

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TREVON D., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

TREVON D.,

Defendant and Appellant.

F063067

(Super. Ct. No. 512606)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Susan D. Siefkin, 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, and Julie A. Hokans, Deputy Attorney General, for Plaintiff and Respondent.

-ooOoo-

* Before Levy, Acting P.J., Gomes, J., and Kane, J.

Appellant, Trevon D., a minor, pled no contest to allegations set forth in a juvenile wardship petition (Welf. & Inst. Code, § 602),¹ as amended, that he committed two misdemeanors, viz., challenging another to a fight in a public place (Pen. Code, § 415, subd. (1)) and carrying a dirk or dagger concealed on his person (Pen. Code, § 12020, subd. (a)(4)), and admitted an allegation that he committed the former offense for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further or assist in criminal conduct by gang members, within the meaning of Penal Code section 186.22, subdivision (d). Following the subsequent disposition hearing, the court adjudged appellant a ward of the court and placed him on probation.

On appeal, appellant contends, and the People concede, that the juvenile court erred in failing to notify appellant of his eligibility for deferred entry of judgment (DEJ) under section 790 et seq. and that the matter must be remanded to allow the court to consider appellant's suitability for DEJ. We reverse and remand for further proceedings.

PROCEDURAL BACKGROUND

The wardship petition in the instant case was filed May 10, 2011. That same day, the Merced County District Attorney (MCDA) filed a "DETERMINATION OF ELIGIBILITY Deferred Entry of Judgment – Juvenile" stating that appellant was eligible for DEJ. This document, on Judicial Council form JV-750, consists in large part of a series of statements, each preceded by a box in which it can be indicated by a check mark or some other notation that the statement is applicable. The box preceding the following statement is not marked: "*Citation and Written Notification for Deferred Entry of Judgment—Juvenile* (form JV-751), is attached."

¹ Except as otherwise indicated, all statutory references are to the Welfare and Institutions Code.

DISCUSSION

The DEJ provisions have been explained as follows: “The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

Under the DEJ statutory scheme, the prosecuting attorney has the initial duty to assess the eligibility of the minor for DEJ. Either before the filing of the wardship petition or as soon as possible thereafter, the prosecuting attorney must review the minor’s file and, if he or she determines the minor meets the DEJ eligibility requirements, notify the court of its determination (§ 790, subd. (b); Cal. Rules of Court, rule 5.800(b)(1); *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1122 (*Luis B.*)) and provide “written notification to the minor,” which must include, inter alia “[a] full description of the procedures for deferred entry of judgment” (§ 791, subd. (a)(1)) and “[a] clear statement that, in lieu of jurisdictional and disposition hearings, the court may grant a deferred entry of judgment with respect to any offense charged in the petition, provided that the minor admits each allegation contained in the petition and waives time for the pronouncement of judgment” (§ 791, subd. (a)(3)).

A minor is eligible for DEJ under section 790 if he or she is accused in a juvenile wardship proceeding of committing a felony offense and all of the following circumstances apply: “(1) The minor has not previously been declared to be a ward of

the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Youth Authority.² [¶] (4) The minor's record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶] (6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.” (§ 790, subd. (a)(1)-(6).)

If the prosecuting attorney finds the minor eligible, the separate question of the minor's “suitability” for DEJ remains. (*Luis B., supra*, 142 Cal.App.4th at p. 1123.) “The trial court then has the ultimate discretion to rule on [this question] after consideration of [certain] factors specified [by statute and rule of court], and based upon the “standard of whether the minor will derive benefit from ‘education, treatment, and rehabilitation’ rather than a more restrictive commitment. [Citations].”” (*Ibid.*) But, “While the court retains discretion to deny DEJ to an eligible minor, *the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory*, as is the duty of the juvenile court to either summarily grant DEJ or examine the record, conduct a hearing, and make ‘the final determination regarding education, treatment, and rehabilitation’ [Citations.] ... The court is not required to ultimately grant DEJ, but is required to at least follow specified procedures and exercise discretion to reach a final determination once the mandatory threshold eligibility determination is made. [Citation.]” (*Ibid.*, italics added.)

As the parties agree, the MCDA correctly determined appellant is eligible for DEJ, but there is nothing in the record to indicate the MCDA complied with the mandatory

² Effective July 1, 2005, the Department of Youth Authority was renamed “the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.” (*In re Lemanuel C.* (2007) 41 Cal.4th 33, 37, fn. 2.)

notice provisions of section 791, subdivision (a) or that the court determined appellant's suitability for DEJ. Therefore, as the parties also agree, remand is required to allow the juvenile court to determine appellant's suitability for DEJ.

DISPOSITION

The judgment is reversed. The matter is remanded to the juvenile court. On remand, the juvenile court is directed to determine appellant's suitability for deferred entry of judgment (DEJ). The court, if it determines appellant is not suitable for DEJ, shall reinstate the judgment.