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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

E055068

(Super.Ct.No. J235937)

OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza,
Judge. Affirmed.

Suzanne G. Wrubel, 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, Eric A. Swenson, and Laura A.
Glennon, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

On November 9, 2010, the San Bernardino County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging that minor and appellant, A.P., had committed two counts of first degree residential burglary under Penal Code section 459 (counts 1 & 2); and trespass under Penal Code section 602, subdivision (m) (count 3).¹

At a pretrial hearing on November 29, 2010, the district attorney amended the petition to allege that minor had also committed second degree commercial burglary under section 459 (count 4). Minor admitted count 4; and counts 1, 2 and 3 were dismissed. The juvenile court then made a true finding as to count 4 and sustained the balance of the petition.

At the dispositional hearing on December 9, 2010, the juvenile court declared minor a ward, granted him probation, and placed him in the custody of his mother.

Thereafter, the district attorney filed four subsequent petitions. First, on January 24, 2011, the petition alleged that minor committed arson under section 451, subdivision (c) (count 1). Second, on January 31, 2011, another petition alleged that minor violated probation by failing to return home. At the detention hearing on February 3, 2011, the district attorney amended the January 24, 2011, petition alleging that minor unlawfully caused a fire to a structure or forestland under section 452, subdivision (c) (count 2).

¹ All statutory references are to the Penal Code unless otherwise specified.

Minor admitted count 2, and the court dismissed count 1. At the dispositional hearing on February 18, 2011, the court continued minor as a ward, but detained him in juvenile hall pending placement in a foster care facility. The court also ordered that minor submit to a psychological evaluation.

On March 18, 2011, at a nonappearance review hearing, the probation department noted that minor was doing “pretty bad” at juvenile hall because he vandalized his room with food and urine. At another nonappearance review hearing on April 1, 2011, it was reported that minor continued to cause problems at juvenile hall. Specifically, minor was rude and disrespectful to staff, called them “stupid bitches,” and claimed he did not “give a fuck.” On April 12, 2011, minor was transferred to a placement facility in Perris, California, called Olive Crest.

On June 6, 2011, a third subsequent petition was filed. It alleged that minor again violated probation by leaving Olive Crest. At the detention hearing on June 7, 2011, minor admitted the violation; he was ordered to remain at juvenile hall pending placement in a different foster care facility. On June 21, 2011, the probation department reported that minor was screened and accepted by Excell Center, a foster care facility located in Turlock, California.

On July 7, 2011, a fourth petition was filed in Stanislaus County. The petition alleged minor committed an assault with force likely to cause great bodily injury under section 245, subdivision (a)(1) (count 1). On July 15, 2011, minor admitted the allegation. The matter was then transferred to San Bernardino County. A contested

dispositional hearing was held for three days on November 8, 9, and 15, 2011. On November 16, 2011, the juvenile court committed minor to the Division of Juvenile Justice (DJJ) for the maximum term of five years four months.

On November 17, 2011, minor filed a notice of appeal. On appeal, minor contends that the juvenile court abused its discretion in (1) committing minor to DJJ; and (2) sentencing minor to the maximum term. For the reasons set forth below, we find no abuse of discretion and affirm the judgment.

II

STATEMENT OF FACTS

Minor was born in July of 1997. He lived with his biological mother, stepfather, and stepsister, also a teenager. Minor suffers from impulse control disorder, struggles with frustration and tolerance, and has a problem with authority. In fifth grade, minor began acting out by running away, smoking marijuana, and stealing from his stepfather. Minor used alcohol, marijuana, and Vicodin in the past, and often skipped school to smoke marijuana. The stepfather would discipline minor by giving him extra chores and leaving minor at home while the rest of the family went out to dinner. Occasionally, the stepfather hit minor and his stepsister as a form of punishment.

At one point, minor's mother had asked her parents to care for minor, but changed her mind. Mother currently believes that minor's grandparents could not provide the best care for him because they would allow minor to get away with more than he should.

Minor has committed crimes including animal cruelty, burglary, arson, and assault. First, minor broke glass in an area where one of the family dogs slept. Later, on October 5, 2010, minor broke into two separate homes. In one home, minor consumed food; and in another home, minor stole video game equipment and traded it either on the street or in a store for money. Minor's stepfather found some of those items and returned them to the residence from which they had been stolen. Minor admitted that he committed the burglaries to get money to buy marijuana. Third, on October 14, 2010, minor and his stepsister ran away to a vacant home and lit a couch on fire to stay warm. The fire spread and eventually caused substantial damage to the house. Minor also kicked holes in the walls of the house because he was bored.

