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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER G.,

Defendant and Appellant.

F066765

(Super. Ct. No. JW128972-01)

OPINION

THE COURT*

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

Michael L. Pinkerton, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, and Wanda Hill Rouzan, Deputy Attorney General for Plaintiff and Respondent.

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

Appellant, Christopher G., a minor, stands adjudicated following a jurisdiction hearing on December 27, 2012, of two counts of rape by force (Pen. Code, § 261, subd. (a)(2)) and one count of committing a lewd or lascivious act against a child under the age of 14 years (Pen. Code, § 288, subd. (a)). At the disposition hearing on January 11, 2013, the juvenile court readjudged appellant a ward of the court under Welfare and Institutions Code section 602,¹ ordered him committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), and set his maximum term of physical confinement at 12 years, less credit for 191 days served in custody.

In a separate case, on July 31, 2012, appellant admitted allegations that he committed grand theft from a person (Pen. Code, § 487, subd. (c)) and battery causing great bodily injury (Pen. Code, § 243, subd. (d)). We refer to this case as the second case.

Section 733, subdivision (c) (section 733(c)) precludes the court from committing a minor to DJF unless, among other things, “the most recent offense alleged in any petition and admitted or found to be true by the court” is an offense listed in section 707, subdivision (b) or Penal Code section 290.008, subdivision (c). (§ 733(c).)

Appellant contends he committed the offenses in the second case *after* he committed the offenses in the instant case; this makes the second case offenses the “most recent offense[s] alleged in any petition and admitted or found to be true by the court” under section 733(c); neither of those offenses is a DJF-eligible offense; and therefore the court erred in ordering him committed to DJF.

The People counter as follows: The relevant date for purposes of section 733(c) is the date of the petition, not the date the offense was committed; the petition in the instant case was filed more recently than the petition in the second case; the two rape counts adjudicated in the instant case are DJF-eligible offenses; and therefore, regardless of the

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

fact that the instant case offenses predate the second case offenses, the instant case offenses are the “most recent offenses” under section 733(c), and therefore the court was not precluded from ordering DJF commitment.²

We affirm.

FACTUAL BACKGROUND

The wardship petition in the instant case was filed September 13, 2012. In that petition, as amended, it was alleged, inter alia, in counts 1 and 4 that appellant committed rape by force, in violation of Penal Code section 261, subdivision (a)(2). It was alleged appellant committed the count 1 rape between January 1, 2010, and December 31, 2011, and the count 4 rape between January 1, 2008, and December 31, 2008.

Forcible rape (Pen. Code, § 261, subd. (a)(2)) is among the offenses listed in section 707, subdivision (b) and Penal Code section 290.008, subdivision (c) and is therefore a DJF-eligible offense. (§ 707, subd. (b)(4); Pen. Code, § 290.008, subd. (c)(2).)

The petition in the second case was filed prior to the petition in the instant case, on July 9, 2012. Appellant committed the two offenses of which he stands adjudicated in the second case on June 12, 2012. Neither of those offenses is a DJF-eligible offense.

DISCUSSION

At the outset, we set forth what is *not* disputed. Appellant committed the non-DJF-eligible offenses adjudicated in the second case more than six months after he committed the most recent DJF-eligible offenses adjudicated in the second case. Therefore, if appellant’s interpretation of section 733(c) is correct—if it is the date of the commission of the offense that controls—neither of the second case offenses, which were the most recent chronologically, was a DJF-eligible offense and the court erred in

² The issue of the proper interpretation of section 733(c) is currently before our Supreme Court in *In re D.B.* (2012) 210 Cal.App.4th 1035, review granted February 20, 2013, S207165.

ordering him committed to DJF. On the other hand, although the instant offenses predate the second case offenses, the petition in the instant case was filed after the petition in the second case, and therefore if the People’s interpretation is correct—if it is the date of the petition that controls—the two rapes of which appellant stands adjudicated in the instant case, both of which were DJF-eligible offenses, were his “most recent offenses alleged in any petition and admitted or found to be true by the court” and there was no error.

In addressing this question of statutory interpretation, we adhere to the following principles:

“We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first, to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.” (*People v. Flores* (2003) 30 Cal.4th 1059, 1063 (*Flores*).

Appellant argues that the “plain language of the statute makes clear that the most recent offense is the critical variable in determining whether a DJF disposition is a legally available option at a disposition hearing.” We disagree. Appellant’s reading of the language is one possible interpretation. However, in our view, the phrase “most recent offense alleged *in any petition*” (§ 733(c), italics added) renders the statute also susceptible to another reasonable interpretation, i.e., that we must look to the date of the most recent petition.

In making his “plain language” argument, appellant relies on *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455 (*V.C.*), and in particular, on the portion of the opinion in which the court stated that examination of the “plain meaning of the statutory language” of section 733(c) leads to the conclusion that “[t]he Legislature has specifically determined it is the minor’s most recent offense that determines the minor’s eligibility for

DJF commitment.” (*V.C., supra*, 173 Cal.App.4th at p. 1468.) *V.C.*, however, is not persuasive authority on this point.

