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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S. N., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S. N., A MINOR,

Defendant and Appellant.

D060020

(Super. Ct. No. J225-777)

APPEAL from a judgment of the Superior Court of San Diego County, Carlos O. Armour, Judge. Affirmed with instructions.

On May 3, 2010, the juvenile court found that S. N. committed assault, by means likely to produce great bodily injury, a felony (Pen. Code,¹ § 245, subd. (a)(1) (count 1)). The juvenile court dismissed count 2 which claimed S. willfully and unlawfully used

¹ All statutory references are to the Penal Code unless otherwise noted.

force and violence upon another to inflict serious bodily injury (§ 243, subd. (d)). The court also dismissed, as to both claims, the allegation that S. personally inflicted great bodily injury (§§ 12022.7, subd. (a) (count 1) and 1192.7, subd. (c)(8) (counts 1, 2)).

On appeal, S. claims that the juvenile court abused its discretion in denying his motion pursuant to section 17, subdivision (b), to have the assault offense reduced to a misdemeanor. S. also claims the juvenile court's notification letters to the superintendent of the Poway Unified School District and to the San Diego Police Department should be amended. (See Welf. & Inst. Code, §§ 827, subd. (b)(2), 827.1.)

As we explain, we conclude the juvenile court did not abuse its discretion in denying S.'s motion to have the assault offense reduced to a misdemeanor. However, as we explain, the notifications should be amended

FACTUAL AND PROCEDURAL BACKGROUND²

On the evening of March 27, 2010, several youths were present at the residence of a young man celebrating his birthday. At some point, 10 males present at the house confronted Robert O., the victim, outside. One of the males, not S., threw a dumbbell weight at Robert. The weight hit Robert in the head, causing him to become unconscious and fall to the ground. After Robert fell to the ground, the 10 males approached him and stomped on him. S. played a role, to some degree, in the assault on Robert.

² We view the evidence in the light most favorable to the judgment of conviction. (See *People v. Osband* (1996) 13 Cal.4th 622, 690.) Certain portions of the factual and procedural history related to S.'s claims of alleged error are discussed *post*, in connection with those issues.

Robert was transported to the hospital. He sustained severe injuries to his head and vision.

DISCUSSION

A. Denial of Section 17, Subdivision (B) Motion

S. first claims that the juvenile court improperly denied his motion to reduce his assault charge under count 1 to a misdemeanor. More specifically, S. claims that the juvenile court abused its discretion in refusing to reduce his felony conviction to a misdemeanor because the trial court's sole purpose in denying his motion was to punish S.

A sentencing court has broad discretion. (*People v. Dent* (1995) 38 Cal.App.4th 1726, 1731.) On appeal the court's sentencing decision will be upheld absent a clear showing of abuse of discretion. (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) The decision whether to reduce a felony to a misdemeanor is one of the sentencing choices within the court's broad discretion. (§ 17, subd. (b).) The burden is on the party challenging the sentence to clearly show the sentencing decision was irrational or arbitrary. Absent such showing, the court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.) In exercising this discretion, the court may consider factors such as " 'the nature and circumstances of the offense' " and " 'the defendant's appreciation of and attitude toward the offense' " (*Id.* at p. 978.)

Here, the circumstances of the offense were quite serious and violent. Robert was hit in the head with a weight, knocked unconscious and then brutally kicked and stomped while on the ground. S. essentially claims the juvenile court's sole purpose in denying the motion was to punish him. While the underlying goals in juvenile court proceedings are rehabilitation and the safety of the public, a decision to not grant a motion that would reduce this serious offense to a misdemeanor is not inconsistent with this policy. (*In re Asean D.* (1993) 14 Cal.App.4th 467; Welf. & Inst. Code, § 202, subd. (d).)

S. takes issue with the juvenile court's statement that "There has to be some enduring consequences to what happened here." While maintaining a felony as opposed to a misdemeanor may produce an enduring consequence, the decision to do so is hardly arbitrary or capricious in light of the severity of the assault. In fact, the court may look at factors such as the gravity and severity of the crime in determining whether or not to reduce a felony to a misdemeanor. True, S. has made progress in school and has not incurred any probation violations, the nature and circumstance of this assault was nevertheless severe. Under these circumstances, the juvenile court did not abuse its discretion in denying the motion. (*People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1457.)

B. Notification Letters Must Be Amended

S. claims the juvenile court's notification letters, pursuant to Welfare and Institutions Code sections 827, subdivision (b)(2), to the superintendant of the Poway Unified School District, and 827.1, to the San Diego Police Department, should be amended. The People agree.

Here, S. was charged specifically with assault by means of force likely to produce great bodily injury. However, the notifications state S. was charged with *assault with a deadly weapon/force likely to cause great bodily injury*, which never occurred. Accordingly, the juvenile court is ordered to file an amended notification letter to reflect that S. was found to have violated section 245, subdivision (a), in that he committed assault by means likely to produce great bodily injury, in conformity with count 1.

DISPOSITION

Judgment is affirmed with instructions to modify and correct the notification.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

McDONALD, J.