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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re D.L., a Person Coming Under the Juvenile Court
Law.

C076505

THE PEOPLE,

(Super. Ct. No. JV135768)

Plaintiff and Respondent,

v.

D.L.,

Defendant and Appellant.

Minor D.L. contends the juvenile court abused its discretion by committing him to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF),¹ rather than placing him out of state in a Level B facility. We disagree and shall affirm.

¹ DJF is part of the Division of Juvenile Justice (DJJ).

FACTUAL AND PROCEDURAL BACKGROUND

In April 2010, minor became a ward of the juvenile court, at age 13, after the Alameda County Superior Court sustained the allegation of an amended Welfare and Institutions Code section 602 petition that minor committed a misdemeanor violation of Penal Code section 245, subdivision (a)(1)² (assault with a deadly weapon other than a firearm).³

According to the police report, the victim reported to Hayward police officers that as he was walking home from school, minor (a classmate) approached him and began punching him for no reason while minor's co-perpetrator went through the victim's pockets and took his cell phone and cash.

The juvenile court released minor to his grandmother on home supervision. The matter was thereafter transferred to San Joaquin County, where minor legally resided.

Between August 26, 2010, and November 8, 2012, minor sustained eight probation violations. The last of these resulted in an order placing minor at Boys Republic, a Level A facility.

On April 25, 2013, at around 10:00 p.m., minor left Boys Republic without permission and his whereabouts remained unknown for some time.

On June 20, 2013, the Alameda County District Attorney filed a subsequent juvenile wardship petition alleging robbery while using a deadly weapon and armed with a firearm (§§ 211, 12202, subds. (a)(1) & (b)), unsafe driving while fleeing a peace officer (§ 2800.2), and carrying a concealed firearm in a vehicle (§ 25400, subd. (a)(1)).

² Undesignated statutory references are to the Penal Code.

³ The original petition charged minor with felony counts of robbery (§ 211—count 1) and battery with serious bodily injury (§ 243, subd. (d)—count 2), and alleged the infliction of great bodily injury as to count 1. Count 2 was amended to misdemeanor assault. Minor admitted count 2 as amended. Count 1 and the great bodily injury allegation were dismissed.

The prosecution filed a notice of hearing to determine minor's fitness for juvenile court treatment (§ 707, subd. (b)), but thereafter withdrew the motion.

According to the police report, at around 5:30 p.m. on June 18, 2013, San Leandro police officers were dispatched to the scene of an alleged carjacking. The victim reported that, while parked in his vehicle with his 10-year-old daughter, two black males pointed a gun at him. Minor told the victim to "give him everything he had." After handing over his cell phone, minor demanded that the victim and his daughter exit the vehicle. Minor got into the driver's seat and drove away, with his co-perpetrator in the front passenger seat. When officers located the stolen car and tried to stop it, minor drove away at a high rate of speed. The ensuing chase ended when minor crashed the stolen car against a retaining wall. Both suspects fled on foot; minor was subsequently detained at gunpoint. An officer saw a large caliber revolver on the front passenger floorboard of the stolen car and, what looked like, a replica semi-automatic firearm on the driver's side floorboard.

On November 4, 2013, minor admitted the robbery count and the firearm use allegation. On the People's motion, the juvenile court dismissed the remaining counts and allegations. The court advised minor that his admitted plea would count as a strike, and his maximum potential confinement for the current offenses, with the terms of all previously sustained petitions aggregated, was six years four months.

The juvenile court transferred the matter to San Joaquin County. In December 2013, upon learning that minor's legal residence was in Sacramento County with his mother, the court transferred the matter to Sacramento County.

On December 19, 2013, the probation department recommended a commitment to DJF for the safety of the minor and the community. The department's assessment stated that the minor's mother would prefer minor to return home with probation services; however, if he were placed in a group home, she would prefer an out-of-state placement that could provide more extensive services to help minor graduate from high school, get help with his anger, and learn a trade. The assessment noted that minor, now enrolled in

the 11th grade at the on-grounds campus of juvenile hall, had previously earned most of the credits needed to graduate from high school.