Finally, while minor was housed at Excell Center, he admitted to the night supervision staff that he wanted to kill somebody so he could return to juvenile hall. On July 6, 2011, around 2:00 a.m., minor entered an office in juvenile hall, which was occupied by Teresa V. He slammed the door behind him, approached Teresa V. with a broken ink pen, and attempted to stab her. Minor then placed his hands around her neck and strangled her. As he did, minor stated, "I'm gonna' kill you bitch." Teresa V. sustained scratch marks and redness consistent with this attack; she was forced to go to the hospital, enroll in physical therapy, seek psychological counseling, and miss several days of school and work.

III

ANALYSIS

A. The Juvenile Court Did Not Abuse Its Discretion in Committing Minor to DJJ

Minor contends that the juvenile court erred in committing him to DJJ based on punishment rather than rehabilitation. Minor also claims that the court failed to properly consider the less restrictive options of placing him with either his grandparents or in continued placement at juvenile hall. We disagree.

1. Factual and Procedural Background

At the contested disposition hearing held in November of 2011, eight witnesses testified over the course of four days.

Annette Ermshar, a clinical psychologist, testified that minor has low social skills and interpersonal immaturity. Ermshar had grave concerns regarding minor's prospects for rehabilitation based on his attempt to stab a staff member and the number of times he had fled from placement facilities. Accordingly, Ermshar recommended that minor (1) should be in a constrained or locked setting; (2) should be given a psychological evaluation so that appropriate medication could be prescribed for his impulse control issues; (3) should attend anger management counseling; (4) should have one-on-one academic counseling; and (5) must enroll in a gang awareness program. Ermshar opined that all five of her recommendations could be accomplished at DJJ. Ermshar also observed that DJJ provides more services than juvenile hall, and DJJ had recently expanded its intervention opportunities. Ermshar did express her concern that minor is

vulnerable, and due to his age, he might be susceptible to negative influences if sentenced to DJJ. When asked whether placement with minor's grandparents would be advisable, Ermshar predicted that minor would flee the home if he encountered any frustration.

Daniel Macallair testified for minor; he is the executive director of the Center on Juvenile and Criminal Justice, which offers a range of services and programs for kids who would otherwise be institutionalized. Macallair testified that rehabilitation is not easily obtained at DJJ, and that DJJ is a violent place, characterized by extreme degrees of gang affiliation. Macallair noted that he prefers county placements, but that he was unfamiliar with the county facilities in San Bernardino County.

Another witness who testified for minor was Richard Moscovitz; he was a social service practitioner for the San Bernardino County Public Defender. Moscovitz testified that minor had the potential to thrive if he were placed in an environment outside of his own home. He also reported that 10 different placement facilities were interested in taking minor; Moscovitz believed that any of these facilities would be a better placement for minor than DJJ. Moscovitz, however, admitted that none of these facilities are locked facilities.

Latasha Coleman testified; she was the probation officer who prepared the disposition report which recommended minor's placement in DJJ. Coleman explained that DJJ was the more appropriate placement facility for minor because the State of California will not license other locked placement facilities. Moreover, the services minor needs, which are available at DJJ, would not be available at juvenile hall because

juvenile hall is not designed to accommodate long-term stays. Coleman offered that the severity of minor's criminal history had factored into her recommendation. First, the arson incident displayed a level of dangerousness to the community. Second, minor admitted that he began setting fires as young as age 12, and that he participated in other school fights prior to the assault. Third, when asked if he was good at lying, minor smiled and said that people believed him when he said bad things about his parents. Finally, minor recently made threats to spit at the juvenile court judge.

The juvenile court heard other evidence regarding minor's psychological evaluation and his history as a runaway. Dr. Marjorie Graham Howard prepared a psychological evaluation prior to the assault on February 26, 2011. The evaluation contained minor's admissions that he: (1) made past false allegations of child abuse against his stepfather; (2) denied being the victim of physical, sexual, or emotional abuse; and (3) likes to fight because "it gets out my anger and makes me happy." At one point, minor asked his stepsister's biological mother if he could live with her after he ran away with the stepsister. Minor's stepsister testified that minor ran away because of the way his stepfather treated him. Minor, however, stated that he ran away from Excell Center because he wanted to go back home.

Minor testified. He stated that he never attempted to stab Teresa V., or threatened to kill her. Instead, minor claimed that he only pushed Teresa V. and asked her for the car keys. Minor admitted that he thought his previous placements were a joke, but he is now taking these opportunities seriously because of the threat of being sent to DJJ.

