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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Defendant and Respondent,

v.

M.V.,

Defendant and Appellant.

E056089

(Super.Ct.No. J238559)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brian Saunders,
Judge. Affirmed in part; remanded with directions in part.

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, Melissa Mandel and Marissa
Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court found true that defendant and appellant M.V. (Minor) committed second degree robbery (Pen. Code, § 211) as alleged in a third subsequent petition. Minor was thereafter continued as a ward of the court, removed from parental custody, and placed in foster care. On appeal, Minor contends, and the People concede, that the matter must be remanded because the juvenile court failed to calculate a maximum term of confinement at disposition. We also agree and will remand the matter.

FACTUAL AND PROCEDURAL BACKGROUND

Minor was initially declared a ward of the court in May 2011, following sustained allegations of grand theft of a person. (Pen. Code, § 487, subd. (c).) Subsequently, on July 18, 2011, a second Welfare and Institutions Code section 602 petition was filed, charging Minor with three counts of robbery (Pen. Code, § 211). On November 15, 2011, Minor admitted to an added count of grand theft of a person (Pen. Code, § 487, subd. (c)), and the remaining three counts of robbery were dismissed. On December 15, 2011, Minor was continued as a ward of the court and placed in her mother's custody.

On February 29, 2012, Minor approached the victim as she was leaving the library with a friend. After an exchange of words between Minor and the victim, Minor pulled on the victim's backpack. At some point during the encounter, Minor told the victim to empty the backpack. While the victim was doing so, Minor took the victim's body spray. Shortly thereafter, a physical fight ensued between Minor and the victim. They eventually stopped fighting, and Minor ran away.

On March 5, 2012, a third subsequent petition was filed, charging Minor with second degree robbery. (Pen. Code, § 211.) Following a jurisdictional hearing on March 27, 2012, the juvenile court found the allegation true.

The dispositional hearing was held on April 11, 2012. At that time, the juvenile court continued Minor as a ward of the court, ordered her removed from parental custody, and placed her in foster care. The juvenile court however failed to state the maximum term of confinement at that time. This appeal followed.

DISCUSSION

Minor contends, and the People concede, that the juvenile court erred by failing to set the maximum term of confinement. We accept the People's concession.

Welfare and Institutions Code section 726, subdivision (c), provides, in relevant part: "If the 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." The maximum term may be stated orally by the court or may be written in the order of confinement. (*In re Julian R.* (2009) 47 Cal.4th 487, 497 (*Julian R.*))

The phrase “‘maximum term of imprisonment’ means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code.” (Welf. & Inst. Code, § 726, subd. (c).) Where the juvenile court elects to aggregate the period of physical confinement based on multiple counts and/or petitions, “the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code.” (Welf. & Inst. Code, § 726, subd. (c).) Aggregation is not mandatory or automatic, but rests within the sound discretion of the juvenile court. (*In re Adrian R.* (2000) 85 Cal.App.4th 448, 454.)

Here, the juvenile court ordered Minor removed from parental custody and placed into foster care. As such, the juvenile court was required to indicate the maximum term of confinement. (Welf. & Inst. Code, § 726, subd. (c); *Julian R.*, *supra*, 47 Cal.4th at p. 491.) However, the juvenile court did not specify the maximum term of confinement either orally or in the order of confinement. Because the juvenile court here did not state a maximum term and there is none recorded in the disposition order, the matter must be remanded for the juvenile court to determine Minor’s maximum term of confinement. We will remand the matter for the juvenile court to determine the appropriate term in this case.

DISPOSITION

The matter is remanded to the juvenile court to determine Minor's maximum term of confinement, to correct the April 11, 2012 minute order of the dispositional hearing, and to forward the corrected document to the probation department. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.