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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

THE PEOPLE,

Plaintiff and Respondent,

v.

MOISES R.,

Defendant and Appellant.

D063355

(Super. Ct. No. J232396)

APPEAL from a judgment of the Superior Court of San Diego County, Richard R. Monroy, Judge. Affirmed as modified and remanded with directions.

Sheila Quinlan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

The Orange County Juvenile Court entered true findings on a delinquency petition alleging that Moises R. committed forcible sodomy (Pen. Code, § 286, subd. (c)(2); count 1), sodomy of a person under 14 years old and more than 10 years younger than the perpetrator (Pen. Code, § 286, subd. (c)(1); count 2) and two counts of committing a lewd act on a child under 14 (Pen. Code, § 288, subd. (a); counts 3 & 4). After the case was transferred to San Diego County, the San Diego County Juvenile Court adjudged Moises a ward (Welf. & Inst. Code, § 602) and ordered him placed in a community care facility.

Moises appeals, contending the findings on counts 3 and 4 must be reversed because there was insufficient evidence he had the requisite specific intent; the court miscalculated his maximum term of confinement (Welf. & Inst. Code, § 726, subd. (d)); and it failed to award him precommitment credit. The People properly concede these points.

In counts 3 and 4, Moises "laid [the victim] on [a] couch" and "pulled [the victim's] pants down." These acts were merely preparatory to the sodomy alleged in counts 1 and 2. (*People v. Perkins* (1982) 129 Cal.App.3d 15, 19.) The court calculated the maximum term as 19 years (13 years on count 1 and two years each on counts 2, 3 and 4)¹ and failed to award Moises credit for time he spent in juvenile hall before the dispositional hearing (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067).

¹ Counts 1 and 2 describe the same act of sodomy, with terms of nine, 11 or 13 years (Pen. Code, § 286, subd. (c)(2)(B); count 1) and three, six or eight years (Pen. Code, § 286, subd. (c)(1); count 2).

DISPOSITION

The true findings on counts 3 and 4 are reversed. As so modified, the judgment is affirmed. The matter is remanded to the juvenile court with directions to calculate precommitment credit and recalculate the maximum term of confinement.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.