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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re W.M., a Person Coming Under the Juvenile Court Law.	C088051
THE PEOPLE, Plaintiff and Respondent, v. W.M., Defendant and Appellant.	(Super. Ct. No. JJCJVDE20150001224)

Minor W.M., who was 17 years old at the time of the charged incident, admitted an allegation of sexual penetration with a foreign object upon a 13-year-old victim. Following a contested disposition hearing, the juvenile court adjudged the minor a ward of the court and committed him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ).

The minor now contends the juvenile court abused its discretion in committing him to DJJ because the commitment was not in his best interest and the court failed to adequately consider a less restrictive placement. Finding no abuse of discretion, we will affirm the judgment.

BACKGROUND

The San Joaquin County District Attorney filed a petition under Welfare and Institutions Code section 602, charging the minor with forcible rape of a child under 14 (Pen. Code, § 261, subd. (a)(2)),[1] sexual penetration with a foreign object (§ 289, subd. (a)(1)(A)), forcible lewd act upon a child (§ 288, subd. (b)(1)), and rape by use of drugs (§ 261, subd. (a)(3)). The minor and the victim were living in a safe house for runaways. Before the charged incident, the minor entered the victim's room, tossed her a bag of pills and said, "I got you." The minor returned to the victim's room about 15 minutes later, forced the victim to the floor, put a pillow over her face, and raped her. He initially denied sexual contact with the victim, but when asked why his DNA was found on her, he claimed he had sex with her in exchange for "weed and/or Xanax and a cell phone" on several occasions.

During the booking process, the minor self-identified as female on a search preference form and asked to be searched by female staff. But when asked about his gender identity for the probation report, he initially said he did not have a gender preference, then indicated he preferred to be identified as male.

At the fitness hearing, the minor admitted the charge of sexual penetration with a foreign object and the remaining charges were dismissed. The probation department filed a dispositional report recommending that the minor be committed to DJJ for treatment and rehabilitative programs that address his behavioral and mental health issues in a safe and secure environment. The report noted that the minor had a history of depression and while detained, received multiple mental health referrals for suicidal ideation. The minor also had a lengthy history of wardship petitions prior to the case at hand, resulting in probation, probation violations, multiple group home placements, a pattern of running away from the placements, an out-of-state placement, and a release to the custody of his

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[1] Undesignated statutory references are to the Penal Code.

guardian. He had been dismissed from probation just three weeks before the charged incident. The report noted the current offenses were very serious in that the minor had preyed on the 13-year-old victim by manipulating her and raping her.

In his dispositional brief, the minor asserted DJJ was not the least restrictive placement. He noted that since being detained he had several psychological episodes, including a hospitalization. The minor conceded that he could obtain appropriate mental health treatment in DJJ but asserted he could also be further victimized based on his gender identity. The brief included a report from a consultant proposing alternative placements.

At the dispositional hearing, defense counsel argued that the minor should be placed in a psychological setting rather than DJJ due to his mental health history. The juvenile court asked counsel to address the fact that the minor was already subjected to nearly every possible less restrictive option and committed the charged offense when he had been off probation for just three weeks. Counsel responded that the minor may have been misdiagnosed. The prosecutor countered that the minor's criminal conduct was escalating. Additionally, the prosecutor argued that DJJ was appropriate because of its extensive sexual offender treatment program. The prosecutor also presented evidence of other programs at DJJ.

After hearing argument, the juvenile court observed: "Looking at [the minor's] file it looks like we've tried all the other least restrictive placements we can impose. We've tried juvenile hall commitments. We've tried sentencing him, ordering him to attend and complete the camp. We've tried local and out-of-state placements . . . . And probation was terminated. It was only terminated for approximately three weeks before this very serious offense took place." The juvenile court explained it had public safety concerns and "we don't seem to be reaching [the minor] as far as behavior." The juvenile court said the minor had been placed on probation and in the custody of his parent and had failed to reform. Accordingly, the juvenile court found a DJJ commitment was in his

best interest. The juvenile court adjudged him a ward of the court and set five years as the maximum time of confinement.