Furthermore, minor stated that he was not certain whether he would have the same motivation to reform his conduct if he was not facing detention in DJJ.

Finally, a stipulation was read stating that minor's maternal grandparents and aunt were willing to accept minor into either of their homes.

At the conclusion of the hearing, the juvenile court made the following findings: (1) minor has no mental health issues, but does have an impulse control disorder; (2) probation and placement have been attempted and have proven unsuccessful; (3) minor needs to be detained in a locked facility; (4) anger management courses are necessary for minor's rehabilitation; (5) minor has a long history of extensive drug use and criminal offenses consisting of burglary, arson, trespass, and animal cruelty; (6) minor has run away from home numerous times; and (7) the current incident of attempting to stab a staff member is disturbing because it displays an escalation of troubling offenses.

Moreover, the juvenile court declined to hear testimony from minor's grandparents, aunt, or uncle; and ruled against placing minor with his maternal grandparents. The court explained that its paramount concerns were what was in the best interest of minor and the community. The court also noted that it was acting as a delinquency court, not as a dependency court, and because minor's mother did not want minor living with his maternal grandparents, the juvenile court did not have the power to affect mother's guardianship. The court acknowledged the rehabilitative purpose of Welfare and Institutions Code section 202, but also noted the importance of forcing

minor to take accountability for his actions. Accordingly, the court did not believe placement with minor's grandparents was a viable option at that time.

At the hearing, the court took minor's youth into account. The court, however, noted that "minors as young as 12 years old go to the Department of Juvenile Justice."

Furthermore, the juvenile court addressed the inappropriateness of juvenile hall as a long-term placement:

"And I would for at least the family's benefit have them understand juvenile hall is not a de facto placement. It was not built and designed to have minors here for extended periods of time. Yes, there are minors that do serve detention time here. But that was not its intent and purpose[]. It is here to try to transition them either back on to formal probation or alternatively send them to placement and at times send them to the Department of Juvenile Justice."

In sentencing minor to DJJ, the juvenile court noted minor's lack of desire to reform his conduct:

"The concern is . . . that [minor] by virtue of what he has done in the past and refuses or at least chooses not to learn from his mistakes continues to make them and makes them having getting worse at the same time. [¶] . . . [¶] The Court would prefer that the minor be sent home with his family and hope that he would learn from his mistakes and choose to make better decisions in the future. But in addition to balancing what is in the minor's best interest, the Court is also duty bound to do what's in the best interest of the community as well."

The juvenile court then found under Welfare and Institutions Code section 707, subdivision (b), that minor had admitted an allegation to an offense that made placement in DJJ appropriate.

Taking into consideration all of the above, the court ordered minor be committed to DJJ for the maximum term of confinement—five years four months—over minor’s objection.

2. Legal Background

Our review of a juvenile court’s commitment decision is highly deferential: “We review a [DJJ] commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court.” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473 [Fourth Dist., Div. Two]; see also *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) “There is no abuse of discretion where the commitment is supported by substantial evidence on the record.” (*In re Kevin F.* (1989) 213 Cal.App.3d 178, 186; see also *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151.)

In determining placement in a juvenile delinquency case, the court focuses on the dual concerns of the best interests of the minor and the need to protect the public. In arriving at a disposition, the court considers the probation officer’s report and any other relevant and material evidence that may be offered. (Welf. & Inst. Code, § 202, subd. (d); *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) The court may consider a commitment to DJJ without first having tried less restrictive placements. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473.) “Finally, the 1984 amendments to the juvenile court

law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. [Citation.]” (*Ibid.*) “Nonetheless, there must be evidence in the record demonstrating both a probable benefit to the minor by a [DJJ] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. [Citations.]” (*In re Angela M., supra*, 111 Cal.App.4th at p. 1396.)

3. Analysis

Here, there was adequate evidence in the record to support the juvenile court’s determination that, in minor’s interest and the interest of public safety, a DJJ commitment was the best available option.

As provided *ante*, Ermshar believed five components were essential to minor’s rehabilitation: anger management classes; one-on-one academic counseling; enrollment in a gang awareness program; an evaluation to medicate minor’s impulse control disorder; and a locked facility. All five are available at DJJ.

A secure, locked facility provides the greatest rehabilitative benefit to minors who have a long history of failure in alternative placements, such as minor. For example, *In re Jonathan T.* (2008) 166 Cal.App.4th 474, involved a 14-year-old minor who was committed to DJJ. In that case, the minor argued that DJJ was inappropriate because the programs were allegedly subpar to others in the county. (*Id.* at p. 486.) The court held that the commitment was not an abuse of discretion and was appropriate because the “minor will benefit from commitment to DJJ, in part, because it will provide him with a secure environment. In other words, it is not merely the programs at DJJ which provide a

benefit to minor, but the secure setting as well. Minor requires a secure setting for his rehabilitative care, because at the age of 14, minor violently attacked another person, ran away from home, and acted in a hostile, disrespectful, and aggressive manner with staff at juvenile hall.” (*Id.* at p. 486.)