On December 23, 2013, the juvenile court referred the matter to the Interagency Management Authorization Committee (the Authorization Committee) for a Level B evaluation.

On January 21, 2014, the probation officer reported to the juvenile court that the Authorization Committee had ruled out a Level B placement and recommended confinement at DJF for a maximum term of two years, a recommendation with which the probation officer concurred. The Authorization Committee rejected Level B placement because: (1) minor's offenses (including his first offense) were serious and he had repeatedly violated probation; (2) minor would soon turn 18 years old and was close to having sufficient credits to graduate from high school, at which time he could choose to leave a Level B placement and the entire system of probation and supervision; (3) given the seriousness of minor's offenses, and the threat he posed to the safety of the community, more extensive rehabilitation services were required.

On March 13, 2014, the district attorney filed a brief in support of DJF commitment in which it discussed minor's substance abuse history, and medical and psychological history. In 2000, at the age of three or four, he was diagnosed with epilepsy. His seizures were upgraded to grand mal in 2002; however, he had not had a reported seizure since 2008 and was not presently taking medication for epilepsy. From 2002 to 2012, minor was seen by a mental health clinician in San Joaquin County where he was diagnosed with Mood Disorder NOS (not otherwise specified). Minor was prescribed Zoloft in 2011; however, he was no longer taking that medication.

A mental health evaluation performed during minor's latest detention produced an Axis I diagnosis of Conduct Disorder and Cannabis Abuse. In addition to daily use of marijuana, minor admitted drinking alcohol every two weeks and using cocaine with the same frequency, until a positive test in early 2012.

According to the probation department, minor had 189 school credits with 31 remaining for his high school diploma; which would require one semester to accrue.

According to the DJJ parole agent and liaison coordinator, if minor were committed to DJF, there would be many treatment and educational services available to him as a “Category 4 offender” facing a two-year term in DJF. After an intake assessment, he would be placed in a treatment plan tailored to his needs. A variety of programs were available, including mental health therapy, substance abuse counseling, educational services, and additional programs specifically aimed at the problems that gave rise to minor’s offenses (e.g., lack of anger control, defective moral reasoning, inadequate social skills, anti-social attitudes, and negative peer influences).⁴

The district attorney asserted that there was no appropriate alternative placement to DJF. Neither Level A nor Level B placements can hold a minor after he turns 19 years old, or obtains a high school diploma or GED. Level A placement would be wholly inappropriate to minor’s offenses and history of absconding from placement. Level B placement would also be inappropriate on these grounds. In addition, because minor was almost 18 years old and was close to obtaining his high school diploma, if placed in a Level B facility, he would likely have only a couple of months in the program before being terminated. Furthermore, both Level A and Level B facilities are unsecured, rendering them unsuited to a person with minor’s history of violent criminal conduct. Minor was a flight risk: Not only did he abscond from Boys Republic, but he had three failures to appear with bench warrants issued (in March 2011, July 2012, and November 2012). Given the short time he could spend in a Level B program, and his history of absconding and failure to appear, a Level B disposition would not provide minor with the rehabilitative services he needed while maintaining the public’s safety.

⁴ The brief attached a brochure from DJF describing its treatment programs in detail.

Moreover, no less restrictive options were available. Minor had been ordered to follow parental directives, ordered to pay fines, placed with his mother, placed away from home at a Level A facility, and detained in juvenile hall in three different counties. He had not availed himself of the programs and treatment options offered him so far. A further commitment to juvenile hall for less than one year would be unsuitable given the nature of minor's current offense, his criminal background, and his treatment needs. Any sentence going past age 19 would require minor to complete it in county jail, which does not offer rehabilitative services like those offered by DJF.

On March 21, 2014, minor submitted an opposing brief requesting out-of-state Level B placement.

According to minor's counsel, two Level B facilities had accepted minor: Glenn Mills in Pennsylvania and Clarinda Academy in Iowa.⁵ A Glenn Mills representative informed counsel that he personally interviewed minor, very much wanted minor to be there, and felt certain they could provide the rehabilitative services he needed. Counsel requested placement there.

