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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ARMANDO R., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMANDO R.,

Defendant and Appellant.

D060474

(Super. Ct. No. J226107)

APPEAL from a judgment of the Superior Court of San Diego County,  
Dwayne K. Moring, Judge. Affirmed.

On July 8, 2010, the San Diego County District Attorney filed a second amended petition in juvenile court alleging that Armando R., a juvenile, came within the provisions of Welfare and Institutions Code section 602 in that he committed eight counts of

vandalism (Pen. Code,<sup>1</sup> § 594, subds. (a), (b)(2)(A); counts 1-8), one count of possession of tools and marking substances with the intent to commit vandalism (§ 594.2, subd. (a); count 9), one count of possession of a billy club (§ 12020, subd. (a)(1); count 10), one count of battery against a school employee (§243.6; count 11), one count of battery committed on school property (§243.2, subd. (a)(1); count 13), and two counts of simple battery (§ 242; counts 12, 14).

On August 4, 2010, pursuant to a negotiated plea agreement with the district attorney, Armando admitted the truth to counts 1, 2 and 10. The parties stipulated that information contained in two probation reports would serve as the factual basis for Armando's admissions. In accordance with the agreement, the juvenile court dismissed the balance of the allegations and obtained a *Harvey* waiver from Armando with respect to the dismissed counts.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754, 758.

On appeal, Armando challenges the juvenile court's decision to deny Armando's motion pursuant to Welfare and Institutions Code section 782 to set aside the true findings and dismiss the petition.<sup>3</sup>

As we explain, we conclude that the juvenile court acted properly in denying Armando's motion to dismiss the petition. Judgment affirmed.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>4</sup>

##### A. *Vandalism Related Offenses (Counts 1-9)*

In February 2010, Armando confessed to police officers that he was a member of a vandalism tagging crew and committed various acts of vandalism, namely, spray painting graffiti, within the City of Escondido, including on the campus of Escondido High School. Police also found cans of spray paint belonging to Armando in his residence.

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<sup>3</sup> Welfare and Institutions Code section 782 states: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order such dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court."

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

*B. Possession of a Billy Club (Count 10)*

On March 26, 2010, police responded to an apartment complex in Escondido following a gang related call. Police were unable to find any suspects but did locate a group of people nearby. Among the group of people found nearby was Armando, who was in possession of a billy club. Armando told police he carried the club for protection and admitted knowing it was illegal to possess it.

*C. Battery Related Offenses (Counts 11-14)*

On May 26, 2010, police responded to Del Dios Middle School after receiving a call about a fight. According to a student named Adrian, another student named Adriel approached him and punched him in the face. Armando, who was with Adriel, joined Adriel in punching Adrian in the head. A teacher intervened in an effort to break up the fight. According to the teacher, both Adriel and Armando punched her in the back of the head before fleeing the scene. When interviewed by the probation officer, Armando admitted he was at the middle school with Adriel, and that Adriel fought with Adrian. However, Armando denied participating in the fight and denied ever hitting a teacher.

**DISCUSSION**

Armando claims the juvenile court abused its discretion when it denied his motion to dismiss the petition pursuant to Welfare and Institutions Code section 782. More specifically, Armando claims that the court improperly considered facts relating to the

dismissed battery allegations (counts 11-14) in ruling on his motion. He also asserts that the court failed to consider appropriate factors in ruling on his motion.

Where a discretionary power is vested in the trial judge, such as the authority to dismiss a petition, his exercise of that discretion must not be overturned on appeal absent "a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

Here, a *Harvey* waiver was given as to counts 11-14. The Supreme Court in *Harvey* held that a plea bargain involving the dismissal of a count contains an implied term that the defendant will suffer "no *adverse sentencing consequences*" based on the facts underlying the dismissed count. (*People v. Harvey, supra*, 25 Cal.3d at p. 758, italics added.) The issue that Armando raises, however, does not deal with sentencing but rather the decision to dismiss a petition. Further, the rule in *Harvey* does not operate in delinquency proceedings to limit a juvenile court's consideration of all appropriate information in making a discretionary decision. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1683-1685.) Even if *Harvey* did not apply to juvenile proceedings, the First Appellate District has stated that in juvenile cases "statutory mandates and good sense require consideration of all relevant circumstances when deciding the level of restriction to be imposed, *even those related to dismissed allegations.*" (*Id.* at p. 1684, italics added.)

Accordingly, we conclude that the juvenile court did not abuse its discretion in denying Armando's motion to dismiss the petition. The court was well within its discretion when it considered the underlying facts of the dismissed counts. Further, Armando has made no showing in the record to rebut the presumption that the court applied the correct standard when determining to deny his motion. (*See People v. Coddington* (2000) 23 Cal.4th 529, 644.)

DISPOSITION

Judgment affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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NARES, J.

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O'ROURKE, J.