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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re D.G., JR., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.G., JR.,

Defendant and Appellant.

F063985

(Super. Ct. No. JW084172-00)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

Carol A. Koenig, 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, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

After appellant D.G., Jr. (D.G.), a minor, entered a plea of no contest to a single count of lewd or lascivious act with a child, a juvenile court adjudged him a ward of the court. The court ordered D.G.'s placement and care vested with the Kern County Probation Department. Further court orders required D.G. to provide two specimens of blood for HIV testing and to have no contact with minors under the age of 12 unless supervised by an adult.

On appeal, D.G. raises three claims regarding the issue of competence to stand trial. He argues that the court proceeded without determining D.G.'s competence, the court failed to follow the proper statutory procedures regarding the competence determination, and no substantial evidence supported a finding that D.G. was competent to stand trial. D.G. also contends that he received ineffective assistance of counsel based on defense counsel's failure to pursue the competence issue. Finally, D.G. contends that the court's orders regarding HIV testing and associating with children are flawed. The People concede the errors in the court's orders regarding testing and association with children but otherwise argue that the court's judgment should be affirmed.

We conclude that the juvenile court properly found that D.G. was competent to stand trial and was not deprived of his right to effective assistance of counsel. The matter is remanded to the juvenile court to modify its orders with respect to HIV testing and contact with children. We affirm the court's judgment in all other respects.

FACTUAL AND PROCEDURAL HISTORIES

On May 17, 2011, the Kern County District Attorney filed a three-count juvenile wardship petition (Welf. & Inst. Code, § 602)¹ against D.G. He was charged with (1) committing an act of sodomy with a person under the age of 18 years (Pen. Code, § 286, subd. (b)(1)); (2) committing a lewd or lascivious act with a child under the age of

¹Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

14 years (Pen. Code, § 288); and (3) engaging in three or more acts of sexual abuse against a child under the age of 14 years (Pen. Code, § 288.5, subd. (a)).

On June 9, 2011, defense counsel declared a doubt about D.G.'s competence. Defense counsel stated that he had difficulties communicating with his client and he had just learned from D.G.'s mother that D.G. had been diagnosed as developmentally delayed. The juvenile court suspended proceedings pursuant to section 709 and appointed the Kern Regional Center to perform an examination of D.G. At a hearing on July 7, 2011, the Kern Regional Center informed the court it had not yet completed an assessment of D.G. Defense counsel requested that a different doctor conduct an evaluation, and the court appointed Dr. Nick Garcia to examine D.G.

Dr. Garcia examined D.G. on July 22, 2011, and prepared a report, which was submitted to the court on July 28, 2011. His evaluation was based on a clinical interview with D.G., a review of the records, and four psychological assessment tests.² Dr. Garcia believed that D.G. was not competent to stand trial. The doctor explained:

“[D.G.] has difficulty being able to offer reasonable assistance to his attorney. The Defendant does not appear to have an ability to cooperate and strategize with his attorney. It is my professional opinion that the Juvenile had difficulty understanding the roles of the prosecution and the judge. The Juvenile had difficulty understanding court proceedings, and legal strategies. He was able ... to articulate the charges against him reporting that it was, ‘Sodomy.’ When asked to define sodomy, the Juvenile had difficulty defining sodomy and reported, ‘It was just rape.’³ The Juvenile had difficulty understanding the pleas that he could make, and upon remediation he still continued to have difficulties with plea bargains as well as being able to understand a concept of a trial, a role of the

²Dr. Garcia used the following four assessment instruments: (1) Juvenile Adjudicative Competence Interview, (2) Wechsler Abbreviated Scale of Intelligence (2 subtests), (3) Wide Range Achievement Test-4 (WRAT-4) (reading subtests), and (4) Rey 15-item test.

