen to her, would not follow rules, and would often get angry. In one incident when he was 13 years old, the minor tried to fight with his sister. She reported the minor would not inform her of his whereabouts and would leave the house for four or five days at a time. She did not consider him a runaway because he would call her and tell her where he was.

In November 2012, the minor, then age 16, was charged with four firearm-related counts after he was found with a loaded .38-caliber handgun whose serial number had been removed. The minor was ordered detained and was placed at juvenile hall.

By December 2012, the minor had earned 10 of the 220 credits needed for high school graduation and his grade point average was 0.40. He was classified as a gang member and was suspended from school following his involvement in a verbal altercation that nearly led to a fight.

In January 2013, the minor admitted an allegation of carrying a concealed firearm. He was committed to juvenile hall for time already served, followed by 30 days' electronic monitoring and 30 days' home supervision, and was allowed to reside with the aunt and uncle.

The minor had two probation violations: one in February 2013, for absconding from his aunt and uncle and cutting off his electronic monitoring device; and the other in March 2013, for the convenience market robbery. The minor said there was no specific conflict that caused him to abscond from his aunt and uncle in February 2013; he claimed he just needed to get away and take care of things. The uncle reported that, when the aunt prohibited the minor from viewing “R” rated movies, he left the house and did not return.

In March 2013, the minor was taken into custody for the robbery. He was found hiding in an RV parked in a driveway. The minor’s father and two adult parolees were present. The father did not inform officers that the minor was present in the RV. Officers searched the RV because they wanted to make sure no one was in the RV to potentially harm them while they searched the house. Near the minor, officers found ammunition and a ski mask similar to the one the minor had worn during the robbery.

According to an April 2013 probation memorandum, the only time the minor attended school in the prior six months was when he was detained in juvenile hall. He had earned 22.5 high school credits and had a 0.92 grade point average.

According to an August 2013 probation memorandum, the minor was classified as a “gang member/associate.” He had 22 incident reports since May 2013, primarily for failing to follow staff directives. In addition, the minor had flooded his room twice, had refused to attend school four times, had been suspended from school twice, and had been disruptive in class and juvenile hall. The minor had accumulated 47 high school credits and had a 1.85 grade point average.

After the juvenile court sustained the petition related to the robbery, the prosecution requested a referral to the Interagency Management and Authorization

Committee (IMAC) for a Level B out-of-state placement evaluation.³ The court found referral for a Level B evaluation was appropriate.

The IMAC evaluation recommended a Level A in-state placement. The evaluation noted that, “although the minor has committed offenses of a serious nature, he has not yet received intensive residential services. It is believed that there are in-state placement programs that can meet his need for structure, supervision, treatment and educational services.”

The August 2013 probation memorandum stated that IMAC “believes there are appropriate programs within California that can address the minor’s criminogenic needs and that the minor should be afforded an opportunity to participate at this level as these resources have not been exhausted.” The memorandum noted that, if the court determined the minor was in need of Level B placement, he had been accepted at four out-of-state facilities.

At the disposition hearing, the juvenile court indicated it had reviewed the probation memoranda, the IMAC evaluation, the wardship petitions, and the violation of probation petitions. The prosecutor urged out-of-state placement because, apart from the Division of Juvenile Justice, there were no in-state locked facilities that could prevent the minor from absconding. The prosecutor argued there was “no guarantee” as to where within California a juvenile committed to in-state treatment would be placed; if the minor got “placed in Sacramento where he’s got connections, friends, it’s easy for him to run. He can hop on a bus. He can have a friend pick him up, and he’s an abscond from Level A. And he’s not getting the services that he needs.” Because both of the minor’s offenses involved guns, his safety and the community’s safety would be best served by an

³ The Superior Court of Sacramento Local Rules, rule 8.14 specifies two levels of placement, Level A in-state placement and Level B out-of-state placement.

out-of-state program “where he’s least likely to run so he can take advantage of the services.”

The minor’s counsel urged the juvenile court to allow him to “go home short of” a Level A placement. Counsel asked the court to “impose a juvenile hall commitment followed by going home to dad and at worst Level A.”

B.

Juvenile Court Ruling

The juvenile court stated it had “heavily considered that in a very short period of time [the minor’s] behavior has escalated significantly. The danger and the violence not only that was demonstrated in this most recent offense, which could have been so much worse, is demonstrated again by facts presented through the course of this trial. And the concept and the need to protect the public is critical.”

The juvenile court noted Level A placement could mean placement “within sufficient close proximity that it would be easy enough for him to return to and engage in behavior that has brought him before this Court. [¶] . . . [¶] So in light of the significance of the offense, the significant increase in the nature of the offenses for which [he] has come before this Court, his pattern of abscond while in the home of his sister, the abscond behavior while in the home of his guardian are the reasons at this point, again, this Court finds that in-state facilities are inadequate to care for and provide his needs.”

C.

