Filed 5/13/19 In re F.G. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re F.G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. F.G., Defendant and Appellant.	F077873 (Super. Ct. No. 513913) **OPINION**

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Ruben A. Villalobos, Judge.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Cavan M. Cox II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Meehan, J. and Snauffer, J.

INTRODUCTION

Appellant F.G. admitted committing robbery and battery with serious bodily injury. He was placed on probation and ordered to serve 150 days in juvenile hall. After violating his probation six times, including commission of subsequent criminal offenses, the juvenile court committed him to the Department of Juvenile Justice (DJJ). He appeals the commitment to DJJ. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On June 1, 2015, F.G. and three other juveniles attacked a male victim. A witness saw four juveniles attack the victim; a gun was pointed at the victim; and one of the juveniles punched the victim several times. When the victim fell to the ground during the attack, the other three juveniles began "kicking and stomping the victim on his head and face." When the victim stopped moving, the juveniles began going through his pockets.

At this point, the four juveniles began walking away, leaving the victim lying in the middle of the roadway. When the juveniles noticed the victim moving again, they returned and one of the juveniles repeatedly kicked the victim while he was on the ground. One of the juveniles then grabbed the victim by his feet and dragged him to the sidewalk.

A Welfare and Institutions Code[1] section 602 petition was filed on June 2, 2015, against F.G., alleging he committed two felonies, robbery and battery with serious bodily injury. F.G. was determined to not be eligible for deferred entry of judgment.

F.G. admitted the allegations. The juvenile court declared F.G. a ward of the court, placed him on probation, and ordered him to serve 150 days in juvenile hall as a condition of probation.

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[1] References to code sections are to the Welfare and Institutions Code.

On April 19, 2016, the probation department filed a notice of violation of probation alleging F.G. was truant from school; disruptive when he was at school; failed to obey curfew; threatened to beat and kill his grandfather; was using marijuana; and was wearing gang attire. F.G. admitted the probation violations on May 4, 2016.

At the May 4, 2016 hearing, the juvenile court stated F.G. was "facing DJJ at this time, and we've got some pretty serious threats against grandfather." The juvenile court informed F.G. that he "admitted to an offense that could get you into" DJJ. F.G. was continued on probation, with 60 days on electronic monitoring, and admonished "to make this work."

On September 6, 2016, F.G. again was found to be in violation of probation for being in a vehicle he knew was stolen. The probation officer noted that when F.G. was placed on electronic monitoring it "didn't go so well" and he spent "the last 23 days in the hall." The People opined that "we're not making any forward progress."

The juvenile court noted that F.G. was 16 years old and needed to "get your high school diploma." The juvenile court continued F.G. on probation and ordered him to serve 75 days in juvenile hall as a condition of probation.

On January 4, 2017, the juvenile court again found F.G. to have violated the terms of probation after he admitted to violating probation by failing to obey all laws. F.G. had been seen driving a stolen vehicle, was stopped and questioned, and admitted taking the vehicle on December 25, 2016. F.G. was continued as a ward of the court on probation and ordered to serve 240 days in juvenile hall.

In November 2017, the probation department again filed a notice of probation violation alleging F.G. was in violation of probation by possessing a controlled substance and failing a sobriety test while at school; failing to obey curfew; and physically fighting with his father. F.G. admitted the allegations on December 1, 2017.

It was noted that F.G. was the father of a baby girl and the juvenile court stated at the December 1, 2017 hearing that F.G. "needs to work" on himself before he could help his minor child. The juvenile court continued F.G. on probation and ordered him to serve 30 days in juvenile hall.

Another violation of probation was alleged on January 25, 2018, on the basis that F.G. was not attending school; not complying with his curfew; and failed to attend required counseling appointments 22 times. F.G. admitted the allegations. The juvenile court continued F.G. on probation and ordered him to serve 45 days in juvenile hall.

Yet another notice of probation violation was filed on April 16, 2018, alleging F.G. was arrested for battering his grandfather and threatening to kill him. F.G. also was charged with battery on a peace officer, resisting arrest, and felony vandalism. On May 10, 2018, F.G. admitted the allegations.

A disposition hearing was held on July 18, 2018. Counsel for F.G. asked for juvenile hall time followed by placement in the home of F.G.'s aunt. The grandfather opined that F.G. was "in the trouble that he's in, because he got too much rope."

