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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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

C079020

THE PEOPLE,

(Super. Ct. No. 69014)

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

The minor J.M. appeals from the juvenile court's order committing him to the Juvenile Justice Center. He contends: (1) the trial court abused its discretion finding a lengthy juvenile hall commitment would assist in the minor's rehabilitation; (2) a lengthy juvenile hall commitment was statutorily unauthorized; and, (3) he is entitled to 20 additional days of custody credit. The People properly concede the final claim. We will correct the commitment order to reflect the proper amount of credits, in all other respects the order is affirmed.

I. BACKGROUND

A. *History of Petitions, Probation Violations, and Placements*

Between November 2007, when the minor was nine years old, and June 2011 the minor was referred to the probation department seven times for incidents including fighting, theft, and drug possession. He was expelled from school in January 2012 for assaulting the principal, after he had already been expelled twice before for fighting and disruptive behavior. Between December 2011 and April 2015, the San Joaquin County District Attorney's Office and probation department filed twelve separate wardship petitions (Welf. & Inst. Code, § 602)¹ and four violations of probation. Two additional wardship petitions were filed in other counties (Riverside and Shasta) and transferred to San Joaquin County. Over the course of those multiple proceedings, defendant admitted receiving stolen property, resisting arrest, being an accessory to burglary, commercial and residential burglary, and carjacking.

In December 2011, the minor was housed at juvenile hall. He was released on house arrest into the custody of his mother on January 3, 2012. On January 18, 2012, his mother reported the minor had run away from home. He was arrested on January 22, 2012, for new charges, including burglary and vandalism, and returned to juvenile hall. From December to March, the minor was involved in three fights, two unit disturbances, and 14 acts of disobedience in juvenile hall. He was also caught with contraband twice. In March of 2012 the minor was adjudged a ward of the court (§ 602) and removed from his mother's custody for placement. The minor was placed with Family Visions Wrap Around Services in early April 2012. Nine days later, he was arrested on new charges and terminated from the program. The minor was again housed at juvenile hall from April 14, 2012, to June 28, 2012. During that time, he engaged in at least 12 negative

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

incidents. On June 28, 2012, the minor was placed in Open Line Group Home. Within a week, he was arrested on new charges in Shasta County. He remained in Shasta County juvenile hall until June 18, 2013, when he was transferred back to San Joaquin County. In July 2013, the minor was placed at Rite of Passage, a residential placement. He did not have behavioral problems while there and successfully completed the program in March 2014. He was again placed with his mother and the Family Visions Wrap Around Services. Within two months, the minor had failed the Family Visions program for disobeying rules. Specifically, he failed to participate in the Family Visions program, attend school daily, and follow curfew. Probation took him into custody. On June 16, 2014, the juvenile court again released the minor to his mother on electronic monitoring, with orders to continue participation at Family Visions, and in less than one week the minor had violated probation.

B. Current Petition

In November 2014, the district attorney's office filed a wardship petition alleging the minor had committed residential burglary (Pen. Code, § 459), misdemeanor vandalism (Pen. Code, § 594, subd. (a)), and misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1)). The minor admitted the burglary charge and the juvenile court dismissed the remaining counts. The juvenile court released the minor to his mother on an electronic monitoring program. Within about a week, the minor had left his mother's home and his whereabouts were unknown. About six weeks later, the Riverside County District Attorney's Office filed a wardship petition, charging the minor with commercial burglary. (Pen. Code, § 459.) The minor admitted the offense and the matter was transferred to San Joaquin County for disposition.

The probation department recommended the minor be placed in the County Juvenile Camp Program, a "structured locked facility," for a 360-day commitment. The juvenile court noted the minor had "continued to show [a] continuous pattern of total disregard for his conditions of probation. Minor's been terminated from EMP, Family

Visions, and has accrued several violations of probation for this behavior. Bench warrants have been issued due to the minor's whereabouts unknown. . . . [¶] Additionally, you haven't gone to school since March of 2014. You are in dire need to have a structured environment where you can be provided with further services to aid you in deviating from further delinquent behavior. They recommend you be committed to the County Juvenile Camp Program. [¶] [J.M.] you basically have done everything we have possible. Only thing except for shipping you out to Pennsylvania or something like that." The juvenile court followed the recommendation and, in February 2015, ordered the minor to serve 360 days in the County Juvenile Camp Program.

Within two months, the probation department filed a violation of probation petition, alleging the minor had caused a disturbance at the camp, including resisting and threatening staff. The minor admitted the probation violation. The probation department recommended the minor be terminated from the County Juvenile Camp Program. The minor's counsel indicated the minor hoped the camp would take him back into the program. The camp administrator was unwilling to do so. Accordingly, the court stated: "The only thing left is he stay [sic] here in the hall, and that's the bottom line." Mother and minor's counsel challenged the amount of custody credits the minor had accrued. The juvenile court revoked and reinstated probation and committed the minor to 443 days in juvenile hall, with 90 days' credit for time served. The juvenile court declared the minor's maximum period of confinement was 12 years four months.

