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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JORDAN S.,

Defendant and Appellant.

F066256

(Super. Ct. No. 512219)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Nan Cohan Jacobs, 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, Eric L. Christoffersen and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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

The court continued appellant, Jordan S., as a ward of the court after Jordan admitted allegations in a supplemental petition (Welf. & Inst. Code, § 777) that he violated his probation. On appeal, Jordan contends the court abused its discretion when it committed him to the Division of Juvenile Justice (DJJ). We affirm.

FACTS

On March 23, 2010, Jordan, who was then 14 years old, walked up behind a female acquaintance and grabbed her breasts. The girl told Jordan not to do that again. When Jordan began saying things to her, the girl slapped him. Jordan threw a soda at the girl and she slapped him again. Jordan then spit on the girl and punched the wall.

On May 18, 2010, at approximately 3:00 p.m., Jordan and other juveniles argued with Robert Aguilar over Jordan harassing one of Aguilar's sons. During the argument Jordan kicked the side and door of Aguilar's minivan and scratched it with a knife. When Monica Budd and Beth Roland intervened, Jordan kicked Budd's car several times and threw a knife at it. Roland told Jordan she was going to call the police and Jordan grabbed her cell phone and broke it in half.

On June 24, 2010, at approximately 3:00 p.m., Jordan struck a juvenile on the head with a skateboard. When the victim fell, Jordan continued to punch him. During the attack the victim sustained a "closed head injury," a black eye, bruising on the nose, and abrasions to the back of his head.

On July 13, 2010, the district attorney filed a first amended petition charging Jordan with misdemeanor sexual battery (count 1/Pen. Code, § 243.4, subd. (e)(1)), felony assault with a deadly weapon (count 2/Pen. Code, § 245, subd. (a)(1)), and misdemeanor vandalism (count 3/Pen. Code, §594, subd. (b)(2)(A)).

Jordan subsequently admitted committing these offenses. On September 15, 2010, the court declared Jordan a ward of the court and committed him to juvenile hall for 120 days with credit for 84 days served.

On February 24, 2011, the court continued Jordan as a ward of the court after he admitted violating his probation by failing to attend school and testing positive for marijuana on three occasions. The court committed Jordan to juvenile hall for 14 days with credit for 2 days.

On March 7, 2011, at approximately 11:55 a.m., Jordan and two gang members approached three high school students and asked them if they “banged.” When one replied he did not, Jordan and the two gang members struck him in the face. An officer who spoke to the victim noticed that his nose was bruised, swollen, and bleeding, and appeared to be broken. Based on information provided by the victim, officers located and detained Jordan and two other males. The victim was transported to the location and positively identified Jordan as one of the males who assaulted him.

On March 9, 2011, the district attorney filed a petition charging Jordan with assault by force likely to produce great bodily injury (count 1/Pen. Code, § 245, subd. (a)(1)).

On April 15, 2011, following Jordan’s admission of the assault offense, the court committed Jordan to juvenile hall for 240 days with credit for 40 days served.

On October 19, 2011, Jordan admitted violating his probation by failing to maintain good school attendance, participate in counseling, and abide by his curfew. Jordan was also associating with Norteño gang members and he admitted to a police officer that he was a “West Side Gangster Crip.” The court committed Jordan to juvenile hall for 120 days with credit for 3 days.

On January 24, 2012, Jordan was suspended five days from school for throwing a pencil at his teacher.

On February 2, 2012, Jordan tested positive for marijuana. He also had six days of unverified or unexcused absences from school in February 2012.

On March 14, 2012, the prosecutor filed an amended supplemental petition alleging Jordan violated his probation by failing to obey all laws, regularly attend school, and refrain from using alcohol and/or drugs.

On March 19, 2012, Jordan admitted the allegations in the petition.

Jordan's Probation Report

Jordan's probation report indicates his mother failed to appear for a scheduled interview with Jordan's probation officer or to contact the officer to reschedule. It also noted that Jordan had been a ward of the court for 18 and a half months and during that time he appeared before the court four times on probation violations and new law violations. He had also been in and out of juvenile hall five times, spent 12 months in custody, and each time he was released from custody Jordan soon resumed his delinquent behavior. Jordan also failed to attend school consistently, to attend counseling at all, and he continued to test positive for marijuana and associate with known gang members and "prior co-responsibles." During an interview with the probation department, Jordan admitted smoking marijuana every other day and that he was a member of a local gang.