Standard of Review

“ ‘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 out of state facility].’ [Citation.] ‘An appellate court will not lightly substitute its decision for that rendered by the juvenile court.’ [Citation.] An appellate court ‘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.]’ [Citation.] ‘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 Jose T.* (2010) 191 Cal.App.4th 1142, 1147; see *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

D.

Statutory Framework

Section 202, subdivision (a), provides in relevant part that the purpose of the juvenile court law is “to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective.”

Section 202, subdivision (b), provides in relevant part: “Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, *family preservation and family reunification are appropriate goals for the juvenile court to consider* when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct *when those goals are consistent with his or her best interests and the best interests of the public.*” (Italics added.)

“Under section 202, juvenile proceedings are primarily ‘rehabilitative’ [citation], and punishment in the form of ‘retribution’ is disallowed [citation]. Within these bounds, the court has broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public. [Citation.]” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) The court does not necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried. (*Ibid.*)

Section 727.1 provides in relevant part: “(b) Unless otherwise authorized by law, the court may not order the placement of a minor who is adjudged a ward of the court on the basis that he or she is a person described by either Section 601 or 602 in a private residential facility or program that provides 24-hour supervision, outside of the state, *unless the court finds*, in its order of placement, that all of the following conditions are met: [¶] (1) *In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.*” (Italics added.)

E.

Analysis

The record supports the juvenile court’s determination Level A in-state facilities are inadequate to meet the minor’s needs within the meaning of section 727.1, subdivision (b).

In his opening brief, the minor heavily relies on *In re Oscar A.* (2013) 217 Cal.App.4th 750 (*Oscar A.*) to “illustrate the juvenile court’s abuse of discretion in the present case.” The minor claims the facts of *Oscar A.* “stand in marked contrast to the facts of the present case” because Oscar had 10 separate petitions filed against him within a period of three years. His reliance is misplaced. *Oscar A.* did not hold that the conduct of the minor then before the court was the threshold necessary to support an out-of-state placement.

Here, the minor had a history of being unsupervised and not following rules. While residing with his adult sister, the minor was found with a loaded firearm with its serial number removed. While placed with his aunt and uncle, he absconded and cut off his electronic monitoring device. The next month, the minor acted as a lookout during an armed robbery. These facts support the juvenile court's finding that an in-state placement was not adequate to protect the minor and the public.

We reject the minor's argument there was "no evidence that an in-state facility was . . . inadequate," simply because he "was never tried at an in-state facility," because it has no merit. The juvenile court's finding that a Level A placement could mean placement "within sufficient close proximity that it would be easy enough for [the minor] to return to and engage in behavior that has brought him before this Court" is supported by the minor's history of being unsupervised, absconding from home, and engaging in criminal behavior. The juvenile court was properly concerned about placing the minor in the same geographic area where others had contributed to him absconding and engaging in criminal behavior. The minor also relies on the provision of section 202, subdivision (a), that provides, where removal of a minor from a parent is necessary, "reunification of the minor with his or her family shall be a primary objective." But this provision does not preclude the juvenile court from ordering out-of-state placement after making the findings required by section 727.1, subdivision (b). " "[E]very statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. [Citations.]" ' [Citations.]" (*In re Michael G.* (1988) 44 Cal.3d 283, 296, quoting *Landrum v. Superior Court* (1981) 30 Cal.3d 1, 14.) Section 202, subdivision (a), cannot be read as precluding out-of-state placement where, as here, the conditions of section 727.1, subdivision (b), are met.

The minor claims an in-state placement would allow him to work toward rehabilitation and integration into his community and family, whereas an out-of-state

placement would inhibit those goals. But section 202, subdivision (b), provides that family reunification is an appropriate goal *when it is consistent* with the best interests of the minor *and the public*. In this case, the juvenile court found in-state placement was *not* consistent with the public's best interest. Section 202 does not require a different result.

The minor contends the juvenile court “erroneously did not even try [him] at any in-state facility to determine whether such a facility would be available or adequate for [him].” We reject this contention. The court is not required to order the least restrictive placement. (*In re Eddie M., supra*, 31 Cal.4th at p. 507 [court does not abuse its discretion simply by ordering the most restrictive placement before other options have been tried].)

The minor relies on three facts to show the juvenile court abused its discretion in ordering out-of-state placement: (1) the IMAC evaluation took the “serious nature” of the offenses into consideration and nevertheless recommended in-state placement because it would afford “the opportunity to work toward rehabilitation and integration back into his community and family,” (2) the probation department agreed with the IMAC recommendation, and (3) the prosecution previously had offered the minor in-state placement as part of a negotiated disposition. While these facts could be used to support the juvenile court's exercise of its discretion in favor of an in-state placement, these facts do not mean the court abused its discretion by ordering out-of-state placement. “If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*People v. Albillar* (2010) 51 Cal.4th 47, 60, citing *People v. Lindberg* (2008) 45 Cal.4th 1, 27.) Here, in light of the evidence in the record, we conclude the juvenile court did not abuse its discretion by ordering out-of-state placement.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

RAYE, P. J.

ROBIE, J.