Counsel noted that when a minor is adjudicated for an offense listed in Welfare and Institutions Code section 707, subdivision (b) (as here), he may be committed to DJF up to age 23, and if so committed the juvenile court retains jurisdiction over him up to age 25. (Welf. & Inst. Code, §§ 607, subs. (b) & (f), 731, 1769, subd. (c).) Counsel asserted that if placed in a Level B facility, minor could not simply walk away after turning 18 years old because he would be violating the terms of his probation and the juvenile court would retain jurisdiction to order him returned to the program.

⁵ Counsel asserted that the Authorization Committee meeting occurred in the absence of counsel and minor's mother, and it was unclear from the Authorization Committee's letter whether any Level B facilities had accepted minor.

Counsel asserted that minor's escape from a Level A facility was of no moment, because the People had provided no statistics to support the claim that minors are as likely to abscond from out-of-state facilities as from in-state facilities; counsel "[was] informed and believe[d] that minors across the board are dramatically less likely to abscond from the out of state placements." Furthermore, minor's behavior in his latest juvenile hall stay had been "exemplary," proving that he could "follow the rules and stay out of trouble."

Counsel asserted the People had overstated the number of credits minor had earned toward high school graduation: According to his most recent transcript, he had only 167 credits, and still needed 53 to graduate.

Counsel asserted there was no evidence minor had received effective treatment or rehabilitative services while in juvenile hall. For instance, according to counsel, the only mental health diagnosis minor received from 2002 to 2012 was "Not Otherwise Specified," which raised "concern about how well [minor] was treated by 'professionals' in San Joaquin County."

Lastly, counsel asserted that the People had exaggerated the violence of minor's record. Aside from probation violations, his only offenses were a misdemeanor at age 13 and the present offense.

At the contested dispositional hearing on March 24, 2014, minor's counsel proffered exhibits showing the programs and services available at the Level B facilities that had accepted minor. The juvenile court admitted them into evidence.

Counsel argued that minor's current offense was less serious than it might appear. Minor pointed a "fake gun," not a real gun, at the adult victim; he advised the adult victim to get his daughter out of the car; minor did not "elevate[]" the level of force or fear; and the purpose of the car theft, according to minor, was to drive to Manteca to attend a cousin's funeral.

Counsel also argued that Boys Republic, from which minor absconded, had not been providing him the services he needed. His mother knew he needed intense counseling because of his medical history, his chronic depression, and his feelings that his father had abandoned him. She had begged the San Joaquin County probation officer to find a better facility, even if out of state, but the officer had said they could not do so. Short-term crises had occurred in minor's family while he was home on a "home pass," including the robbery of his mother's home and a death in the family. No one at Boys Republic helped minor deal with these incidents. Shortly after, he was denied a "home pass." He absconded about two days later. The current offense happened only two months after that.

Counsel asserted that DJF would be a bad place for minor because, although he had never been a gang member, he would be exposed to a significant number of gang members, who would try to recruit him. Minor had a history of problems with negative peer influences, but this would be far worse.

Although counsel was requesting Level B placement, in his opinion Level A placement also remained a viable option. There were Level A placements in-state that could provide more structure and security than Boys Republic.

Counsel believed that despite minor's age, there would still be time to get him into Level B facilities. Neither Glenn Mills nor Clarinda would require minor to complete high school while enrolled in their programs. Minor had indicated he wanted to take full advantage of any programs such facilities had to offer.

The juvenile court asked counsel how long minor could remain in a Level B placement, given that he would turn 18 years old in less than a month. Counsel replied that he could stay until he turned 19 years old, and then would have to be returned to California and released to his own care and custody. He added, when minors are returned under those circumstances, it is usually because they have successfully completed their programs.