Minor argues that the juvenile court neither discussed minor’s rehabilitative needs nor made any finding that the commitment would be beneficial to him. However, there is no requirement for the court to specify the precise manner in which minor will benefit from DJJ. (*In re Jonathan T., supra*, 166 Cal.App.4th at p. 486.) Moreover, the court had a lengthy explanation as to its findings, which led to its decision of what would be beneficial to minor. Specifically, the court noted minor’s history as a runaway, and thus found that a locked facility would be highly valuable to minor. “And Dr. Ermshar on behalf of the defense testifying for [minor] had clearly indicated that because of his runaway and AWOL history, he needs a locked facility.” Moreover, minor’s mother testified that she had lost control of minor, felt she was unable to provide adequate supervision, and thus, was not opposed to minor being placed in DJJ. Similar to *In re Jonathan T., supra*, 166 Cal.App.4th 474, DJJ represented a probable benefit because it not only provided the programs necessary for minor’s rehabilitation, but also a secure facility.

Minor also contends that the commitment to DJJ poses a grave danger to him because of his young age and the possibility he would be victimized by older, more

sophisticated youths. In support, he cites *In re Carrie W.* (1979) 89 Cal.App.3d 642, 646; this case, however, is distinguishable.

In *In re Carrie W.*, *supra*, 89 Cal.App.3d 642, the minor was sentenced to the California Youth Authority (CYA) after making unauthorized long distance phone calls. (*Id.* at p. 644.) The appellate court held that it was inappropriate to sentence the minor to the CYA based on that conduct alone, where the minor had not committed any further delinquent conduct in the five months she had spent at juvenile hall. (*Id.* at pp. 647-648.) Here, unlike the minor in *In re Carrie W.*, minor committed a serious and violent crime, and had a demonstrated history of delinquent activity with no showing of remorse or any desire to reform his behavior.

Furthermore, minor's age did not prohibit the juvenile court from ordering a DJJ commitment. Courts have found that 14-year-old minors could be committed to DJJ based on the severity of their crime, runaway status, and unsuccessful detentions at juvenile hall. (See *In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 486.) Here, minor was 14 when he was committed to DJJ—after he attempted to stab an Excell Center staff member and threatened to kill her; displayed a significant and extensive runaway history; and exhibited a pattern of disrespectful behavior toward staff, teachers, and the court.

Based on the above, we find that substantial evidence supports the court's implied finding that minor and the public could benefit from his commitment in DJJ.

Next, we address whether substantial evidence supports the court's implied finding that alternative placements would be inappropriate. Evidence was presented as to

three less restrictive placements: (1) juvenile hall; (2) other placement facilities; and (3) minor's grandparents' home.

First, juvenile hall was inappropriate for minor because it was unable to meet all of Ermshar's recommendations. While juvenile hall was a locked facility, it did not provide a gang awareness program and was limited in other services. Moreover, there was evidence that juvenile hall was designed for an interim stay, not a long-term placement for rehabilitation. Furthermore, minor was unsuccessful during his previous placement at juvenile hall; he vandalized his room and was disrespectful to staff.

Second, the other proposed placement facilities were found to be inappropriate because they lacked significant features essential to minor's rehabilitation. Moscowitz, who testified on behalf of minor, claimed that he contacted 10 different facilities which were interested in taking minor. Moscowitz, however, admitted that none of these facilities were secure facilities. Hence, these facilities were inappropriate for minor's rehabilitation where he needed a locked facility. Moreover, although Macallair testified that DJJ is a violent place, he recognized that it would be reasonable to leave minor in a secure facility until he could demonstrate behavior indicating he could be transferred to a less restrictive setting. Keeping minor near his family was another concern for Macallair, but he admitted that he was not familiar with any of the placement facilities in San Bernardino County. Hence, he was unable to testify as to their appropriateness. Therefore, there was no evidence presented that those facilities provided both the range of service minor needs and the secure setting he requires.

