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

In re IVAN V., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN V.,

Defendant and Appellant.

F069758

(Super. Ct. No. JW132554-00)

OPINION

THE COURT*

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

Kelly Babineau, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, and Carlos A. Martinez, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J. and Detjen, J.

INTRODUCTION

Appellant Ivan V. admitted committing second degree robbery. He also admitted several enhancements, including: (1) the offense was a serious felony; (2) he personally used a firearm in the commission of the offense; (3) he was a principal in a criminal street gang; and (4) the robbery was committed for the benefit of a criminal street gang. He appeals from his commitment order, contending the juvenile court abused its discretion when it committed him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) and erred in imposing confinement time for two Penal Code section 12022.53¹ enhancements.

We agree the juvenile court erred in the amount of confinement time that was imposed and will modify the commitment order accordingly. We conclude, however, the juvenile court did not abuse its discretion in committing Ivan to DJJ.

FACTUAL AND PROCEDURAL SUMMARY

Because Ivan entered into a plea agreement, the facts are taken from the probation officer's report.

On May 2, 2014, at approximately 10:00 p.m., Adriana Herrejon, Mercedes Herrejon, and Miguel Torres were walking in an alley in Bakersfield when two people, later identified as Ivan and Alexis T., exited from a silver Nissan and approached the trio. Ivan was holding a shotgun and as he approached the trio he shouted, "Give up your money and jewelry."

Fearing they would be shot, Adriana handed over her \$400 gold chain necklace and Torres handed over a \$150 silver wedding band and a \$1,500 gold chain necklace. When Ivan and Alexis demanded jewelry from Mercedes, she attempted to hand them her cell phone. Ivan pointed the shotgun at her and stated, "No cell phones." Alexis and Ivan then fled.

¹All further statutory references are to the Penal Code unless otherwise specified.

Bakersfield police officers subsequently spotted the silver Nissan and conducted a high-risk traffic stop. The sole occupant of the vehicle was 17-year-old Joshua H. Joshua gave officers access to his cell phone. The officers found photographs depicting gang signs and firearms, including a sawed-off shotgun, on the cell phone.

Around 10:50 p.m. police officers received information that a cell phone associated with Alexis was near a specific intersection. When the officers arrived, they observed two males matching the descriptions of the suspects, later identified as Ivan and Alexis. The officers detained both Ivan and Alexis. Ivan admitted the two had robbed the victims and had thrown away the shotgun when they fled. Ivan had the two necklaces taken in the robbery on his person. When the two were transported to the location where the robbery had occurred, Ivan nodded toward the alley and stated, “Yeah, that’s where I jacked them.”

When the officers asked Ivan why he had committed the robbery, he responded that he “needed to come up.” When asked whether he was a southerner, Ivan replied, “Fuck no. I’m from the North.” When asked whether he was a Norteño gang member, Ivan stated that he had been born in Delano and grew up with “homies from the North.”

Alexis claimed affiliation with the Norteño criminal street gang. Alexis led the officers to where the shotgun had been discarded. The ring taken in the robbery was found on Alexis.

Mercedes was able to identify the vehicle used in the robbery. All three victims identified Ivan and Alexis as having been involved in the robbery.

On May 7, 2014, an amended Welfare and Institutions Code section 602 petition was filed alleging that Ivan came within the jurisdiction of the juvenile court. The petition alleged that Ivan committed three counts of second degree robbery, three counts of assault with a shotgun, and one count of actively participating in a criminal street gang. Numerous enhancements also were alleged. Ivan denied all allegations and enhancements at the detention hearing.

On May 19, 2014, Ivan entered into a plea agreement. The agreement called for Ivan to admit to one count of second degree robbery and to admit (1) the robbery was a serious felony within the meaning of section 1192.7, subdivision (c)(19), (2) he personally used a firearm in the commission of the offense (§ 12022.53, subd. (b)), (3) he was a principal who participated in a criminal street gang (§ 12022.53(e)(1)), and (4) he committed the robbery for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)). In exchange for the admissions, all other counts would be dismissed.

At the July 7, 2014, dispositional hearing, the juvenile court had reviewed the probation report. The probation report noted that Ivan had first come to the attention of authorities following a 2012 referral for committing battery. He admitted consuming alcohol and regularly using marijuana. His record in school noted disciplinary referrals for truancy and possessing marijuana, for which he was expelled for the remainder of the school year. In making a disposition recommendation, the probation officer considered the nature of the offense, Ivan's behavior at home, and his school performance. The probation officer considered, and rejected, a recommendation for a local commitment because of Ivan's violent conduct in the current offense. A local commitment would have meant placing Ivan in a nonsecure facility, where he easily could flee and thereby place the community at risk. The probation report noted that a group home setting was offered to Ivan and his family; however, they rejected that option because it meant placement out of state.