³“When asked to define ‘rape,’ [D.G.] reported, ‘If you want to do it, and they don’t want to do it.’ He was unable to elaborate.”

prosecutor and defense counsel, as well as had difficulty being able to draw the distinction between the roles of a judge and a probation officer. The Juvenile appears to have difficulties understanding the potential penalties in his case. Based on a reasonable degree of psychological certainty, I believe that the Juvenile does not have a reality based appraisal of his circumstances. I believe that he is not capable of rudimentary decision making, or the ability to consider additional alternatives with regards to his case. The Juvenile will have difficulty being able to rationally consult with his attorney. It is my opinion that if the Juvenile should choose to plead guilty, he would not be able to make a competent decision concerning the waiver of rights and does not appear [to] have a rational understanding of the consequences of what it means to enter into a plea. It is my opinion that the Juvenile is not competent to participate in his own defense. He does not have the ability to consult with his own attorney, nor does he have a factual understanding of legal processes.”

On August 3, 2011, the juvenile court found D.G. not competent to stand trial. The court ordered the proceedings to remain suspended and referred D.G. to the Kern Regional Center for an evaluation to determine whether he was eligible for services.

On August 30, 2011, a probation officer submitted a memorandum to the court reporting that the Kern Regional Center determined the minor was eligible for services. The memorandum also stated that D.G. had been evaluated by Dr. Thomas Middleton, who “found the minor is competent to stand trial and recommends the minor’s delinquency proceedings be re-instated.” A report from the Kern Regional Center and a written psychological evaluation by Dr. Middleton were attached.

The report from the Kern Regional Center was prepared by an assessment coordinator. It was reported that D.G. was eligible for services because he had a developmental disability based on borderline level of intellectual functioning with substantial impairments in the areas of learning, self-direction, and economic self-sufficiency. The report stated: “[D.G.] underwent a psychological evaluation with Dr. Middleton, PhD, Clinical Psychologist on July 28, 2011. Dr. Middleton also completed a competency evaluation and determined that [D.G.] is competent to stand trial. Please note that [D.G.] had been previously considered not competent by Dr. Garcia (report

dated 7.27.11).” Under the heading “Recommendations,” the report stated that D.G. was competent to stand trial and recommended that his “case be referred back to the court to reinstate charges and set for further proceedings.”

Dr. Middleton’s psychological evaluation was based on a clinical interview, mental status examination, five psychological assessment tests,⁴ and D.G.’s medical records. Dr. Middleton recognized that Dr. Garcia had determined that D.G. was not competent to stand trial, but he reached the contrary conclusion, stating that D.G. appeared quite competent. Dr. Middleton offered an explanation for how he and Dr. Garcia reached different conclusions:

“At the time of the evaluation [by Dr. Middleton], Dr. Garcia’s prior competency evaluation dated July 27, 2011 was not available to this examiner. Dr. Garcia saw the minor on July 22, 2011. This examiner administered ... selected items from the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). The minor was able to consistently attend to the multiple choice format. His score was 100% correct across items for Basic Legal Concepts, Skills to Assist Defense, and Understanding Case Events. He was quite uncomfortable discussing his legal circumstance at the time of the evaluation, but acknowledged this examiner’s review of the case. This is consistent with his general avoidance of discussing any legal or antisocial history. The minor appeared to be quite competent. It should be noted that Dr. Garcia was said to have administered the Juvenile Adjudicative Competency Interview (JACI). This examiner is familiar with the JACI as well. The minor’s spontaneous responses appear to be limited and were considered deficient by Dr. Garcia. Nonetheless, on the multiple choice CAST-MR items, the minor did quite well and as stated, scored 100% on the items administered to him.”

Dr. Middleton reported that, according to Dr. Garcia’s report, D.G. “did not know what a plea bargain was, but did with this examiner on the CAST-MR.” In addition, Dr.

⁴Dr. Middleton used the following five assessment instruments: (1) Developmental Test of Visual-Motor Integration, (2) WRAT-4, (3) Wechsler Adult Intelligence Scale-IV, (4) Vineland Adaptive Behavior Scales-II, and (5) Rey 15-Item Memory Test.