The prosecutor responded: DJF believed minor required two years of services to meet his therapeutic needs, not the single year (at most) available in a Level B placement. Probation had confirmed that minor could not stay in such a placement after obtaining a high school diploma or GED. Minor's records as of March 11, 2014, showed that he had earned 189 credits toward graduation, putting him very close to completion; the transcript offered by minor, showing only 167 credits, was undated. In any event, a year or less was not enough time to address the concerns for public safety caused by minor's conduct, or to sanction him for it; and Level B facilities, though remotely situated, are not escape-proof. Minor's first offense "was really a 211 that was pled down to a 245 misdemeanor," and the victim was left with a concussion. Leading to the present offense, minor had eight probation violations, including one for having a weapon at school in 2011. The fact that minor had done well in the structured setting of juvenile hall indicated he could also do well in the structured setting of DJF.

Minor's mother gave a statement requesting an out-of-state placement for minor.

The juvenile court made the following findings and ruling:

"It's never easy to decide what to do with a young person either way. I have to balance certain things.

"I have to balance the safety of the community. The seriousness of the conduct that's before me. I have to balance his prior behavior, his prior record. I have to balance what's in his best interest What would likely lead to his further rehabilitation, education, training[,] et cetera.

"It's never a good choice. I mean, either I send him far away or someplace close but at a more restrictive confinement level.

"And I know [mother] . . . and others believe that it's a penitentiary or prison that's being contemplated here. I don't believe that. I don't believe that the Division of Juvenile Justice for the Department of Corrections and [R]ehabilitation is a quote 'penitentiary' or prison per se.

“I understand what you mean by that, but I also believe that there is structure there. There is opportunity. There . . . is a program to help young men and young ladies that’s different from what was going on just a few years ago.

“But I just say that just so you understand that if I thought it was a penitentiary, I might agree with you completely that a young 17 year old young man shouldn’t be going to a place like that, like you’re thinking it is.

“So . . . I have to consider what happened on June 18 of 2013, what we call and what you’ve heard these lawyers say the seriousness of the offense; right.

“I have to consider that you were on probation at the time. I have to consider that you had run; basically what the law says has been absconded from the Boy’s [*sic*] Republic at the time. I have to consider the seriousness, as I said, of the conduct; whether it was a replica gun or not or whether there might have been a real gun that got thrown out of the car or not . . . I don’t know. But the people that are in the car I’m sure you can now appreciate how they felt. And I know you apologized and express[ed] remorse for your conduct and I don’t doubt that.

“The other part about driving away, and running from the police, and getting on the freeway[,] a major freeway, Interstate 580[,] about [5:30, 6 o’clock in the afternoon] [a]t high speeds, and then crashing the vehicle, and then running from the police[,] et cetera, puts a lot of people at risk. Because the police don’t know whether you really have a gun, or not have a gun, or whether you are going to turn and maybe assault one of them. Or wh[ile] you are running on the freeway some other person gets in the way and crashes or flips their car or the police hit them by accident[,] whatever.

“¶ . . . ¶

“Which there were probably a lot of people and other people in their cars around that time.

“So that proposes a danger to the community is what I’m trying to tell you, to everybody else and to yourself.

“I know you broke your ankle, but you could have crashed that car and gone right through the windshield, and you could be in front of me in a wheelchair. Or worse yet, your family could have gone to a funeral because of something like that. That would have been even more tragic obviously.

“So . . . I read your record, and I have here in my notes, and I’ve read several places that you were declared a ward of the court when you were merely 13 years old back in March of 2010.

“You’ve had multiple violations of probation. No less than ten violations of probation. Most of them for running or, as the law says, absconding and not being where you are supposed to be or failing to appear and not going to school[,] et cetera.

“And the district attorney wrote in her brief, and I saw that as well, that probably the longest period that you had not violated probation since you were about 13 years old, was for about the four or five months that you were at the . . . Boy’s[sic] Republic in Southern California.

“So you’ve been tried at local placements unsuccessfully. You have a history of running, and failing to appears, and having bench warrants issued. And it’s very clear from the studies that are in front of me, including the reports from Alameda County, San Joaquin County, and from [the Authorization Committee] . . . committee here in Sacramento County, that you need structure to succeed.

“And like [the prosecutor] said and I think [minor’s counsel] said, you do pretty well obviously in a structured environment.

“I read about your grades. I read about your GPA. I read that you finished the math exam, California Math Exit Exam ahead of time and you behave well in a structured environment. I don’t doubt that at all.