The probation report noted Ivan's violent and aggressive actions in the instant offense. The probation report opined that Ivan's "criminal sophistication is quickly escalating" and that he was in need of "a long term rehabilitative program." The probation report further opined that Ivan was minimizing the nature of his actions and his participation in the offense. The probation officer concluded that Ivan presented a serious risk to the community. In conclusion, the probation report stated:

“The minor’s criminal sophistication, refusal to take responsibility for his actions, and failure to refrain from delinquent behavior indicate the minor is in need of more intensive and structured rehabilitative services that can only be offered through [DJJ].”

Ivan’s counsel argued against the probation report’s recommendation of a commitment to DJJ, requesting a local commitment. The People submitted on the probation report.

The juvenile court stated it had considered the “individual facts and circumstances of the case” in determining a maximum period of confinement would be 29 years. The juvenile court found that it was probable Ivan would benefit from the programs available at DJJ. Ivan was adjudged a ward of the juvenile court and committed to DJJ.

DISCUSSION

Ivan contends the juvenile court abused its discretion when it ordered a commitment to DJJ. He also contends the juvenile court erred in establishing the maximum term of confinement in that only one term may be imposed for the section 12022.53 enhancements.

I. Commitment to DJJ

Ivan contends the juvenile court abused its discretion and that a local commitment was the appropriate disposition. We disagree.

Welfare and Institutions Code section 202, subdivision (b) provides that 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.” The minor’s rehabilitation and public safety are both important considerations in a juvenile disposition. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667-668.)

The juvenile system is designed to give juvenile courts maximum flexibility in fashioning a disposition. (*In re Greg F.* (2012) 55 Cal.4th 393, 411-412.) A juvenile

court's commitment decision will be reversed only on a showing of abuse of discretion. “““A reviewing court must indulge in all reasonable inferences to support the findings of the juvenile court.””” (*In re Travis J.* (2013) 222 Cal.App.4th 187, 199 (*Travis J.*).

Here, Ivan has failed to demonstrate an abuse of discretion. The juvenile court had reviewed the probation report, which noted that Ivan had a history of truancy and possession of illegal substances. Ivan's current offenses demonstrated violent and aggressive conduct and that his criminal sophistication was quickly escalating. The probation report addressed various short- and long-term secure and nonsecure commitments, concluding that many of the options would aid in Ivan's rehabilitation, but only a commitment to DJJ would provide the long-term rehabilitation Ivan needed, while at the same time providing a secure commitment that would protect the public.

The local programs available to Ivan were either nonsecure or short term, or both. Ivan minimizes the severity of his conduct by arguing that his behavior warranted a local commitment to the Kern Crossroads program, which is a six-month program. Ivan admitted being a member of a criminal street gang, committed a robbery for the benefit of the gang, and personally used a weapon in the commission of the robbery. This conduct warranted more than a few months in a local program, as the juvenile court noted when it stated, “the six-month duration is not sufficient to deal with Ivan's particular needs, nor is it sufficient to deal with the necessary protection for the community.”

As for Ivan's contention that he should not have been committed to DJJ on a first offense, there is no requirement that a minor be committed to other than DJJ on a first offense. DJJ need not be a last resort disposition. Commitment to DJJ ““may be made in the first instance, without previous resort to less restrictive placements.”” (*In re Carl N.* (2008) 160 Cal.App.4th 423, 432-433, quoting *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.)

First offense or not, Ivan committed a serious crime and was engaged in gang activity, which the juvenile court reasonably found warranted a long-term commitment

for rehabilitative and public protection purposes. There was no abuse of discretion by the juvenile court. (*Travis J., supra*, 222 Cal.App.4th at p. 199.)

II. Term of Commitment

Ivan admitted enhancements pursuant to section 12022.53, subdivisions (b) and (e)(1). The juvenile court imposed a confinement period of 10 years for the section 12022.53, subdivision (b) enhancement and an additional four years for the section 12022.53, subdivision (e)(1) enhancement. Ivan contends this is error and the People concede the issue.

Section 12022.53, subdivision (f) provides, in relevant part: “Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment.” Pursuant to section 12022.53, subdivision (f), only one additional term shall be imposed. Consequently, the juvenile court erred in imposing both terms.

We can correct the maximum term of confinement to conform to section 12022.53, subdivision (f) without remanding for further proceedings. (*People v. Smith* (2001) 24 Cal.4th 849, 854.)

DISPOSITION

The maximum term of commitment is hereby modified by striking the term imposed for section 12022.53, subdivision (e)(1). In all other respects the judgment and commitment order are affirmed.