Middleton noted that Dr. Garcia had obtained lower test scores in his assessment of D.G. than he had obtained. For example, when Dr. Garcia administered the WRAT-4, he obtained a standard score of 79 on the reading subtest, a score in the borderline range, while Dr. Middleton obtained a score of 88, a score in the low average range. Dr. Garcia determined D.G.'s I.Q. was 65, a score in the low range, while Dr. Middleton used a different intelligence test, resulting in a higher score in the borderline range, with composite scores of 72 for verbal comprehension and 73 for perceptual reasoning. Dr. Middleton did determine that D.G.'s full-scale I.Q. was 65, which he described as in the range of mild mental retardation, but he observed that D.G.'s reasoning skills appeared to be higher than his auditory attention and speed of performance.

At the end of his report, the doctor offered "Impressions and Recommendations," which concluded:

"The minor was previously seen by Dr. Garcia with report date of July 27, 2011. He was considered not competent to stand trial. This examiner completed a partial administration of the Competency Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). The minor scored 100% on all items administered to him and appeared quite competent when given adequate structure. He responded well to multiple choice answers. The minor was able to pass the Rey 15-Item Memory Test with a score of 100%. He recalled completing this test with Dr. Garcia previously. He, thus, was able to recall information over time. The minor did present as inattentive and avoidant, but these are seen as emotional factors that can be overcome with the minor. He does not show evidence of severe cognitive deficits that would interfere with his competency. He is 16 years and 5 months of age."

Dr. Middleton closed his report: "I will of course defer to the [Kern Regional Center] clinical and/or forensic teams regarding the minor's eligibility and competency. Thank you very much for the opportunity to evaluate [D.G.]. If I can be of further assistance, please feel free to contact me."

On August 31, 2011, the juvenile court held a hearing to discuss the assessment by the Kern Regional Center. The court noted that Dr. Middleton found D.G. competent to stand trial and addressed defense counsel. Defense counsel responded:

“Judge if I read the report, it appears to me Dr. Middleton, who I believe evaluated [D.G.] twice, the second time performed the same test as Dr. Garcia performed, and they got different results. That is something that I feel I need to follow up with Dr. Middleton and potentially Dr. Garcia on as well. I’m not prepared to submit on his competency at this time. I need a little more time to look behind the reports.”

The court asked defense counsel, “And when do you believe you would be prepared to go forward with such a hearing?” Defense counsel requested a week to week-and-a-half continuance, indicating that would be sufficient time to contact the doctors. Defense counsel stated that he “usually” can get a hold of Dr. Middleton and “can also get a hold of” Dr. Garcia. A hearing was scheduled for 12 days later.

On September 12, 2011, the hearing reconvened and the following discussion occurred:

“THE COURT: [¶] ... [¶] Proceedings had been suspended under Section 709 of the Welfare [and] Institutions Code. The young man has been evaluated on more than one occasion. Dr. Garcia had found the young man not competent to stand trial. And he was referred to the Regional Center for determination as to his eligibility for services there.

“At some point during the course of those examinations, Dr. Middleton examined the young man and while he [is] eligible for Regional Center services, Dr. Middleton concluded that the young man is competent to stand trial. [Defense counsel.]

“[DEFENSE COUNSEL]: Judge, I agree with Dr. Middleton’s assessment at this time.

“THE COURT: Then the Court will find that [D.G.] is competent to stand trial; proceedings under Welfare [and] Institutions Code Section 602 are reinstated at this time.”

On October 24, 2011, D.G. entered a plea of no contest to count 2, lewd and lascivious conduct with a child under the age of 14. The court accepted the plea and dismissed the remaining two counts.

On November 17, 2011, the court adjudged D.G. a ward of the court and placed him on probation not to exceed his 21st birthday. The court found that “[c]ontinuation in the home of the parent would be contrary to [D.G.’s] welfare” and vested his placement and care with the probation department. To provide services and protect the public, the probation department recommended that care, custody, and control of D.G. be given to the department. It was recommended that D.G. be placed in an appropriate care facility by Kern Regional Center with outpatient sexual offender counseling. The court found that the case plan proposed by the probation department was appropriate.

