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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS M.,

Defendant and Appellant.

F062562

(Super. Ct. No. 08CEJ600958-1V)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Fresno County. Alvin Harrell, III,  
Judge.

Arthur L. Bowie, 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, Kathleen A. McKenna and  
Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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

## INTRODUCTION

Luis M. 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)).<sup>1</sup> Luis M. appeals from the order of the juvenile court committing him to the Division of Juvenile Facilities (DJF)<sup>2</sup> after he violated probation by absconding from a group home. Because Luis does not have a prior adjudication for an offense set forth in Welfare and Institutions Code section 707, subdivision (b),<sup>3</sup> 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 Luis to DJF.

## FACTS AND PROCEEDINGS

On September 3, 2008, soon after Luis turned 12 years old, he admitted a single allegation in a petition filed pursuant to section 602 that he committed a lewd and lascivious act on a child under 14 years of age (Pen. Code, § 288(a)).<sup>4</sup> In exchange for

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

<sup>2</sup> 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, that formerly referred to CYA. (*In re N.D.* (2008) 167 Cal.App.4th 885, 890, fn. 2.)

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

<sup>4</sup> On July 5, 2008, the victim's mother witnessed Luis placing his finger into the anus of her six-year-old child. The victim told the mother that Luis threatened the victim with a knife and forced the victim to take his pants down. The victim told investigators that Luis put a knife to his throat and told him to get to the backyard. When the victim screamed for help, Luis placed his hand over the victim's mouth to stop the victim from screaming. Luis told the victim to take down his pants and placed his finger into the

his admission, an allegation that Luis committed an act of sexual penetration by force (Pen. Code, § 289, subd. (a)(1)) was dismissed. At the disposition hearing on September 17, 2008, Luis was adjudged a ward of the court and placed on formal probation. On September 26, 2008, Luis was placed at Quality Group Homes, Inc.

On June 16, 2009, the probation department filed a supplemental petition pursuant to section 777 alleging that Luis absconded from school while still a resident at the group home. Luis's whereabouts remained unknown. Luis's probation was revoked and a warrant was issued for his arrest. Luis was arrested on September 2, 2010. On September 3, 2010, Luis denied the allegations in the supplemental petition. At the conclusion of a settlement conference on September 27, 2010, Luis admitted to violating his probation by absconding from the group home.

At the disposition hearing on May 11, 2011, the juvenile court committed Luis to DJF for a term not to exceed seven years, less custody credits of 336 days. Appellant was ordered to register as a sex offender pursuant to Penal Code section 290.008. Luis 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.

### **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

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victim's "backside." Luis admitted to officers that he placed his finger into the victim's anus on three occasions, but denied threatening the victim with a knife.

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.)<sup>5</sup>

The relevant facts of this case are identical to those in *C.H.* Luis 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 Luis to DJF. (*Id.* at p. 109.)

Respondent further notes that, pursuant to section 1752.16, the juvenile court is authorized to house Luis at DJF without committing him to that institution if Fresno County has entered into a contract with DJF as provided by the statute.<sup>6</sup>

### **DISPOSITION**

The juvenile court's order committing Luis to DJF is reversed. The case is remanded for the juvenile court to conduct further proceedings regarding Luis's

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<sup>5</sup> 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.

<sup>6</sup> 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 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 *In re C.H.* (2011) 53 Cal.4th 94.”

placement including consideration of whether he should remain housed at DJF pursuant to section 1752.16.