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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re DANIEL C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL C.,

Defendant and Appellant.

F060916

(Super. Ct. No. JJD060401)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Judge.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

Following a contested hearing, and pursuant to Welfare and Institutions Code section 707.1, subdivision (b)(1),¹ Daniel C. (appellant) was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) for a maximum confinement time of nine years five months. On appeal, he contends the juvenile court both violated its authority and abused its discretion in committing him to the DJF. He also contends that the juvenile court abused its discretion in setting his term of confinement.

We originally disagreed with appellant and affirmed the judgment. Appellant petitioned for review, which the California Supreme Court granted. By order filed February 1, 2012, the Supreme Court transferred the case to this court, with directions to vacate our decision and to reconsider the cause in light of *In re C.H.* (2011) 53 Cal.4th 94 (*C.H.*). We have vacated our prior decision and reconsidered the matter. We now reverse the juvenile court's commitment order to the DJF.²

FACTS AND PROCEEDINGS

In 2006, after a juvenile wardship petition was filed, appellant, then 14 years old, admitted a misdemeanor violation of disturbing the peace (Pen. Code, § 415) and was adjudged a ward of the juvenile court. Before disposition took place, a second juvenile wardship petition was filed, and appellant admitted that he brought a knife and marijuana onto school property, a felony and a misdemeanor, respectively (Pen. Code, § 626.10, subd. (a); Health & Saf. Code, § 11357, subd. (e)). But before disposition could take place, a third juvenile wardship petition was filed, this time alleging that appellant sodomized his then seven-year-old sister by use of force or violence (Pen. Code, § 286, subd. (c)) and committed lewd acts upon her (*id.*, § 288, subd. (a)). Appellant admitted to

¹Further undesignated statutory references are to the Welfare and Institutions Code.

²In response to the decision in *C.H.*, the Legislature passed emergency legislation, effective February 29, 2012, amending sections 731 and 733 so that a minor may be committed to the DJF if the most recent offense is described in either subdivision (b) of section 707 or subdivision (c) of Penal Code section 290.008. (Stats. 2012, ch. 7, §§ 1, 2.)

one felony count of sodomy without force or fear (*id.*, § 286, subd. (a)), and one count of committing a lewd act upon his sister (*id.*, § 288, subd. (a)). The juvenile court continued appellant as a ward of the court and found his maximum confinement exposure to be nine years five months on the three petitions combined. Appellant was removed from the custody of his parent and placed in a group home.

From July of 2006 through October of 2008, appellant resided in three group homes and incurred numerous placement violations. Following termination from the last group home, appellant was detained in the Tulare County Juvenile Detention Facility and he subsequently admitted violating his probation.

On April 27, 2009, following a contested hearing, the juvenile court committed appellant to the DJF, but suspended placement so that he could participate in a local sex offender rehabilitation program. Appellant again violated probation, and, on July 29, 2010, the juvenile court committed appellant to the DJF for a maximum confinement time of nine years five months.

On August 5, 2010, the superior court ordered that appellant, because he was now 18 and pursuant to section 707.1, subdivision (b)(1), be transferred to “an appropriate adult facility.”

DISCUSSION

Two statutes govern whether a court may commit to the DJF a juvenile who has not committed an offense described in subdivision (b) of section 707. At the time of appellant’s commitment, section 731 authorized a juvenile court to commit to the DJF a juvenile who has been adjudged a ward of the court if the ward has committed an offense described in subdivision (b) of section 707 “and [the ward] is not otherwise ineligible for commitment to the division under Section 733.” (§ 731, subd. (a)(4).) Section 733, at the time of appellant’s commitment, made a ward ineligible for commitment to the DJF when “the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex

offense set forth in subdivision (c) of Section 290.008 of the Penal Code.” (§ 733, subd. (c).)

In *C.H.*, the minor committed a violation of Penal Code section 288, subdivision (a), which is listed in Penal Code section 290.008, subdivision (c). But the minor had never committed an offense listed in section 707, subdivision (b). (*C.H.*, *supra*, 53 Cal.4th at pp. 98-99.) Interpreting section 731, subdivision (a)(4) and section 733, subdivision (c), the Supreme Court concluded that because the minor had not committed a section 707, subdivision (b) offense, he could not be sent to the DJF, even if his most recent offense alleged in the petition and admitted or found true by the juvenile court was a sex offense set forth in Penal Code section 290.008, subdivision (c). (*C.H.*, *supra*, 53 Cal.4th at pp. 100-103, 108.)

The relevant facts of this case are identical to those in *C.H.* Appellant had not committed a section 707, subdivision (b) offense. The juvenile court, therefore, had no authority to commit him to the DJF. (*C.H.*, *supra*, 53 Cal.4th at p. 108.) We consequently reverse the juvenile court’s dispositional order committing appellant to the DJF. (*Id.* at p. 109.)

In light of our holding that appellant’s commitment to the DJF for the underlying offenses must be recalled, his argument that the juvenile court abused its discretion in committing him to the DJF because less restrictive commitments existed and were rejected is moot. Appellant is not precluded on remand from making any arguments regarding his placement.³

³On February 29, 2012, as part of the emergency legislation passed by the Legislature in response to the *C.H.* decision, section 1752.16 was added to the Welfare and Institutions Code. That section provides: “(a) The chief of the Division of Juvenile Facilities, with approval of the Director of Finance, may enter into contracts with any county of this state for the [DJF] to furnish housing to a ward who was in the custody of the [DJF] on December 12, 2011, and whose commitment was recalled based on both of the following: [¶] (1) The ward was committed to the [DJF] for the commission of an offense described in subdivision (c) of Section 290.008 of the Penal Code. [¶] (2) The ward has not been adjudged a ward of the court pursuant to Section 602 for commission of an offense described in subdivision (b) of Section 707. [¶] (b)

DISPOSITION

The dispositional order committing appellant to the DJF is reversed. The case is remanded to the juvenile court for further proceedings regarding appellant’s placement, including consideration of whether he should remain housed at the DJF pursuant to section 1752.16.

DAWSON, J.

WE CONCUR:

GOMES, Acting P.J.

DETJEN, J.

It is the intent of the Legislature in enacting this act to address the California Supreme Court’s ruling in *In re C.H.*[, *supra.*] 53 Cal.4th 94.”