The court ordered D.G. to enroll in sex offenders counseling and to have no contact with minors under the age of 12 unless supervised by an adult. D.G. was further ordered “to provide two specimens of blood, one within 7 days and the second one 6 months from that date, pursuant to PC 1202.1, to test for the AIDS virus.”

DISCUSSION

I. Competence to stand trial

“It is well established that the criminal trial of an incompetent defendant violates the due process clause of the state and federal Constitutions. [Citation.] Like an adult defendant, a minor has a right to a competency hearing in juvenile delinquency proceedings. [Citation.]” (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234.) “Whether an adult or a child, the question at the competency hearing is the same: Does the individual have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and a rational, as well as a factual understanding of the proceedings? [Citations.]” (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 468.)

Procedures for determining competence in juvenile proceedings are provided in section 709 and California Rules of Court, rule 5.645(d). Under section 709, proceedings must be suspended if the court finds that substantial evidence raises a doubt about the minor's competency. (§ 709, subd. (a); see former Cal. Rules of Court, rule 5.645(d) ["If the court finds that there is reason to doubt that a child who is the subject of a petition filed under section 601 or 602 is capable of understanding the proceedings or of cooperating with the child's attorney, the court must stay the proceedings and conduct a hearing regarding the child's competence"].)

"Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence." (§ 709, subd. (b).)

The right to a competency determination may not be waived by defense counsel. (See *People v. Marks* (1988) 45 Cal.3d 1335 (*Marks*); *Pate v. Robinson* (1966) 383 U.S. 375, 384.)

A. Competence determination

Here, the parties agree that D.G. had a right to a competency hearing as a matter of due process and under section 709. D.G. contends that the court did not make the required determination that he was competent to stand trial. The People respond that the court made a proper finding of competence at the hearing on September 12, 2011, in which the court first gave defense counsel an opportunity to speak and then made an express finding that D.G. was competent to stand trial.

D.G. relies on *Marks, supra*, 45 Cal.3d 1335. In that case, counsel for criminal defendant Marks expressed severe doubt as to his client’s ability to assist in his defense. (*Id.* at p. 1338.) In response, the trial court ordered a special hearing to determine Marks’s mental competence and appointed two psychiatrists to examine Marks and submit reports. (*Ibid.*)

On the day scheduled for the competency hearing, the court and defense counsel had the following discussion:

“The Court: ‘Is that set for trial?’

“Defendant’s Counsel: ‘It’s set for a 1368 [competency] trial, Your Honor, and I think all 1368⁵ matters have been resolved. Mr. Marks was referred to [two psychiatrists], both of which have submitted reports indicating that Mr. Marks is able to cooperate with counsel for purposes of preparing his defense. After talking to Mr. Marks this morning, I believe that’s a true statement, in which case I would ask that the Court take the matter off calendar and continue the matter ...’

“The Court: ‘All right.’” (*Marks, supra*, 45 Cal.3d at p. 1339.)

There was no further reference in the record to any proceeding to determine Marks’s competence. (*Marks, supra*, 45 Cal.3d at p. 1339.) Marks went to trial and was found guilty of murder. (*Ibid.*)

On appeal, our Supreme Court held that the trial court’s failure to hold a competency hearing required reversal. (*Marks, supra*, 45 Cal.3d at p. 1340.) The *Marks* court explained, “[T]he trial court had no jurisdiction to proceed on the charges against defendant until the court determined whether defendant was competent to stand trial”; the fact that “the [competency] hearing was not held is dispositive.” (*Ibid.*)

⁵In adult criminal proceedings, Penal Code section 1368 requires the court to order a hearing to determine the defendant’s competence if defense counsel informs the court that he or she believes the defendant is or may be mentally incompetent. (Pen. Code, § 1368, subd. (b).) All proceedings in the criminal prosecution must be suspended until the question of the mental competence of the defendant is determined. (Pen. Code, § 1368, subd. (c).)