DISCUSSION

The minor contends the juvenile court abused its discretion when it committed him to DJJ because the commitment was not in his best interest and the juvenile court failed to adequately consider a less restrictive placement.

Minors under the juvenile court's jurisdiction must receive "care, treatment, and guidance consistent with their best interest and the best interest of the public." (Welf. & Inst. Code, § 202, subd. (b).) "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 [DJJ]. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We 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.] 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." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395 (*In re Michael D.*).) Those purposes include the protection and safety of the public. (Welf. & Inst. Code, § 202, subds. (a), (b); see *In re Michael D.*, at p. 1396.) The juvenile court's commitment decision does not constitute an abuse of discretion where the evidence "demonstrate[s] probable benefit to the minor from commitment . . . and that less restrictive alternatives would be ineffective or inappropriate." (*In re George M.* (1993) 14 Cal.App.4th 376, 379.)

The minor asserts that in determining his best interest, the juvenile court failed to address his particular mental health and gender identity needs. He relies on *In re Carlos J.* (2018) 22 Cal.App.5th 1. There, the court of appeal explained that because there was "no evidence before the juvenile court regarding any 'intensive treatment' appellant might receive" while confined, the juvenile court could not have made a determination of

probable benefit to the minor. (*Id.* at p. 10.) The court of appeal held there must be "*some* specific evidence in the record of the programs" expected to benefit the minor in support of the juvenile court's finding of probable benefit. (*Ibid.*, original italics.)

Here, however, in contrast to the record in *In re Carlos J.*, the dispositional report identified the specific treatment programs that would benefit the minor: the mental health program and the sex behavior treatment program. The report explained that "[a] youth with mental health diagnoses or active symptoms that require a higher level of care may be placed into a residential Mental Health Program prior to Sex Behavior Treatment Programs (SBTP). Concurrent with mental health treatment groups, the youth would be able to receive SBTP treatment." These programs were further described to the juvenile court in DJJ's treatment program packet. While the minor's dispositional brief proposed alternative placements, it did not specify what programs those placements offered that could assist the minor with treatment specific to his mental health needs and gender identity beyond a sex offender treatment program similar to that offered at DJJ. Indeed, the brief conceded that the minor could obtain appropriate mental health treatment at DJJ.

The minor claims the juvenile court failed to adequately consider alternative less restrictive placements, but we disagree. As the trial court noted, the minor had failed at several prior less restrictive placements, leading to escalating criminal behavior and the charged offense. He also had numerous escapes from court-ordered placements. In view of those failures, the juvenile court reasonably concluded that the minor's best chance at rehabilitation was DJJ: "Getting him to DJJ does have a number of programs that can help him. I don't see what else we can offer him outside of DJJ and really have a shot at making any difference in his life." In addition, in the juvenile court's July 25, 2018 dispositional minute order, it adopted the findings and ordered the recommendations found at pages 29 through 31 of the probation report and said "The Court finds minor's mental and physical condition render it possible that the minor will benefit by the treatment provided by" DJJ. There was evidence in the record that DJJ programs would

provide the minor with extensive, long-term sex offender counseling in a highly structured, disciplined, and closely supervised environment. Such a restrictive environment was appropriate to ensure the minor's participation in the rehabilitative treatment program and to address the court's well-founded public safety concerns. "The purposes of juvenile wardship proceedings are twofold: to treat and rehabilitate the delinquent minor, and to protect the public from criminal conduct. [Citations.] The preservation of the safety and welfare of a state's citizenry is foremost among its government's interests . . . ." (*In re Jose C.* (2009) 45 Cal.4th 534, 555.)

It is not enough for a minor to assert on appeal that the juvenile court could have ordered a less restrictive placement. The minor must show that the juvenile court abused its discretion. (*In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) Here, the minor has not established that the proposed alternative placements would have been in his best interest or that those placements would have adequately protected the public, and he has not established that the juvenile court abused its discretion.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, Acting P. J.

We concur:

/S/
HOCH, J.

/S/
KRAUSE, J.