Third, placement with minor's grandparents was also inappropriate for the same reasons the other placement facilities were found to be ineffective. Although minor argues that the court erred in precluding him from presenting evidence as to the viability of placement with his grandparents, his argument has no merit. Testimony by the grandparents or other relatives would not have provided evidence that services comparable to anger management classes, academic counseling, a gang awareness program, or a psychopharm evaluation were available at a relative's home. Moreover, a major concern in this case was minor's history as a runaway. The grandparents' home is not a locked facility, and for this reason alone it would have been an inappropriate placement for minor. In fact, Ermshar testified that minor would flee from his grandparents' home if he experienced any frustration. Furthermore, even minor's mother felt minor's conduct would escalate if he were placed with her parents. She stated:

"I believe my parents don't think my son can do any wrong. And at this point in his life with all the legal trouble he is in, he doesn't need someone to pat him on the back and say . . . let's go to church and things will be all hunky-dory. That's not life."

Therefore, because the grandparents' home did not have the recommended services and setting necessary for minor's rehabilitation, it was also an inappropriate placement.

Nonetheless, minor argues that the juvenile court erred in refusing to consider placement with his grandparents under Welfare and Institutions Code section 727, subdivision (a)(1). That section authorizes a court to place a minor who has been adjudged a ward of the court with a relative. As discussed above, the court noted that it

did not believe that the grandparents' home was a viable option. Therefore, assuming arguendo that the court misunderstood the scope of its discretion, there is no possibility that the court would have placed minor with his grandparents. Therefore, any alleged error in refusing to consider placement under Welfare and Institutions Code section 727 was harmless.

We further note that in finding that less restrictive alternatives would be inappropriate, the juvenile court properly took into account the need to promote public safety as well. The probation officer acknowledged this consideration when she wrote her report:

“[Minor] appears to lack remorse, and the seriousness of his current and past offenses are brutal with potential for fatal consequences. . . . The minor's behavior has progressively gotten worse in the past year, and his lack of remorse is concerning to this officer. [¶] The minor has been given the opportunity to complete two different placement homes, which he chose to leave willingly. If the minor had left the placement with out [sic] going out of his way to harm staff, this officer would have considered replacement. . . . [¶] Due to his failure to comply with his terms and conditions of probation, his run away [sic] history, and violent prior and current history, Probation supervision or placement no longer appears appropriate. It appears that his delinquent behavior is escalating in severity. This officer believes the minor is not remorseful for his actions, and further precautions need to be taken for his protection as well as the protection of the community. The minor is in need of definite long-term rehabilitation;

therefore, a recommendation to the Department of Juvenile Justice is appropriate at this time.”

In addition, minor’s own mother testified that, based on minor’s attack on Teresa V., mother was concerned for the family’s safety.

Based on minor’s actions—his recidivism, escalating offenses, extensive runaway and drug history, and the inappropriateness of other placements—we find that the juvenile court did not abuse its discretion in concluding that committing minor to DJJ was the best solution available to serve minor’s needs and secure the safety of the public.

B. The Juvenile Court Did Not Abuse Its Discretion in Sentencing Minor to the Maximum Term

Minor argues that the juvenile court abused its discretion in sentencing him to the maximum term of confinement at DJJ because it failed to consider the relevant facts and circumstances of minor’s case. Minor also argues that the court ordered the maximum term based on nothing more than speculation regarding the length of time minor would actually spend in DJJ. We disagree.

When a juvenile court sentences a minor to DJJ, the court must set a maximum term of confinement “based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court.” (Welf. & Inst. Code, § 731, subdivision (c).) The court considers factors about the offense and the offender’s history that would be comparable to those employed for the sentencing of adults. (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1185.) Further, a juvenile court

may consider whether the minor committed perjury in determining the appropriate disposition. (*In re Lawanda L.* (1986) 178 Cal.App.3d 423, 430 [Fourth Dist., Div. Two].) Finally, the court is not required to orally pronounce the maximum period of confinement or state its reasons. (*In re Julian R.* (2009) 47 Cal.4th 487, 499.)

In this case, the juvenile court sentenced minor to the maximum term of confinement. Before pronouncing the sentence, the court spoke at length about its decision to commit minor to DJJ. The court noted minor's lengthy criminal history, his lack of remorse, and his dishonesty. The court also stated that the attack on Teresa V. was not refuted, as minor admitted the allegation, and yet, "[minor] had a different version when he testified on the stand and has reportedly a history of being less than truthful, which is troubling." In accordance with *In re Sean W.*, *supra*, 127 Cal.App.4th at page 1185, and *In re Lawanda L.*, *supra*, 178 Cal.App.3d 423, the juvenile court properly took minor's criminal history, his current conduct, and his inability to take responsibility for his actions into account in sentencing him to the maximum term. We discern no abuse of discretion.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.