“And it’s not surprising, I read in the report here from Alameda County from the Center on Juvenile and Criminal Justice which the Alameda Court had prepared dated October 23rd of last year. It was a report to the court.[⁶]

“And they wrote and told the judge there that you had been living an unstructured lifestyle without schooling, without parental supervision or support. That in sum, you had an unhealthy style. Like your mother was saying, you were probably running with the wrong people making some bad decisions for whatever reason. That’s the past but that’s what I saw in the report.

“That’s why I say you seem to do pretty good when you have structure, when you have rules, when you have program, when you know where you’re going to be, you know what you’re going to do the next day.

“So I’m convinced that you need to be in a structured environment. And because of your past history of running, of absconding[,], that there’s no reasonable alternative available.

“As good as these programs are out of state that [counsel] has told me about, and I’m sure they are good, that was tried and it was unsuccessful.

“So the only last thing I want to tell you, and I’ll tell this to your mother, your grandfather, and your brother[,], I’m concerned about your safety as well. Not only the safety of the community, the safety of the public generally when we have youngsters carjacking, essentially, and running from the police.

“I don’t have to tell you. [Counsel] will tell you. Your mother will tell you. Your grandfather will tell you. When you run from the police they tell you to stop, they tell you to get down, and they don’t know if there’s a gun on your person or in the car, people will likely get shot.

⁶ This document was prepared in response to the People’s motion (later withdrawn) to have minor declared unfit to be tried in the juvenile system.

“We are all thankful nobody got shot but you could have very easily been shot or hurt in that crash, so I’m concerned for your safety.

“If you run, then you are going to have no other prospects in front of you but bad choices. You are going to be having to make bad choices again.

“So I think not only for the safety of the community but for your own safety and for the necessity of your structure, I am going to commit you—and I don’t take any joy in doing it—to the Division of Juvenile Justice.

“And I am going to make, for the record, the findings that the parent or guardian is no longer, or has not been capable of providing you, or has failed in providing you and indeed has neglected to provide you with the necessary training, care, custody, education.

“And that you’ve been tried on probation for many, many times and that you failed each time. That your welfare requires that you be removed, from your parent and/or guardian.

“And I find that committing you to the Division of Juvenile Justice will benefit your effort at reformation and education, training. And in fact that the likelihood of success by being committed at the Division of Juvenile Justice is in fact the only reasonable alternative before the court.”

DISCUSSION

Minor contends the juvenile court abused its discretion by denying his request for Level B placement and instead committing him to DJF. We disagree.

When making a sentencing decision under the juvenile court law, the court “shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor.” (Welf. & Inst. Code, § 202, subd. (d).) In determining disposition, “the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (Welf. & Inst. Code, § 725.5.)

“No ward of the juvenile court shall be committed to [DJF] unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by [DJF].” (Welf. & Inst. Code, § 734.)

“The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision. [Citations.] Nonetheless, there must be evidence in the record demonstrating both a probable benefit to the minor by a [DJF] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. [Citations.] A [DJF] commitment may be considered, however, without previous resort to less restrictive placements. [Citations.]” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) “Nor does the court necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried. [Citations.]” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.)

In determining whether substantial evidence supports a DJF commitment, the reviewing court must examine the evidence at the disposition hearing in light of the purposes of the juvenile court law. (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.) These include (1) “the protection and safety of the public” (Welf. & Inst. Code, § 202, subd. (a)), and (2) “care, treatment, and guidance that is consistent with [the minor’s] best interest, that holds [minors] accountable for their behavior, and that is appropriate for their circumstances[,] [which] may include punishment that is consistent with the rehabilitative objectives of [the juvenile court law]” (Welf. & Inst. Code, § 202, subd. (b)).

The juvenile court here found that all the factors mentioned in Welfare and Institutions Code section 725.5 (minor’s age, the circumstances and gravity of his current offense, and his previous delinquent history) and two of the three factors mentioned in Welfare and Institutions Code section 202 (the safety and protection of the public, and

minor's best interests) militated in favor of a DJF commitment. Substantial evidence supported the court's finding.