Additionally, Jordan had been involved in numerous incidents in juvenile hall. On May 17, 2011, he received 24 hours of room rest for assaulting another juvenile because the juvenile "snitched" on Jordan's friend. On June 8, 2011, he received five hours of room rest for noncompliant and disrespectful behavior. On June 14, 2011, he received 24 hours of room rest for punching a juvenile standing in a line because "the voices in his head told him to." On June 21, 2011, he received 24 hours of room rest for challenging a rival gang member to fight and exchanging negative comments with him. On July 1, 2011, Jordan received seven hours of room rest for challenging another juvenile to fight. On July 13, 2011, he received negative point reflections for noncompliant and disrespectful behavior. On October 23, 2011, Jordan received 24 hours of room rest for calling another juvenile a derogatory name and punching him in the mouth. In that

incident staff had to pepper spray Jordan in order to get him to comply with their commands. On December 21, 2011, Jordan received 24 hours of room rest for repeatedly punching another minor in the head and face and he had to be physically separated and restrained to end the assault. On March 26, 2012, Jordan received 24 hours room rest for inappropriate language and for threatening staff.

The report also noted that Jordan failed to attend an assessment counseling appointment on February 17, 2011, and an eight-week Cognitive Behavioral Therapy Group that began on September 6, 2011. In the latter part of 2011 Jordan and his mother cancelled several appointments with a case worker from Juvenile Justice Behavioral Health and this resulted in the worker “closing” Jordan from services.

On March 23, 2012, Jordan’s probation officer contacted the DJJ and was informed that if committed there, an assessment would be made to determine Jordan’s individualized needs. He would also be referred to the Impact Program, which is designed to counsel and educate juveniles who are gang affiliated, to the Counter Point Program, and to aggression intervention training. Jordan would also be encouraged to work towards obtaining his high school diploma or GED. The report recommended a commitment to the DJJ.

On November 1, 2012, at a contested dispositional hearing, defense counsel submitted medical records which indicated that while living in Missouri, Jordan was sexually abused at 18 months of age and removed from his mother’s custody. They also disclosed that his mother’s boyfriend regularly physically abused Jordan and his mother. Additionally, Probation Officer Brian Ousby testified that he was very familiar with the programs at the DJJ and that it offered a therapeutic program that addressed several issues of importance to Jordan including sexual abuse and child abuse. Ousby further testified that there were no long-term programs at juvenile hall and that Jordan’s assaultive conduct made it difficult, albeit not impossible, to place him in a group home.

However, Ousby was concerned that in a group home Jordan would continue his assaultive conduct, that this would threaten the safety of staff and other wards at the home, and that Jordan would be a disruptive influence in such a setting.

After hearing argument, the court deferred its decision to the following day so it could review medical records submitted by defense counsel and the current and prior probation reports. The following day the court committed Jordan to the DJJ for a maximum term of confinement of five years six months. In so doing, the court found that Jordan would benefit from the services available at the DJJ, including those that would address his sexual abuse and domestic violence victimization, his substance abuse, and his mental health issues. The court also found that a group home commitment would be inappropriate because it provided a less structured setting than juvenile hall and Jordan had not been able to control his behavior at the hall. In so finding, the court cited Jordan's inability to follow rules at juvenile hall, his numerous incidents of violence against other minors, and his disrespect and defiance of staff. The court also concluded from Jordan's dismal behavior at the hall and his history of violence that other less restrictive alternatives would be inappropriate or ineffective and that public safety required placement in a more secure setting than a group home.

DISCUSSION

Jordan contends his commitment to the DJJ serves no other purpose than punishment. He further contends the court made findings based primarily on Jordan's failure to take advantage of services offered to him and his failure to stay in one location long enough to give him any services except when he was in custody. However, according to Jordan, his failure to participate in treatment was due to the extremely poor supervision by his mother and not on his failure to cooperate. Additionally, Jordan cites the Juvenile Placement Manual prepared by the Center on Juvenile and Criminal Justice to contend there were at least three high level group home placements that work with

juvenile gang members with assault-related adjudications and histories of acting out in juvenile hall where the court could have placed him. Jordan also contends the record does not contain any evidence he would receive the services the court said he would at the DJJ. Thus, according to Jordan, his commitment to the DJJ must be reversed because less restrictive alternatives to a DJJ commitment were available and there was absolutely no evidence presented that he would benefit from being committed there. We will reject these contentions.

