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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CONNOR K., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CONNOR K.,

Defendant and Appellant.

D060522

(Super. Ct. No. JCM227962 01)

APPEAL from an order of the Superior Court of San Diego County, Polly
Shamoon, Judge. Affirmed.

Sixteen-year-old Connor K. was arrested after he engaged in a violent fight with his brother while armed with a baseball bat and a knife. Connor admitted to making a criminal threat (Pen. Code, § 422), and the juvenile court declared him a ward of the court and placed him in his father's custody with probation conditions. Less than two months later, Conner admitted violating his probation conditions. After he completed a

short-term program, Connor was placed with his father, but soon after violated his probation conditions. The court then committed Connor to the Breaking Cycles program for not more than 150 days. (Welf. & Ins. Code, § 726, subd. (a)(2).)¹

On appeal, Connor contends the court abused its discretion in placing him in the Breaking Cycles program without properly considering the less restrictive drug court program. We reject this contention. The juvenile court considered the relevant factors and did not abuse its discretion. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

In November 2010, San Diego County deputy sheriffs went to Conner's home in response to a report of a family disturbance. Connor's father (Father) told the deputies that Connor and his 17-year-old brother were fighting and "out of control." During the fight, Connor attacked his brother with a broken baseball bat and repeatedly attempted to stab him with a knife. Connor also punched holes in the drywall of the home and broke a doorjamb.

Conner was charged with four separate counts under section 602: (1) assault with a deadly weapon; (2) assault by means of force likely to produce great bodily injury; (3) making a criminal threat; and (4) misdemeanor malicious destruction of property. After a settlement conference, Conner admitted to making a criminal threat in violation of Penal Code section 422. The court dismissed the other three counts with a *Harvey* waiver.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

(People v. Harvey (1979) 25 Cal.3d 754.) The court advised Connor that the overall maximum confinement term was three years.

At the April 2011 disposition hearing, Judge Polly Shamoan said that she had read and considered the social study report prepared by the probation department. In the report, the probation officer detailed the violent events surrounding the fight and discussed Connor's use of a bat and a knife. The probation officer stated that Connor's "delinquency score . . . places him in the high level of risk for continued delinquency. He appears . . . to suffer from limited self control, impulsive behavior, and [has] little involvement in positive structured activities." The probation officer identified several additional risk factors, including a history of more than 20 child protective services referrals (each of which was found inconclusive), facts showing law enforcement officers had been called to the home on several prior occasions based on Connor's misconduct, the severity of Connor's offense, and Connor's attempted use of two different weapons against his brother during the "rampage." However, the officer recommended that Connor be placed with Father because there have been "no further incidents of anger being reported."

After reviewing this report, the court placed Connor on probation in Father's custody. The court imposed numerous probation conditions, including prohibitions on drug and alcohol use, drug/alcohol testing requirements, and compliance with school rules and regulations. At the hearing, Judge Shamoan spoke to Connor and "stress[ed] . . . the importance of complying with the terms and conditions of probation"

About one month later, on May 12, Conner tested positive for cocaine and THC. Four days later, he again tested positive for THC, indicating new use since the previous test. Conner also received referrals in school for defiance, disruption, and having drug paraphernalia in his backpack, and was suspended from school for the defiance referral. When Conner reported to probation before his probation violation hearing, he took a drug test that yielded a positive result for alcohol.

At the probation violation hearing on June 8, Conner admitted he violated the controlled substance and school behavior probation conditions. Judge Lawrence Kapiloff found that continuance in the home was contrary to Conner's welfare and committed him to the Short Term Offender Program (STOP) for a period not to exceed 90 days. In response to Father's objections, the court stated, "I'm sorry if I shock you, dad, but somewhere along the line [Connor has] got to understand that we're not going to tolerate this." The court noted that Connor did not seem to understand that he needs to follow the court's rules: "[T]he way [Connor is] behaving doesn't tell me it's got through his head and that is why I did what I did."

About three weeks later, on June 30, Conner completed the STOP program and began home supervision. About one week later, an anonymous caller reported that Conner was not following the conditions of home supervision. Although his initial drug tests were negative, a July 22 drug test yielded positive for alcohol.

Conner was arrested for this probation violation on July 26 and was found in possession of spice, a synthetic drug with marijuana-type effects. Connor also told an officer that he had drunk alcohol. Two days later, the court held a detention hearing and

detained Connor in Juvenile Hall, pending a further hearing. A probation officer prepared a report recommending that Connor be placed in the Breaking Cycles program, stating that continuance in the home is "contrary to the child's welfare" and that reasonable efforts have been made to continue Connor's placement in the home, but Connor has failed to reform.

At an August 8 probation violation hearing, the deputy district attorney recommended "serious drug intervention" to prevent further harm to Connor, stating that "the family is in major denial" and "we need to do our best to save Connor from the trajectory that his life is currently on. . . . Pretending [the problems] don't exist won't make them go away." She urged the court to consider a better environment for Connor saying, "I don't think [Father's] home is a safe place for this minor." She noted that the parents had a deep love for Connor, but appeared to be in denial about his continued drug and alcohol use and were engaged in efforts to protect Connor from the consequences of his misconduct. After listening to comments made by Connor's parents in which they strenuously objected to Connor's placement outside the home, Judge Shamoon stated that Connor was "at risk to being a drug addict, if he is not already" and that it was "not safe for him to be anywhere other than juvenile hall where we can make sure he is restricted from access to any kind of drugs at all" The court scheduled an evidentiary hearing for August 22 on the probation violation allegations.