Section 782 provides that a juvenile court may dismiss a wardship petition or a true finding of an allegation of criminal conduct “if the court finds that the interests of justice and the welfare of the minor require such dismissal.” In *V.C.*, the juvenile court, in the exercise of its discretion under section 782, dismissed the minor’s most recent offense, which was a non-DJF-eligible offense, in order to cause an earlier offense, which did qualify the minor for commitment to DJF, to be the most recent offense. The minor’s adjudication of the most recent offense was based on a negotiated plea agreement. The Court of Appeal, noting that “[the minor’s] constitutional rights ... include[d] his due process right to the benefit of his plea bargain” (*V.C., supra*, 173 Cal.App.4th at p. 1465), held “the juvenile court’s dismissal was not in the interests of justice in light of the constitutional rights of [the minor] to his plea bargain” (*id.* at p. 1467).

Next, at the outset of the portion of the opinion upon which appellant relies here, the court stated, “This conclusion is confirmed by consideration of the interests of society, which in this case have been expressed by the Legislature in section 733(c).” (*V.C., supra*, 173 Cal.App.4th at p. 1467.) There follows a discussion in which the court concludes the “plain meaning” of section 733(c) is that “[t]he Legislature has specifically determined it is the minor’s most recent offense that determines the minor’s eligibility for DJF commitment,” and that allowing dismissal of the most recent offense under section 782 would frustrate this legislative intent. (*V.C., supra*, 173 Cal.App.4th at p. 1468.)³

The *V.C.* court’s conclusion regarding the plain meaning of section 733(c) is not persuasive for two reasons. First, because the court held that dismissal under section 782 was an abuse of discretion as it violated the minor’s rights to the benefit of the plea

³ In *In re Greg F.* (2012) 55 Cal.4th 393, 415 (*Greg F.*), our Supreme Court disapproved the *V.C.* court’s conclusion that section 733(c) restricts a juvenile court’s discretion under section 782.

bargain, the court’s discussion of section 733(c), which merely “confirmed” that holding, was unnecessary to its decision and therefore dictum. Second, even if the court’s section 733(c) discussion could be considered part of its holding, in reaching its conclusion as to the plain meaning of the statute, the court did not address the question before us, i.e., whether the critical date is the date of the petition or the date of the offense. (See *People v. Jones* (1995) 11 Cal.4th 118, 123, fn. 2 [“that cases are not authority for propositions not considered”].)

Having determined that section 733(c) is susceptible to at least two reasonable interpretations, we turn now to consideration of public policy and “the ostensible objects to be achieved” by the statute. (See *Flores, supra*, 30 Cal.4th at p. 1063.) On this point we find instructive *Greg F., supra*, 55 Cal.4th 393.

In that case, the California Supreme Court, by a four-to-three majority, held that where a juvenile who was on probation for a DJF-eligible offense committed a non-DJF-eligible offense, the juvenile court had the discretion to dismiss the new petition pursuant to section 782, based upon the juvenile court’s finding that such a dismissal would best serve the interests of justice and the welfare of the minor. The dissent took the position that section 733(c) precluded a section 782 dismissal. The majority stated the following:

“The dissent’s interpretation could also reward gamesmanship in the context of multicount petitions. If a minor commits a series of criminal offenses and all are alleged in the same 602 petition, there is an argument that section 733(c) prohibits commitment to DJF unless the last offense committed is [a DJF-eligible offense]. Although section 733(c) premises eligibility for DJF on the nature of ‘the most recent offense alleged in any petition,’ *focusing on the most recently committed offense could lead to arbitrary and potentially absurd results* in a multicount case. A minor who commits a string of violent acts would be immunized from a DJF commitment if the crime spree happened to end with a nonqualifying offense. *An arguably more sensible interpretation of section 733(c) would require simply that an offense alleged in the most recent petition, and admitted or found true, be listed in section 707(b) or Penal Code section 290.008, subdivision (c).*” (*Greg F., supra*, 55 Cal.4th at p. 412, fn. omitted, italics added.)

In an accompanying footnote, the majority stated: “We need not, and do not, resolve this controversy here. We note, however, that focusing on the most recent petition, and not the most recent offense described in a multicount petition, would appear to avoid absurd consequences and remain consistent with the Legislature’s intent to reserve DJF commitments for specific recent offenses.” (*Greg F.*, *supra*, 55 Cal.4th at p. 412, fn. 3.)

The danger of absurd consequences and results contrary to legislative intent posed by the crime spree scenario posited by the court in *Greg F.* in the context of multicount petitions is also present in the context of multiple counts alleged in separate petitions as in the instant case.

The discussion in *Greg F.* quoted above is dicta. Nevertheless, “statements of the California Supreme Court should be considered persuasive even if properly characterized as dictum.” (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1147.) And, generally speaking, it is advisable for trial courts and intermediate appellate courts to follow Supreme Court dicta. (*Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1168–1169.) In our view, as suggested by our Supreme Court in *Greg F.*, the more sensible view of section 733(c) is that it is the most recent petition that controls. Accordingly, we conclude the court was not precluded here from ordering appellant committed to DJF.

DISPOSITION

The judgment is affirmed.