II. DISCUSSION

A. Length of Juvenile Hall Commitment

The minor contends the juvenile court erred in finding a lengthy juvenile hall commitment was the most appropriate placement for him. He argues the decision was an abuse of discretion not intended to assist his rehabilitation and the juvenile court should have looked into an alternate placement, such as Rite of Passage. The minor also contends the lengthy juvenile hall commitment was statutorily unauthorized. The People

argue that this claim is forfeited as he did not object to the commitment to juvenile hall or request an alternative placement. The People also claim the minor's claim is moot because he has likely finished serving his commitment. The minor acknowledges his term will likely have been served and the issue is "technically moot," however, he claims we should exercise our discretion to review the matter because the issues are likely to recur and evade review, and his future rights could be affected by this lengthy disposition, should he suffer a new offense. We agree with the People, the matter is forfeited for failure to object.

Dispositional orders in juvenile matters are entrusted to the discretion of the juvenile court. (*In re Greg F.* (2012) 55 Cal.4th 393, 411.) The failure to object to such a discretionary dispositional choice forfeits the claim on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 351; *In re Sheena K.* (2007) 40 Cal.4th 875, 885.) However, the forfeiture rule does not apply if the disposition is unauthorized; that is, if it cannot "lawfully be imposed under any circumstance in the particular case." (*In re Sheena K.*, *supra*, at p. 887, quoting *Scott*, *supra*, at p. 354.)

Commitment to the juvenile hall is an explicitly statutorily authorized disposition. (§§ 202, subd. (e), 730, subd. (a); see also *In re Greg F.*, *supra*, 55 Cal.4th at p. 404.) The minor acknowledges the juvenile court had the authority to commit him to juvenile hall, and had the authority to aggregate the terms for all the previously sustained petitions. The minor does not claim that the commitment to juvenile hall was a disposition that could not be lawfully imposed under any circumstances. Rather, he claims that the lengthy commitment to juvenile hall was punitive and served no rehabilitative purpose. This is a challenge to the juvenile court's exercise of discretion,

not to the authority of the court to order that disposition.² Therefore, those claims are forfeited by failure to object.

The minor's one claim that the disposition order was unauthorized is relative to the length of the commitment in juvenile hall. He contends the year-long commitment to juvenile hall was statutorily unauthorized, because juvenile hall is intended for "detention and temporary placements," not for lengthy postdisposition confinement. The minor cites no authority, and independent research has revealed none, that imposes an upper limit on a juvenile hall commitment or that prohibits the juvenile court from ordering a lengthy juvenile hall confinement as part of its broad discretion in crafting dispositional orders. The disposition ordered here was not an unauthorized disposition, and the minor was required to object to the length of his commitment to preserve this claim on appeal.

Contrary to the minor's claim, he did not object to the juvenile hall commitment. All of counsel's argument regarding the commitment were specifically made regarding the custody credits to which he was entitled. At no time did counsel object to the placement in juvenile hall, the lack of services, lack of rehabilitative purposes, or the length of that commitment. Because these challenges involve discretionary disposition choices, an objection was required to preserve the claims on appeal. Accordingly, the minor's claims as to the juvenile hall commitment are forfeited.

B. Predisposition Custody Credits

The parties agree that the minor is entitled to an additional 20 days of predisposition custody credit.³ A "minor is entitled to credit against his or her maximum

² A lengthy juvenile hall confinement may serve the overall purpose of rehabilitating the minor by impressing upon the minor the seriousness of his or her offense. (*In re Ronny P.* (2004) 117 Cal.App.4th 1204, 1207; *In re Ricardo M.* (1975) 52 Cal.App.3d 744, 749.)

³ Although the minor's commitment was set to expire before this appeal could be resolved, the predisposition credit issue is because the minor is still on probation and

term of confinement for the time spent in custody before the disposition hearing. [Citations.] It is the juvenile court's duty to calculate the number of days earned, and the court may not delegate that duty. [Citations.]" (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) "[W]hen a juvenile court elects to aggregate a minor's period of physical confinement on multiple petitions . . . , the court must also aggregate the predisposition custody credits attributable to those multiple petitions." (*Ibid.*; see § 726, subd. (d)(3).)

As of February 18, 2015, the probation officer calculated the minor's custody credits at 654 days. The calculation failed to include 20 days, July 9, 2013, through July 28, 2013, when the minor was in custody and entitled to credits. Accordingly, the minor is entitled to an additional 20 days of custody credits.

could be returned to custody for future probation violations. (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1231.)

III. DISPOSITION

The commitment order is modified to award the minor 20 days of additional predisposition custody credits. In all other respects the order is affirmed. The juvenile court is to prepare an amended commitment order and to forward a certified copy to the appropriate juvenile authority.

/S/

RENNER, J.

We concur:

/S/

NICHOLSON, Acting P. J.

/S/

ROBIE, J.