In the interest of providing guidance to trial courts, the *Marks* court explained why the most likely reasons for the trial court's failure to hold a competency hearing did not affect the result. "The trial court most likely construed the proceedings ... as a waiver of a determination of the competency issue. Defendant's counsel stated, '... I think all 1368 matters have been resolved.' and indicated his belief that defendant was competent. As we emphasized in [*People v.*] *Hale* [(1988) 44 Cal.3d 531], however, '... the matter is jurisdictional, and cannot be waived by counsel. [Citations.] Moreover, as pointed out in *Pate* [*v. Robinson*], *supra*, 383 U.S. at page 384 [citation omitted], "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial.'" (*Hale, supra*, 44 Cal.3d at p. 541.) This principle is well established and understood.... The obligation and authority to determine a defendant's competency belong to the trial court or jury, not to the defendant's counsel." (*Marks, supra*, 45 Cal.3d at p. 1340.)

The court also rejected the argument that, by taking the matter off calendar at the request of defense counsel, the trial court implicitly determined that Marks was competent to stand trial. (*Marks, supra*, 45 Cal.3d at p. 1341.) "We find illogical the notion that an agreement not to hear a matter constitutes a hearing of the matter. That aside, there was no statement by the court that it had formed any opinion as to whether defendant was competent. Nor was there even a suggestion by the court that it had reviewed the psychiatrists' reports." (*Ibid.*)

In this case, D.G. argues that the juvenile court's finding of competence, stated at the hearing on September 12, 2011, was merely acquiescence to defense counsel's failure to pursue the matter and did not constitute a true finding based on consideration of the evidence. D.G. argues that the juvenile court's finding in this case is no different from the trial court's statement, "All right," in *Marks*.

We are not persuaded. As our Supreme Court explained, the trial court in *Marks* most likely understood defense counsel's statement that the section 1368 matters had

been resolved and request that the matter be taken off calendar as a waiver of a determination of the competency issue. The trial court's "All right" was an acceptance of defense counsel's waiver, and no competency determination was made. (*Marks, supra*, 45 Cal.3d at pp. 1339-1340.)

Here, by contrast, defense counsel did not ask that the competency hearing be taken off calendar. Nor did he expressly waive the right to a hearing on the matter. Instead, at a hearing on August 31, 2011, defense counsel told the court he was "not prepared to submit on [D.G.'s] competency at this time" and asked for additional time in order to "look behind the reports" apparently by speaking with Dr. Middleton and possibly Dr. Garcia. At the next hearing, on September 12, 2011, defense counsel told the court that he agreed with Dr. Middleton's assessment.

Given defense counsel's statement at the previous hearing that he was "not prepared to submit," it is reasonable to infer that defense counsel's statement that he agreed with Dr. Middleton's assessment meant that he was prepared to submit. Defense counsel did not waive D.G.'s right to a competency hearing; rather, he submitted the question of D.G.'s competence to the court based on the doctors' reports. As D.G. acknowledges, parties may waive the right to confront and cross-examine witnesses and submit the question of competence to the court based on written reports. (*People v. Taylor* (2009) 47 Cal.4th 850, 861-863 [where both parties submitted question of defendant's competence to court based on two psychologists' reports without further evidence or argument, trial court could constitutionally undertake to resolve competence question without conducting evidentiary hearing]; *People v. McPeters* (1992) 2 Cal.4th 1148, 1168-1169, superseded by statute on other grounds as stated in *People v. Wallace* (2008) 44 Cal.4th 1032, 1087 [submission to court of issue of defendant's competence to stand trial based on psychiatric reports is neither per se unconstitutional nor violation of statute].)