The probation officer stated that F.G. had "uncontrollable aggression and impulsiveness," showed a disregard for the law and safety of others, had made threats to his girlfriend and family members, and "seems to work better in a structured environment and in a secured facility." The probation officer stated that a long-term commitment to juvenile hall had been considered, but such a commitment would not provide the same treatment and services as DJJ.

Specifically, the probation officer stated a DJJ commitment would provide vocational training; the ability to receive compensation for work while at DJJ; and mental health services that could address anger management issues, decisionmaking skills, substance abuse, and gang awareness. F.G. would undergo an assessment at DJJ to determine his educational, mental health, and medical needs. He would be reassessed

every 90 to 120 days after that. F.G. was now 18 years old and did not need a legal guardian, so placement in a family home was not viewed as a viable option. It also was felt that F.G. "works better in a secured facility."

At the continued disposition hearing on July 20, 2018, the juvenile court committed F.G. to DJJ. The juvenile court stated it was ordering the DJJ commitment "because I believe that doing so is in your best interest." DJJ would afford an opportunity to "fix the issues that are going on with you." The juvenile court stated, however, that it was not committing F.G. to DJJ for the maximum period of five years, instead imposing a term of commitment of 36 months. The juvenile court also noted that depending upon F.G.'s performance in DJJ, he could "get out much sooner than that." The juvenile court found that F.G. would benefit from the "reformatory discipline" and treatment at DJJ.

The commitment order was filed on July 20, 2018. F.G. filed a notice of appeal on July 30, 2018.

DISCUSSION

F.G. contends the juvenile court abused its discretion when it committed him to DJJ because a less restrictive placement was available and appropriate. We disagree.

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 purpose of juvenile delinquency laws is twofold: (1) to serve the 'best interests' of the delinquent ward by providing care, treatment, and guidance to

rehabilitate the ward and 'enable him or her to be a law-abiding and productive member of his or her family and the community,' and (2) to 'provide for the protection and safety of the public ….' (§ 202, subds. (a), (b) & (d); [citations].)" (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615.) "In determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history." (§ 725.5.)

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.) 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.)

A DJJ commitment is not an abuse of discretion where the record demonstrates "both a probable benefit to the minor … and the inappropriateness or ineffectiveness of less restrictive alternatives." (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) There is "no absolute rule that a DJJ commitment cannot be ordered unless less restrictive placements have been attempted." (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1081; *In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.)

In this case, less restrictive placements were tried repeatedly and failed to effect any change for the better in F.G.'s behavior. Probation with placement in the home of his grandparents and juvenile hall commitments failed to effect any change in F.G.'s behavior and his behavior worsened. Despite F.G.'s claim to the contrary, there were no local options available that would protect the public and rehabilitate him. Juvenile hall commitments and placement with family members had failed. There was no evidence

whatsoever that placement with another family member, the aunt, would protect the public and assist in reforming F.G. now that he was 18 years of age.

The only viable remaining placement was DJJ, as the juvenile court noted. A variety of programs to address F.G.'s mental health needs would be available at DJJ, as well as vocational training to enable him to become a productive member of society who could support himself and his daughter. Periodic assessments would ensure F.G. was receiving the services he needed.

No fewer than six probation violations were found true of F.G. after the sustained section 602 petition for two felony offenses. Several of the probation violations were themselves criminal offenses. F.G. continued to engage in criminal activity, including stealing a vehicle, physically fighting with his father, battering his grandfather and threatening to kill him, battering a peace officer, resisting arrest, and engaging in felony vandalism. In addition, F.G. continued to use marijuana, was in possession of a controlled substance on school grounds, and failed to attend 22 scheduled counseling sessions. The DJJ commitment would provide structure and ensure F.G. received the counseling and other services he needed to reform his behavior, while protecting the public from his anger and aggression.

In addition, the DJJ commitment would provide vocational training opportunities for F.G., who was now 18 years of age, and needed to have the ability to support himself and his daughter.

The restrictive environment at DJJ would provide for the protection and safety of the public and afford an opportunity for F.G. to avail himself of DJJ programs and reform his behavior, which no less restrictive alternative had accomplished. (*In re J.W.*, *supra*, 236 Cal.App.4th at pp. 667–668.)

The juvenile court did not abuse its discretion in committing F.G. to DJJ. (*In re Angela M.*, *supra*, 111 Cal.App.4th at p. 1397.)

DISPOSITION

The July 20, 2018 order committing F.G. to the Department of Juvenile Justice is affirmed.