In preparation for the August 22 hearing, Connor wrote a letter to the court admitting that he "messed up pretty badly" and has a "drug and alcohol problem," but stating that he now realizes he needs to change. Connor asked to be placed with Father

and be allowed to attend his high school while attending an outplacement drug rehabilitation program.

At the August 22 hearing, Conner admitted to violating probation by using alcohol. The court (Judge Margie Woods) dismissed a second probation violation allegation (not completing the prior drug program) with a *Harvey* waiver. After the admissions, Connor's counsel and the prosecutor said they were in agreement that the court should refer Connor's case for drug court screening instead of an immediate commitment to Breaking Cycles. Although noting the serious and violent nature of the offenses committed by Connor and Connor's repeated violations of probation conditions, the court agreed to permit a drug court screening and set the next hearing for August 30.

At the August 30 hearing, Judge Shamoon stated that after reviewing Connor's case, the drug court team found he was not a good candidate for drug court at the present time. Judge Shamoon said there were various factors that made him ineligible, including his prior violent acts and his lack of history of substance abuse treatment. Judge Shamoon explained that "[w]hen we meet [in drug court] there [are] a lot of activities and time to be together," and expressed concern about "jeopardiz[ing] the safety of people around you." The court emphasized that the decision was made based on numerous factors specific to Connor's case, including his delinquency history. The court also stated there was limited space for juveniles in the drug court program, but made clear that there were openings for qualified juveniles in the program and its decision was not based on a conclusion that "drug court doesn't have room for Connor."

At the hearing, Father argued at length that Connor should be placed at home with outpatient drug rehabilitation therapy, asserting that Connor was willing to change his behavior and that Connor's actions triggering the delinquency charges were exaggerated and untrue. The court declined to alter its ruling based on this argument. The court stated that it would follow the probation officer's recommendations, which included placement in the Breaking Cycles program not to exceed 150 days. In its written minute order, the court specifically found that "[c]ontinuance in the home is contrary to the child's welfare," and that Connor "has been tried on probation while in custody and has failed to reform."

DISCUSSION

Conner contends the juvenile court abused its discretion and did not consider all the requisite factors when it committed him to the Breaking Cycles program instead of the drug court program.

A. Applicable Legal Principles

Juvenile courts have broad discretion to make disposition and placement decisions in an attempt to rehabilitate minors. A juvenile court's commitment order may be reversed only if it is shown that the court abused its discretion. (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 485.) "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." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

In determining the appropriate disposition in a delinquency proceeding, the juvenile courts must consider: "(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." (§ 725.5.) "Juvenile courts . . . shall consider the safety and protection of the public . . . and the best interests of the minor in all deliberations pursuant to this chapter." (§ 202, subd. (d).) Juvenile commitment decisions must also be supported by evidence "demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate." (*In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.)

B. *Analysis*

The record shows the court considered the proper factors in placing Connor in the Breaking Cycles program. By the August 30 hearing, Connor had repeatedly violated probation conditions prohibiting him from using drugs and alcohol, and had been suspended from school for possession of drug paraphernalia, disruption, and defiance. Although Connor and his parents repeatedly told the court that he was ready to change his behavior, he continued to violate rules and use drugs and alcohol. Additionally, as the court noted at the August 22 hearing, Connor committed serious and violent offenses against his brother, including using a bat and a knife, which could have resulted in serious injury. After Connor was placed on probation, he yielded at least four positive drug tests indicating use of cocaine and marijuana. Further, the court had earlier found that Connor had "some sophistication" and that 16-year-old Connor had been using drugs for some time, and his parents were unable or unwilling to accept the seriousness of the problem. In its written minute order placing Connor in the Breaking Cycles program, the court specifically found that "[c]ontinuance in the home is contrary to the child's welfare" and he "has been tried on probation while in custody and has failed to reform."

On this record, we are satisfied the court considered the appropriate statutory factors and there is substantial evidence supporting the court's findings.

On appeal, Connor contends the court abused its discretion because it "ceded responsibility for determining Connor's future to the drug-court committee." The record does not support this contention. The court noted several specific factors that made Connor ineligible, including his prior violent history and his lack of prior drug treatment. The court further made clear that it did not refuse to place Connor in the drug court program because this program "doesn't have room for Conner" Instead, the court explained that Conner did not meet the drug court criteria for various other reasons, including Connor's "delinquency history" and his "history of violence." Judge Shamoon, who had presided over the initial disposition hearing, was familiar with Connor's case and specifically considered whether Connor would be best served by the drug court program or a more restrictive program. The record reflects that the court properly considered the relevant factors, and did not rely solely on the conclusions of the drug court screening team.

We also reject Connor's contention that the court placed him in the Breaking Cycles program without evaluating whether it was appropriate based on his age, circumstances, and gravity of the offense. At the August 30 hearing, the court did not detail its reasons for placing Connor into the Breaking Cycles program because the parties and the court were focused on considering a less restrictive alternative (drug court). The court and parties had discussed the Breaking Cycles program at the prior hearing, and a primary purpose of the August 30 hearing was for the court to consider

whether drug court was a reasonable alternative placement. After finding that drug court was not a proper placement, the court reasonably imposed the Breaking Cycles program.

Contrary to Connor's claim, the court was not required to provide a detailed explanation for placing him in Breaking Cycles. The record contains substantial evidence showing the court considered the appropriate statutory factors in placing him into this program. Under these circumstances, it is not necessary for the court to discuss each factor at the disposition hearing or explain the reasons underlying its conclusions. (See *In re John F.* (1983) 150 Cal.App.3d 182, 185.) "[I]f there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the [court] did not state on the record [its] consideration of those alternatives and reasons for rejecting them will not result in a reversal." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 577.)

DISPOSITION

Order affirmed.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

McDONALD, J.