It is apparent that the juvenile court understood defense counsel's statement that he agreed with Dr. Middleton's assessment to mean that he was submitting the question to the court because the court responded by making the competence determination. The court stated, "Then the court will find that [D.G.] is competent to stand trial" Contrary to D.G.'s claim, this is very different from the trial court's conduct in *Marks*, where "there was no statement by the court that it had formed any opinion as to whether defendant was competent." (*Marks, supra*, 45 Cal.3d at p. 1341.) Here, the court expressly made a finding that D.G. was competent.

Further, while there was no suggestion in *Marks* that the trial court had reviewed the psychiatrists' reports (*Marks, supra*, 45 Cal.3d at p. 1341), in this case, the juvenile court summarized the divergent conclusions of Dr. Garcia and Dr. Middleton, suggesting that it did review the reports. D.G. asks us to presume that the juvenile court did not consider the evidence in making its finding. Absent evidence to the contrary, however, we presume that the court did consider the evidence presented. (Evid. Code, § 664; *Thompson v. Thames* (1997) 57 Cal.App.4th 1296, 1308 ["We must presume that the court knew and applied the correct statutory and case law"].)⁶

For these reasons, we reject D.G.'s contention that the court failed to make the determination that he was competent to stand trial.

B. Penal Code sections 1372 and 1374

D.G. also contends that his statutory rights were violated because the juvenile court failed to follow the proper procedures to reinstate the proceedings. He refers to Penal Code sections 1372 and 1374.

⁶D.G. argues for the first time in his reply brief that neither doctor's report was entered into evidence. We do not consider this point because the People were not given an opportunity to respond. (*People v. Tully* (2012) 54 Cal.4th 952, 1075 ["It is axiomatic that arguments made for the first time in a reply brief will not be entertained because of the unfairness to the other party"].)

Under Penal Code section 1372, subdivision (a)(1), “[i]f the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court” Similarly, if a defendant becomes competent after a conservatorship has been established, the conservator is required to certify that fact to the sheriff and district attorney. (Pen. Code, § 1372, subd. (b).) Under Penal Code section 1374, “[w]hen a defendant who has been found incompetent is on outpatient status ... and the outpatient treatment staff is of the opinion that the defendant has recovered competence, the supervisor shall communicate such opinion to the community program director.” If the community program director agrees, the director must certify that opinion to the committing court. (*Ibid.*)

These Penal Code sections, however, “on their face apply only to adult criminal proceedings.” (*In re Christopher F.*, *supra*, 194 Cal.App.4th at p. 469.) As we have discussed, section 709 and California Rule of Court, rule 5.645(d), address competence determinations in juvenile proceedings.

In *In re Christopher F.*, *supra*, 194 Cal.App.4th at page 465, the appellate court reviewed a competency determination made prior to the enactment of section 709. (Section 709 was enacted in 2010 (Stats. 2010, ch. 671, § 1).) The appellant, a minor, argued that the juvenile court erred by failing to appoint a regional center director to evaluate his mental competence, as required in criminal proceedings pursuant to Penal Code section 1369, subdivision (a). (*In re Christopher F.*, *supra*, at p. 468.) The reviewing court rejected the appellant’s argument because California Rules of Court, rule 5.645—not Penal Code section 1369—governed competency determinations in juvenile proceedings, and rule 5.645 did not require the appointment of a regional center director. (*In re Christopher F.*, *supra*, at pp. 469-470 [appointment of regional center

director “is simply not required by statute or rule of court”].) Similarly, in the present case, neither section 709 nor rule 5.645 required certification of restoration of competence from a director of a community program or regional center. Consequently, to the extent D.G. contends he was entitled to the specific procedures provided in Penal Code sections 1372 and 1374, his contention fails because these statutes do not apply in juvenile proceedings.

Further, even assuming for the sake of argument that there was a statutory violation, D.G. has not demonstrated harm. (Cf. *People v. Leonard* (2007) 40 Cal.4th 1370, 1387-1388 [trial court’s failure to appoint director of regional center for developmentally disabled as required by Pen. Code, § 1369 reviewed for prejudice to defendant].) D.G. claims he was harmed because he did not have a hearing on his competence after he was found not competent. We reject this claim because, as discussed above, D.G. was provided a competency hearing; it occurred on September 12, 2011, when defense counsel submitted the issue on the record and the juvenile court made its competency determination. (*People v. McPeters, supra*, 2 Cal.4th at pp. 1168-1169 [competency hearing comported with due process rights where “defendant presented evidence and received an independent judicial determination of his competence to stand trial based on the stipulated record”].)

