

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

W.P.,

Defendant and Appellant.

F062497

(Super. Ct. No. JW092393-03)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega,
Judge.

Candice L. Christensen, 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, Ward A. Campbell and Sean M.
McCoy, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Kane, Acting P.J., Detjen, J., and Franson, J.

INTRODUCTION

W.P. was adjudicated a ward of the court after admitting an allegation that he performed a lewd or lascivious act on a child under the age of 14 years (Pen. Code, § 288, subd. (a)).¹ W.P. appeals from the order of the juvenile court committing him to the Division of Juvenile Facilities (DJF)² after he had multiple violations of probation. Because W.P. does not have a prior adjudication for an offense set forth in Welfare and Institutions Code section 707, subdivision (b),³ we are compelled by the California Supreme Court's recent decision of *In re C.H.* (2011) 53 Cal.4th 94 (*C.H.*), to reverse the juvenile court's order committing W.P. to DJF.

FACTS AND PROCEEDINGS

On July 12, 2007, when W.P. was 13 years old, he admitted a single allegation in a petition filed pursuant to section 602 that he committed a lewd or lascivious act on a child under 14 years of age (Pen. Code, § 288(a)).⁴ On July 26, 2007, the juvenile court found W.P. to be a ward, removed him from his guardians' custody, placed him on probation,

¹ This code section will hereafter be referenced as Penal Code section 288(a).

² DJF is a division of the Department of Corrections and Rehabilitation and was formerly known as the California Youth Authority (CYA). DJF was renamed by statutory enactment in 2005. (Welf. & Inst. Code, §§ 202, subd. (e)(5), 1000, 1703, subd. (c), 1710, subd. (a).) The DJF is part of the Division of Juvenile Justice. (Gov. Code, §§ 12838, 12838.3, 12838.5, 12838.13.) DJF is referenced in statutes, such as Welfare and Institutions Code sections 731 and 733, which formerly referred to CYA. (*In re N.D.* (2008) 167 Cal.App.4th 885, 890, fn. 2.)

³ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code. Section 707, subdivision (b) is hereinafter cited as section 707(b).

⁴ On June 27, 2007, W.P.'s foster brother found him engaging in sexual intercourse with his foster sister, who was four years old. W.P. briefly ran away. When he returned, W.P. asked the witness why he was crying. The witness told W.P. he was crying because of what he saw W.P. doing to the victim. W.P. replied that what he did was okay, normal, and for the witness not to worry.

and authorized the probation department to find suitable placement for appellant. On December 6, 2007, the juvenile court authorized the probation department to place W.P. in a group home in Sacramento County.

On June 23, 2008, the prosecutor in Sacramento County filed a petition pursuant to section 602 alleging that W.P. committed two acts of sexual battery (Pen. Code, § 243.4, subd. (d)). On July 30, 2008, the juvenile court granted the prosecutor's motion to dismiss the new petition and substitute it with notice that appellant violated his probation pursuant to section 777. On October 7, 2008, the juvenile court found the allegation true.

The case was transferred from Sacramento County to Kern County. On November 13, 2008, the juvenile court authorized the probation department to locate a suitable facility for W.P.'s placement. On January 20, 2009, the juvenile court ordered W.P.'s placement in the Sacramento County group home.

On January 18, 2011, a new notice was filed pursuant to section 777 that W.P. had absconded from his court-ordered placement. On January 19, 2011, W.P. waived his rights and admitted the allegation that he violated his probation. On February 2, 2011, the juvenile court continued W.P. as a ward and directed the probation department to keep W.P. in juvenile hall pending suitable placement. W.P. was placed in the Excell Center in Stanislaus County on March 16, 2011.

On May 2, 2011, the probation officer filed a status report noting that W.P. began to act defiantly in the Excell program. The probation officer recommended that W.P. be committed to DJF in order to participate in the division's intensive sex offender treatment program. On May 16, 2011, the juvenile court ordered W.P.'s commitment to DJF for eight years with custody credits of 328 days. Appellant was ordered to register as a sex offender pursuant to Penal Code section 290, subdivision (c).

Appellant contends, and respondent concedes, that he could not be committed to DJF because he does not have an adjudication for a section 707(b) offense. Appellant also argues that there were clerical errors in the clerk's minute order. Respondent replies that these errors are moot.

COMMITMENT TO DJF

In *C.H.*, the minor committed a violation of Penal Code section 288(a), which is an offense listed in Penal Code section 290.008, subdivision (c), but is not an offense listed in section 707(b). The minor did not have a sustained petition for an offense listed in section 707(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 707(b) offense, he could not be sent to DJF. (*C.H.*, *supra*, 53 Cal.4th at pp. 100-103, 108.)⁵

The relevant facts of this case are identical to those in *C.H.* W.P. has not committed a section 707(b) offense. The juvenile court, therefore, lacked authority to commit him to DJF. (*C.H.*, *supra*, 53 Cal.4th at p. 108.) We, therefore, reverse the juvenile court's disposition order committing W.P. to DJF. (*Id.* at p. 109.)

Respondent further notes that pursuant to section 1752.16, the juvenile court is authorized to house W.P. at DJF without committing him to that institution if Kern County has entered into a contract with DJF as provided by the statute.⁶ We further

⁵ The Legislature passed emergency legislation effective February 29, 2012, in response to the decision in *C.H.* amending sections 731 and 733 so that a minor may be committed to DJF if the offense is described in either subdivision (b) of section 707 or subdivision (c) of Penal Code section 290.008.

⁶ Section 1752.16 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 Division of Juvenile Facilities to furnish housing to a ward who was in the custody of the Division of

agree with respondent that any errors in the commitment order to DJF are now moot because the juvenile court's commitment order is being reversed and the original commitment order is now void.⁷

DISPOSITION

The juvenile court's order committing W.P. to DJF is reversed. The case is remanded for the juvenile court to conduct further proceedings regarding W.P.'s placement including consideration of whether he should remain housed at DJF pursuant to section 1752.16.

Juvenile Facilities on December 12, 2011, and whose commitment was recalled based on both of the following:

“(1) The ward was committed to the Division of Juvenile Facilities 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) It is the intent of the Legislature in enacting this act to address the California Supreme Court's ruling in ... *C.H.* (2011) 53 Cal.4th 94.”

⁷ We agree with W.P. that the juvenile court incorrectly noted in the commitment order that W.P. has not been on psychotropic medication. There are many references in the record setting forth the psychotropic medications W.P. has been prescribed during the course of his wardship.