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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANDY F., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDY F., a Minor,

Defendant and Appellant.

D064891

(Super. Ct. No. J233984)

APPEAL from an order of the Superior Court of San Diego County, Richard R. Monroy, Judge. Affirmed.

Alex Kreit, 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 Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

A petition was filed in the juvenile court alleging that Andy F. (the Minor) transported, possessed, possessed for sale and imported a kilogram of methamphetamine (meth). (Welf. & Inst. Code,¹ § 602; Health & Saf. Code, §§ 11377, subd. (a); 11378; 11379, subd. (a).) The District Attorney notified the Minor that he was eligible for deferred entry of judgment (DEJ) under section 790.

After review by the probation officer and a contested hearing, the court found the Minor unsuitable for DEJ. Thereafter, the Minor admitted transporting meth and the remaining charges were dismissed. He was declared a ward of the court and granted formal probation, subject to certain terms and conditions.

The Minor appeals challenging the juvenile court's decision denying DEJ. He contends the court abused its discretion by placing too much emphasis on the seriousness of the offense. We have reviewed the record and find the juvenile court acted within the scope of its discretion and will therefore affirm the order.

STATEMENT OF FACTS

The facts of the offense are not in dispute. Accordingly, we will include only a brief summary of the evidence in this case.

On August 17, 2013, the Minor attempted to enter the United States from Mexico through the San Ysidro pedestrian area. He was sent to the secondary inspection point where officials discovered he had a kilogram of methamphetamine on his person. The

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

Minor waived his *Miranda*² rights and told authorities he was to be paid \$500 for bringing the drugs into the country.

DISCUSSION

When the juvenile court judge denied the Minor's request for DEJ he said:

"I think when we import this quantity of drugs into the country, that you've chosen to participate in what I call a commercial drug dealing, because the amount of drugs that you bring in is so significant and can do so much harm to so many people, that is what I'm considering. I believe that's what probation considered and why they found him not to be an appropriate candidate for DEJ and why they recommended the Stop 90 program in their Fast Track report. [¶] So I understand that you are not precluded from DEJ and that you do have many traits that would mean you might be a good candidate. But for me and my view of this kind of trafficking of these kinds of quantities is I think that you made a choice to participate in what I deem to be a very significant crime, and for that reason I'm denying your request to DEJ 790. So that request is denied."

The Minor contends the juvenile court erred in failing to grant his request for DEJ. He contends the trial court relied only on the seriousness of the charges and failed to consider the appropriate factors which supported his request. We find no abuse of discretion.

This case presents circumstances similar to those we addressed in *In re Damian M.* (2010) 185 Cal.App.4th 1, 5 through 6. There Damian was arrested when he drove a car containing a substantial amount of marijuana across the border from Mexico. Like the Minor in this case, Damian claimed the juvenile court placed too much emphasis on the serious nature of the offense and thus abused its discretion.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

Regarding the review of a juvenile court decision denying DEJ, we held when the juvenile court denies a request for DEJ where the minor is statutorily eligible, we review the decision under the abuse of discretion standard. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607.) Where the minor is eligible for DEJ it is the responsibility of the trial court to independently review the factors specified in section 791, subdivision (b) and determine if the minor will benefit from less restrictive treatment. (*In re Sergio R., supra*, at p. 607.)

The court in *Sergio R.* stated: "We are persuaded that the statutory language [of section 791, subdivision (b)] empowers but does not compel the juvenile court to grant [DEJ] once eligibility under section 790, subdivision (a) is established." (*In re Sergio R., supra*, 106 Cal.App.4th at p. 605.) The juvenile court in *Sergio R.* found the minor eligible for DEJ, but denied the minor's application because the minor was an entrenched gang member and would not benefit from the less restrictive treatment. (*In re Damian M., supra*, 185 Cal.App.4th at p. 5.)

Like the minor in *In re Damian M., supra*, 185 Cal.App.4th 1, the Minor here relies heavily on *Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556 (*Martha C.*), to support his claim of trial court error. We do not believe *Martha C.* assists the Minor here.

In the *Martha C.* case the juvenile court denied DEJ in substantial part as a social policy of deterring other youth from committing serious offenses. The probation department had concluded that *Martha C.* would benefit from DEJ, with which the trial court apparently agreed. However, the trial court denied the request for reasons other

than those related to whether the minor would benefit from deferral or whether the minor needed the more structured process of probation and/or custody. (*Martha C.*, *supra*, 108 Cal.App.4th at p. 562.)

The juvenile court's decision in *Martha C.*, *supra*, 108 Cal.App.4th 556, is substantially different from the court's decision in this case. Here the trial court was aware the Minor was eligible for DEJ. The probation officer recommended that the Minor be placed on formal probation and that the Minor would benefit from the more significant restraints of probation, which the officer believed would enhance the Minor's chances of rehabilitation. The juvenile court here considered the recommendations, arguments and citations to case law with which it was provided. However, in the court's analysis, the seriousness of the offense, which involved the Minor attempting to smuggle a kilogram of meth strapped to his body in return for \$500, supported the probation officer's views that there should be some consequences of the Minor's actions, along with supervision in order to benefit the Minor and deter future criminal conduct.

We recognize that competent juvenile court judges might come to different conclusions on the facts of this case. However, that only emphasizes that decisions such as that before us are entrusted to the very broad discretion of the juvenile courts. (*In re Damian M.*, *supra*, 185 Cal.App.4th at p. 5.) Given that the court was aware of its discretion, reviewed the recommendation of the probation officer and conducted a hearing on the issue, we cannot say the decision was arbitrary, unreasonable or unlawful in any way. Nor can we say that the Minor will not benefit from structure and the

imposition of some, albeit not draconian, consequences for his actions. The record does not show an abuse of discretion.

DISPOSITION

The order denying DEJ is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.