C. Substantial evidence

In the alternative, D.G. argues that if the juvenile court did find him competent to stand trial, that finding was not supported by substantial evidence. Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Christopher F., supra*, 194 Cal.App.4th at p. 471, fn. 6.) In reviewing the juvenile court’s competency determination, we look at the entire record to determine whether a rational trier of fact could have found D.G. competent to stand trial. (*Ibid.*)

We conclude substantial evidence supported the juvenile court’s finding. Dr. Middleton’s report showed that he administered selected items from the CAST-MR and

D.G. scored 100 percent correct for “Basic Legal Concepts, Skills to Assist Defense, and Understanding Case Events.” Dr. Middleton explained that, while D.G.’s spontaneous responses may have been limited when questioned by Dr. Garcia, he “was able to consistently attend to the multiple choice format.” For example, Dr. Garcia reported that D.G. did not know what a plea bargain was, but Dr. Middleton found that he did know what a plea bargain was when asked about it in a multiple choice format. The doctor observed that D.G.’s reasoning skills appeared to be higher than his auditory attention or speed of performance, and he opined that “[t]he minor appeared to be quite competent.” Given Dr. Middleton’s report, a rational trier of fact could find D.G. competent to stand trial.

D.G.’s argument that substantial evidence was lacking is premised on his assertion that Dr. Middleton did not actually make a competency determination in his report. “At most,” he argues, “Dr. Middleton stated that D.G. did not show evidence of severe cognitive deficits that would interfere with his competency.” We disagree with D.G.’s interpretation of Dr. Middleton’s report. In contrasting his results to Dr. Garcia’s, Dr. Middleton observed, “The minor appeared to be quite competent.” Later in his report, under the heading “Impressions and Recommendations,” Dr. Middleton reported that D.G. scored 100 percent on the CAST-MR and again stated that D.G. “appeared quite competent.” A reasonable reading of the report is that Dr. Middleton determined that D.G. was competent to stand trial.⁷ In any event, even assuming Dr. Middleton did not make a competence determination, his report contained substantial evidence from which the juvenile court could find that D.G. was competent.

⁷Dr. Middleton’s closing statement that he would “of course defer to the [Kern Regional Center] clinical and/or forensic teams regarding the minor’s eligibility and competency” does not persuade us otherwise. We understand this statement as acknowledgment by Dr. Middleton that he was not the final decision maker with respect to D.G.’s eligibility for services or his competence to stand trial. This statement does not indicate that Dr. Middleton did not make a determination about D.G.’s competence in his report.

D.G. also asserts that Dr. Middleton's report failed to state the criteria used to select the administered items. We find this unpersuasive because, as the People point out, D.G. does not explain the significance of this criticism. He appears to believe that the Juvenile Adjudicative Competence Interview used by Dr. Garcia is more reliable or appropriate than the Competence Assessment for Standing Trial for Defendants with Mental Retardation used by Dr. Middleton, but he offers no evidence or explanation for his belief. At the time of his evaluations, D.G. was a 16 year old who was found to be mildly retarded. We see no reason to assume that an assessment instrument that took into account his age but not his mental retardation is inherently superior to an instrument that took into account his mental retardation but not his age.

Finally, D.G. argues that Dr. Middleton did not assess for several issues relevant to whether D.G. was competent to stand trial. The question for us, however, is not whether Dr. Middleton's report could have been more detailed or addressed more issues. The question is only whether there was substantial evidence to support the juvenile court's finding that D.G. was competent to stand trial. We have concluded there was such evidence in the record.

