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

In re F.S., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

F.S.,

Defendant and Appellant.

F064780

(Super. Ct. No. JW116806-04)

OPINION

THE COURT*

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

Allan Junker, 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 Michael A. Canzoneri, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J. and Franson, J.

It was alleged in a supplemental juvenile wardship petition (Welf. & Inst. Code, § 777)¹ that appellant, F.S., violated probation by failing to complete juvenile sex offender counseling. On March 26, 2012, appellant admitted the allegation, and at the disposition hearing on April 10, 2012, the court ordered appellant, who at that time was a little less than seven weeks shy of his 20th birthday, committed to juvenile hall for four years, with credit of 281 days for time served, and ordered, pursuant to section 208.5, that appellant be delivered to the custody of the county sheriff to serve the term imposed in county jail.

On appeal, appellant's sole contention is that the juvenile court abused its discretion in ordering appellant to serve his commitment in county jail. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

Appellant was initially adjudged a ward of the juvenile court and placed on probation in March 2008, following his adjudication of receiving a stolen motor vehicle (Pen. Code, § 496d), a felony. Conditions of probation included that he attend the Blanton Academy. In October 2008, he was found to be in violation of probation after he was dropped from the Blanton Academy. The court continued appellant on probation, not to extend past his 21st birthday, and ordered him committed to Camp Erwin Owen (CEO).

Later in October 2008, appellant admitted an allegation that he committed a misdemeanor violation of Penal Code section 496d. The court continued appellant on probation for a period not to exceed five years, and ordered that his commitment to CEO remain in effect.

Appellant was released from CEO in January 2009. In April 2009, "[appellant] was arrested on a furlough violation for curfew violation [and] not residing with his mother as directed, and additionally, it was noted [appellant] was uncooperative with

¹ All statutory references are to the Welfare and Institutions Code.

² Information in this section is taken from the report of the probation officer filed April 10, 2012, in connection with appellant's disposition hearing on that date.

Probation.” He was ordered to serve three days in juvenile hall. Thereafter, appellant “completed the furlough portion of his commitment program and was transferred to regular supervision.”

In February 2010, a supplemental wardship petition was filed in which it was alleged that appellant committed a violation of Penal Code section 261.5, subdivision (c) (unlawful sexual intercourse with a minor more than three years younger than the perpetrator) and violated his probation. Later that month, appellant admitted the allegations, and the juvenile court declared the offense to be a felony, continued appellant on probation for a period not to extend past his 21st birthday, ordered him committed to CEO, and made various other orders, including that he complete sex offender counseling.

In May 2010, appellant was released from CEO. The court ordered that appellant enroll in the Star Academy and complete juvenile sex offender counseling. In July of 2010, a “furlough warrant” was issued for appellant’s arrest due, inter alia, to appellant’s failure to attend Star Academy and failure to enroll in juvenile sex offender counseling. Appellant “remained on the run for several months,” before he was arrested in November 2010. He served a 14-day commitment in juvenile hall, and in December 2010, “a re-assessment was completed at which time [appellant’s] overall level of risk to re-offend was determine[d] to be ‘high.’”

The instant petition, alleging that appellant was dropped from the Kern County Mental Health Juvenile Services, Juvenile Sexual Offender Program (JSOP), was filed in June 2011. A mental health therapist stated the following in a memorandum: Appellant began the JSOP on February 23, 2011. His “progress and participation had been entirely unsatisfactory since the time of his referral.” Appellant “failed to attend even one individual therapy session once his initial assessment and treatment planning sessions were completed.” He “was completely unresponsive to efforts to contact him to rectify the problem and as a result he was dropped from [JSOP].”

The probation office contacted appellant in March 2012 at the Lerdo Jail Facility, where appellant was being housed, at which time appellant “appeared to be indifferent and unresponsive to questioning regarding his recent history on probation,” although at the “end of the conversation, he [stated] he hoped to complete his counseling upon release from custody.” A “re-assessment was completed” at that time, “and it was determined [appellant’s] overall level of risk to re-offend is ‘high.’”

Appellant has not graduated from high school, “he has not attended school since absconding from the Star Academy program in July of 2010,” he “has no plans of re-enrolling ... or attempting to obtain his GED [General Educational Development],” he “does not work,” and he told the probation officer that he uses marijuana approximately three to four times per week.

The probation officer recommended that the court order a juvenile hall commitment and that “[b]ased on [appellant’s] age and pursuant to ... [s]ection 208.5, [appellant] shall be delivered to the custody of the Sheriff to serve the time in the Kern County Jail.”

DISCUSSION

As appellant does not dispute, generally, where, as here, a ward over the age of 19 violates probation, section 208.5 “allows the ward to be delivered to a local adult detention facility, unless the court orders continued detention in the juvenile facility.” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 616.) Appellant argues that the court abused its discretion in ordering a disposition that results in appellant serving time in county jail because, he asserts, such disposition is unduly harsh. Specifically, appellant argues as follows: the offense for which he was most recently placed on probation—violating Penal Code section 261.5, subdivision (c)—is not among the serious offenses listed in section 707, subdivision (b); a disposition that requires appellant to serve time in county jail for failing to complete a therapy program “makes no sense,” because he will not receive therapy in jail; a disposition that requires appellant to serve time in county jail will

not further two of the purposes of the juvenile court law, viz., providing for the safety and protection of the public and strengthening appellant's family ties; appellant is not a "threat to the public;" there were less restrictive dispositions available; and the court's disposition order "appears retributive." Appellant's challenge to the disposition order is without merit.

"A juvenile court's commitment order may be reversed on appeal only upon a showing the court abused its discretion." (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330; accord, *In re Todd W.* (1979) 96 Cal.App.3d 408, 416.) An appellate court will not lightly substitute its judgment for that of the juvenile court but rather must indulge all reasonable inferences in favor of the decision and affirm the decision if it is supported by substantial evidence. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473 (*Asean D.*); *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53 (*Lorenza M.*).

"In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing to support the commitment in light of the purposes of the Juvenile Court Law. (§ 200 et seq)" (*Lorenza M., supra*, 212 Cal.App.3d at p. 53.) "In 1984, the Legislature amended the statement of purpose found in section 202 of the Welfare and Institutions Code. *It now recognizes punishment as a rehabilitative tool* and emphasizes the protection and safety of the public.³ [Citation.] The significance of this change in emphasis is that when we assess the record in light of the purposes of the Juvenile Court Law [citation], we evaluate the exercise of discretion with punishment and public safety and protection in mind." (*Lorenza M., supra*, 212 Cal.App.3d at pp. 57-58, fn. omitted (italics added);

³ Section 202 provides in relevant part: "Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. *This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter.*" (§ 202, subd. (b) (italics added).)

accord, *Asean D.*, *supra*, 14 Cal.App.4th at p. 473 [“the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public”].)

Appellant has shown a consistent pattern of failing to conform to the law’s requirements, despite multiple grants of probation and commitments to CEO and juvenile hall. He has suffered adjudications of one misdemeanor and two felonies, violated probation on multiple occasions, failed to attend school, used marijuana on a regular basis and has been consistently incorrigible for a significant period of time. As demonstrated above, the juvenile court law specifically acknowledges that punishment can aid in a ward’s rehabilitation by holding him or her accountable, and the record here supports the conclusion that a disposition less restrictive than that ordered here would not be adequate to hold appellant accountable for his actions. Therefore, when we consider the current purposes of the juvenile court law, we conclude the disposition order in the instant case did not constitute an abuse of discretion.

DISPOSITION

The judgment is affirmed.