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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.A., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

E054558

(Super.Ct.No. J240410)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed with directions.

Mark D. Johnson, 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, Garrett Beaumont and Gil Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Minor D.A. (minor) seeks (1) remand for the court to impose a maximum term of confinement and calculate his pre-hearing confinement credits, and (2) modification of a probation term to add a knowledge requirement and to limit the probation officer's discretion. The People agree with both of minor's requests.

FACTS AND PROCEDURAL HISTORY

The People suggest that the facts of this case "are not pertinent to . . . the issues on appeal." We disagree.

While at a park in Los Angeles County, in July 2011, the minor (age 14), acting in concert with a younger juvenile, hit and punched victim H.E. and took two "razor" scooters and a cell phone from him.¹ A Welfare and Institutions Code section 602 petition (the petition) filed July 29, 2011, alleged that minor had committed second degree robbery in violation of Penal Code section 211.² The petition noted the "charge range" [of confinement] as "2-3-5." On August 18, 2011, at a Los Angeles County Juvenile Court hearing at which the robbery victim, minor, and the law enforcement officer who had arrested him testified, the court found the allegation true and sustained the petition. Because minor was a legal resident of San Bernardino County, the Los Angeles court ordered him transferred to San Bernardino for disposition.

¹ We will adopt the parties' method of citing to the Reporter's Transcript of the Los Angeles Superior Court proceedings as "LART" and the Reporter's Transcript of the proceedings of the San Bernardino County Superior Court as "RT."

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The San Bernardino Superior Court accepted the transfer on August 25, 2011, and, because minor was also a section 300 dependent, ordered the probation department to prepare a section 241.1 report.³ The section 241.1 committee met on August 30, 2011. Its report, filed September 9, 2011, stated that the Department of Family Services had exhausted all of the services it could provide, but that minor had not benefitted from them “due to his consistent runaways.” The committee recommended that minor be declared a section 602 ward and be placed in a lock-down facility where he could receive services.

On September 9, 2011, the court followed the recommendation, declared minor a section 602 ward, and placed him in the care of the probation department. The court ordered minor to juvenile hall to “await placement” in a “suitable foster care facility on terms and conditions of placement numbered 1 through 28.” The court asked minor whether he understood and accepted the terms and conditions of his probation. Minor replied that he did. Term number 11 stated that minor was “Not to associate with . . . co-participants(s), [J. B.], or anyone not specifically approved by the probation officer.” Minor’s counsel did not object to any of the terms.

The court did not orally specify a maximum term of confinement. The juvenile detention disposition report stated only that minor was “ordered to placement” with no entries in the time boxes under the “confinement” column.

³ This appears to have been minor’s fourth section 241.1 referral.

DISCUSSION

Term of Confinement

Minor argues first that the court should have specified the term of confinement it was imposing. Minor is correct. “If [a] minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” (§ 726, subd. (c).) The maximum term may be stated orally by the court or may be written in the order of confinement. (*In re Justin R.* (2009) 47 Cal.4th 487, 497.) Because the court here did not state a maximum term and there is none recorded in the detention disposition report, the matter must be remanded for the court to determine minor’s maximum term of confinement in a juvenile facility. As stated in the petition, the terms of confinement available for second degree robbery are two, three, and five years. (Pen. Code, § 213, subd. (a)(2).) We will remand the matter for the juvenile court to determine the appropriate term in this case.

Minor next argues that the juvenile court is also required to calculate minor’s pre-dispositional confinement credits. Minor is also correct on this point. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) We will instruct the court to make these calculations when the matter is remanded.

Probation Term 11

Minor argues at great length that, because this term limits his First Amendment right to association, to avoid unconstitutional overbreadth it must include a knowledge requirement. In one sentence, the People concede the point. The parties are correct.

The juvenile court may “impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (§ 730, subd. (b).) A court has the authority to empower the probation department to supervise the enforcement of the probation conditions imposed. (*People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241.) However, while a juvenile court enjoys broad discretion to impose reasonable conditions that might otherwise be unconstitutional, it “must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

Nevertheless, we do not agree with minor’s reliance on *In re Kacy S.* (1998) 68 Cal.App.4th 704 (*Kacy S.*) for the suggestion that the determination of what persons or category of persons with whom minor may not associate cannot be left to the discretion his probation officer. Minor quotes the *Kacy S.* court’s statement that such a condition would require the probation officer to approve contact with persons like “grocery clerks, mailcarriers and healthcare providers.” (*Id.* at p. 713.) Such an interpretation is absurd and “belie[s] both context and common sense.” (*In re Ramon M.* (2009) 178 Cal.App.4th 665, 677.)

Minor also quotes the *Kacy S.* court's statement that the record there did not "justify such a sweeping limitation on the minor's liberty." (*Kacy S.* at p. 713.) The record here is different. Minor's behavior in every setting in which he finds himself demonstrates and justifies his need for extremely close supervision. A probation report filed August 17, 2011, in Los Angeles County Superior Court detailed much of minor's history. The current section 241.1 report added more information.

The parental rights of minor's parents were terminated in 2002, when he was five years old, and he has demonstrated increasingly severe behavioral problems since that time. He was removed from the care of his paternal grandmother in 2008 because she was unable to manage him. In 2010 family reunification services were terminated with a plan of long term placement. Since 2009, minor has lived in more than ten different group homes and has been suspended from school at least nine times. The cause for his many group home changes and school suspensions include defiant, obscene, disruptive, destructive, and increasingly violent behavior. He has run away numerous times. He has stolen property. He has harassed teachers, fellow group home members, and classmates. He bit one staff member; threw rocks, chairs and telephones during spates of uncontrolled anger; and threatened to shoot people or stab them with knives. He admitted to a psychologist who evaluated him in 2008 to having used marijuana and been sexually active since the age of nine. Since 2003, he has been charged with a variety of crimes including: assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)); vandalism (Pen. Code, § 594, subd. (a)(2)); brandishing a deadly weapon (Pen. Code, § 417, subd. (a)(1)); threatening school or public officers (Pen. Code, § 71); burglary (Pen. Code, § 459);

making criminal threats (Pen. Code, § 422); giving false information to a peace officer (Pen. Code, § 148.9); marijuana possession (Health & Saf. Code, § 11357, subd. (b)); and battery upon a cohabitant (Pen. Code, § 243, subdivision (e)(1)). In all these instances the charges were either dropped or the minor was referred back to his social worker for continued placement as a section 300 dependent minor.

The only person now in a position to provide—on behalf of the court—the close supervision minor so obviously needs, is his probation officer. “Since the court does not have the power to impose unreasonable probation conditions, it could not give that authority to the probation officer through [probation] condition [11].” (*People v. Kwizera, supra*, 78 Cal.App.4th at p. 1240.)

DISPOSITION

The matter is remanded to the trial court to determine minor’s maximum term of confinement and calculate any pre-dispositional credits to which he may be entitled, to correct the minute order and detention disposition report, and to forward the corrected documents to the probation department.

Probation term number 11 is modified to read as follows: “Minor is not to associate with J. B. or anyone minor knows has been disapproved by his probation officer.”⁴

In all other respects, the judgment is affirmed.

⁴ To preserve the anonymity of the minor J.B., the revised probation condition uses only initials. The juvenile court is directed to use his full name in the modified probation condition.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.