A. Standard of Review

A juvenile court's commitment decision may be reversed on appeal only upon a showing the juvenile court abused its discretion. (*In re Todd W.* (1979) 96 Cal.App.3d 408, 416.) In evaluating the record, we apply the substantial evidence test. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 579.) The reviewing court indulges all reasonable inferences in support of the juvenile court's decision. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) A DJJ commitment must conform to the general purpose of the juvenile court law. (Welf. & Inst. Code, § 202; *In re Todd W.*, *supra*, 96 Cal.App.3d at p. 417.) Legislation enacted in 1984 recognized punishment as a rehabilitation tool and shifted the "emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express 'protection and safety of the public' [citations], where care, treatment, and guidance shall conform to the interests of public safety and protection." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) The disposition also must evidence probable benefit to the minor and that less restrictive alternatives would be ineffective or inappropriate. (Welf. & Inst. Code, § 202, subd. (e); *In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576.)

A juvenile court is not required to attempt less restrictive alternatives before ordering a specific commitment. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473.) "[I]f there is evidence in the record to show a consideration of less restrictive placements was

before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal.” (*In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577.)

B. Analysis

Applying these principles, we conclude the juvenile court acted within its discretion by committing Jordan to the DJJ. Jordan needed long-term, intensive treatment to deal with his assaultive conduct, anger management issues, gang behavior, failure to attend school, and other issues arising from having been a victim of domestic and sexual abuse. However, his extensive history of assaultive behavior and his failure to attend school and to comply with court orders and probation directives to submit to treatment required that he be placed in a secure placement where he could receive the counseling and treatment he needed. These circumstances, particularly his assaultive conduct, support the court’s finding that a commitment to a group home would be inappropriate because it was not secure enough and it would put staff and other wards at risk, as well as disrupt the treatment other wards received there. The court could also reasonably find that a commitment to juvenile hall would be inappropriate because it did not have any long-term programs and Jordan’s numerous commitments there had been ineffective in reforming him.

Moreover, the juvenile court law now recognizes the rehabilitative effect of punishment and a concern for the safety of the community. (Welf. & Inst. Code, § 202.) Jordan’s assaultive conduct remained unabated even in a secure juvenile hall setting where he spent more than a year in custody. Thus, the court could reasonably conclude from the failure of past placements, the danger Jordan posed to the community, and the need to hold Jordan accountable, that any placement short of a DJJ commitment would be ineffective or inappropriate.

Further, Probation Officer Ousby testified that he was informed by an intake officer at the DJJ that if Jordan were committed there, an assessment of his individual needs would be conducted and Jordan would then be referred to programs that addressed his gang affiliation and aggression. Jordan would also be encouraged to work toward earning his high school diploma or GED. Ousby also testified that the DJJ offers a therapeutic treatment program for sexually abused children that addressed several issues of importance to Jordan including sexual abuse and domestic abuse. Additionally, the court could reasonably find that Jordan would benefit from the structure and discipline inherent in a commitment to the DJJ, as well as the vocational and educational programs, and other counseling and therapeutic programs available there. (Cf. *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153 [juvenile court properly found that the DJJ, with its specialized institutions and rehabilitative programs tailored to a delinquent's sophistication and need for security, probably would benefit minor].) Thus, the record also supports the juvenile court's finding that Jordan would benefit from a commitment to the DJJ.

Jordan cites three group homes that purportedly serve youth from Stanislaus County who have a history of violence, gang affiliation, and mental disorders as examples of less restrictive placements that would have been appropriate for him. According to Jordan, these group homes are listed in the 2008/2009 edition of the Juvenile Placement Manual that is published by the Center on Juvenile and Criminal Justice. However, this manual was not introduced into evidence in the juvenile court. Thus, this claim is not properly before us because it relies on evidence outside the record. (*People v. Seaton* (2001) 26 Cal.4th 598, 634.) In any event, the court found that a group home placement would be inappropriate for the reasons previously discussed and this finding is amply supported by the evidence.

Further, Jordan's assertion that the record does not contain any evidence that he would benefit from a commitment to the DJJ ignores the previously discussed evidence that Jordan would probably benefit from a DJJ commitment. Accordingly, we conclude that the court did not abuse its discretion when it committed Jordan to the DJJ.

DISPOSITION

The judgment is affirmed.