II. Ineffective assistance of counsel

D.G. next claims that defense counsel was ineffective because counsel impermissibly waived his right to a hearing on the issue of competency or failed to pursue a hearing on competency in light of the evidence that D.G. was not competent. This claim is premised on his position that the hearing on September 12, 2011, was not a competency hearing and the juvenile court did not make a finding that D.G. was competent. As we have discussed, however, the juvenile court did make a competence finding on September 12, 2011. The court did so after defense counsel submitted the question to the court based on the doctors' reports. Consequently, we reject D.G.'s claim that his counsel waived his right to a hearing or failed to seek a competency hearing.

D.G.'s argument may also include the claim that defense counsel was ineffective

by submitting the matter to the court based on the doctors' reports instead of presenting witnesses and making an argument. "To succeed in a claim of ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and that, but for counsel's error, the outcome of the proceeding, to a reasonable probability, would have been different. [Citations.] If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, the claim on appeal must be rejected unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation." (*People v. Lawley* (2002) 27 Cal.4th 102, 133, fn. 9.)

We "indulge a strong presumption that counsel's acts were within the wide range of reasonable professional assistance." (*People v. Dennis* (1998) 17 Cal.4th 468, 541.) To prevail on a claim of ineffective assistance of counsel, an appellant must overcome the presumption that defense counsel's conduct could be considered sound legal strategy under the circumstances. (*Ibid.*)

Here, D.G. has not established either that defense counsel's performance fell below reasonable standards or that he suffered prejudice. First, the record shows that defense counsel asked for additional time and indicated that he intended to contact Dr. Middleton and possibly Dr. Garcia. At the next hearing, defense counsel submitted the question of competence to the court, stating that he agreed with Dr. Middleton's assessment. Defense counsel was not asked for an explanation of his actions. It is possible that he followed up with both doctors and determined as a matter of legal strategy that witness testimony and argument would not be helpful at the competency hearing. Second, D.G. has not established prejudice as he does not explain what testimony or argument defense counsel could have made that reasonably would have resulted in a different outcome.

III. Court orders

Penal Code section 1202.1 provides that the court must order every person adjudged by the court to be a person described by section 601 or 602 of the Welfare and Institutions Code by reason of a violation of specified sexual offense “to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) within 180 days of the date of conviction.” (Pen. Code, § 1202.1, subd. (a).) “[U]pon the victim’s request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested.” (Pen. Code, § 1202.1, subd. (d)(2).)

Here, the court ordered D.G. to provide two specimens of blood, one within seven days and a second one six months from that date, “pursuant to [Penal Code section] 1202.1” The order further provided that the results of the test be sent to the minor, the victim, and “the officer in charge of the facility and the chief medical officer **if** the defendant or minor is detained.”

The parties agree that only one HIV test is required under the statute, and that test must occur within 180 days of the court’s jurisdictional finding, October 24, 2011. In addition, the parties agree that Penal Code section 1202.1 does not require the test result to be sent to the victim or “the officer in charge of the facility and the chief medical officer” in this case. As a result, we will remand the matter to allow the court (1) to modify the order to require D.G. to submit to one HIV test within 180 days of October 24, 2011, and (2) to strike the part of the order requiring the result be sent to the victim and the officer in charge of the facility and the chief medical officer.

The court ordered D.G. to “have no contact with minors under the age of 12 unless supervised by an adult.” The parties agree that prohibiting a minor from associating with any child under age 12 without the requirement that the minor know the child’s age is unconstitutionally overbroad. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 816 [prohibition from associating with “any gang members” unconstitutionally overbroad; modified to prohibit association with “any person known to [juvenile] to be a gang

member”].) We will remand the matter to allow the court to modify the order to prohibit D.G. from contact with minors known by him to be under age 12.

DISPOSITION

The case is remanded to the juvenile court to correct its orders regarding HIV testing and contact with minors as discussed in this opinion. The judgment is affirmed in all other respects.

Wiseman, Acting P.J.

WE CONCUR:

Gomes, J.

Kane, J.