Minor was almost 18 years old. He had been a ward of the court for almost five years, during which every alternative, up to and including Level A placement and numerous periods of confinement in juvenile hall, had been tried and had failed to rehabilitate him. Although he was found to have committed criminal offenses only at the beginning and end of that period, both offenses were violent. The current offense, which involved the use of firearms, endangered not only the victims but the general public. In between his criminal offenses, he violated probation multiple times, absconded from a Level A facility, and repeatedly failed to appear in juvenile court. Whenever he was not under stringent supervision, he avoided school, fell in with undesirable associates, and abused drugs and alcohol.

Furthermore, the evidence before the juvenile court showed that DJF has programs and services tailored to minor's rehabilitative needs, from which he could benefit for his entire two-year commitment. Although Level B facilities might also have such programs and services, minor's counsel impliedly conceded that the minor could voluntarily leave such a facility when he turned 19 years old or when he received a high school diploma or GED, even if he had not benefited from the facility's programs and services. Minor's counsel also impliedly conceded that Level B facilities are unsecured, making it possible for minor to abscond from such a facility, as he had already done from a Level A facility. Given all of these facts, the juvenile court was within its discretion to find that only a DJF commitment could meet the objectives of the juvenile court law as to this minor.

Minor asserts that "[t]he court's focus on a structured environment failed to consider the minor's status as a non-gang member," vulnerable to the influence of gang members in DJF, and the likelihood that Level B facilities "would have far fewer gang members than [DJF]." Even if the last assertion (for which minor cites no supporting

evidence) is correct, the juvenile court could properly exercise its discretion to reject Level B placement for the reasons we have already given.

Minor disputes the prosecutor's claim that minor would not have enough time to rehabilitate in Level B placement. He cites "Assembly Bill 12," passed in October 2010, and asserts: "January 1, 2013[,] marked the second phase of AB 12, wherein youth who are in the system at the time of their 18th birthday are eligible to stay in care until the age of 20." He also asserts that under the Interstate Compact for Placement of Children (the Interstate Compact) (cf. Fam. Code, § 7900 et seq.), an out-of-state county housing a facility in which a minor is placed may continue to supervise the minor even after graduation from high school.⁷ Even if minor may raise these points for the first time on appeal, the perfunctory manner in which he does so forfeits them.

As to the first point, minor fails to cite any statute purportedly enacted by "Assembly Bill 12" or any case law construing it. As to the second point, minor fails to cite any specific provision of the Interstate Compact or any authority showing that the Interstate Compact has the legal effect he ascribes to it in the context of juvenile delinquency law. Legal propositions asserted without developed argument and apposite authority are forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

But even if an 18-year-old ward of the juvenile court is eligible to stay in care until he turns 20 years old, that does not mean that he is required to do so. And even if an out-of-state facility can continue to supervise a minor after graduation from high school, that does not rule out the possibility that the minor could simply leave the day he turns 19 years old, whether he has graduated or not.

⁷ Minor notes that his trial counsel asserted: "The person from Glen[n] Mills that I spoke to . . . believes that he could, if deposed today, can get the interstate compact ready in time to get [minor] there." However, counsel did not explain what legal significance an interstate compact would have in this case.

Minor asserts that a DJF commitment is “unnecessarily punitive because the court never said the minor needed to be in a locked facility,” but only “a structured environment.” This point borders on the frivolous. The court said plainly that minor could not be allowed to abscond again, and minor produced no evidence that it would be impossible to abscond from a Level B facility.

Lastly, minor asserts: “Rehabilitation is not enhanced by being housed with gang members.” That premise, if taken to its logical conclusion, would preclude DJF commitment not only in this case but in every case. In any event, rehabilitation is only one of the purposes of the juvenile law, and the juvenile court could reasonably conclude that the law’s other purposes—holding minor accountable for his behavior and protecting the public safety—could be achieved only by a DJF commitment.

DISPOSITION

The order committing minor to DJF is affirmed.

RENNER _____, J.

We concur:

BLEASE _____, Acting P. J.

MAURO _____, J.