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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JARED F.,

Defendant and Appellant.

G045840

(Super. Ct. No. DL029879)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory W. Jones, Judge. Affirmed in part and reversed in part.

Rex Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, and Dane R. Gillette, Chief Assistant Attorney General, for Plaintiff and Respondent.

THE COURT:*

Appellant, Jared F., admitted four counts of committing a lewd act on a child, and he was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF). After the dispositional hearing, the Supreme Court decided *In re C.H.* (2011) 53 Cal.4th 94, which holds that a juvenile court may not commit a minor to DJF if the minor has never been adjudged to have committed an offense listed in subdivision (b) of Welfare and Institutions Code section 707. Because Jared has not been adjudged to have committed such an offense, the court's dispositional order is reversed.

STATEMENT OF THE CASE

Jared was charged in a petition filed in 2007 with two counts of committing a lewd act on a child in violation of subdivision (a) of Penal Code¹ section 288. In 2009, he was charged in a subsequent petition with two additional counts. Following a contested probation violation hearing in 2011, the court found several probation violations to be true and ordered that Jared, who was 18 years old at the time, continue as a ward of the court. At the dispositional hearing in September 2011, the court ordered Jared committed to DJF. The court acknowledged the offenses are not listed in subdivision (b) of Welfare and Institutions Code section 707 but stated, "However, they are D.J.J. suitable offenses pursuant to section 733, subdivision (c) of the Welfare and Institutions Code."

DISCUSSION

Prior to 2012, section 733 of the Welfare and Institutions Code stated, "A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities: [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found

* Before Moore, Acting P. J., Aronson, J., and Ikola, J.

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

to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code... .” Section 288, subdivision (a), is set forth in section 290.008.

Three months after the dispositional hearing in this case, the Supreme Court decided *In re C.H.*, *supra*, 53 Cal.4th 94, holding that an offense described in Welfare and Institutions Code section 707, subdivision (b), is a prerequisite to DJF commitment.²

² The offenses listed in Welfare and Institutions section 707, subdivision (b) are: “(1) Murder. [¶] (2) Arson, as provided in subdivision (a) or (b) of Section 451 [arson causing great bodily injury or arson of inhabited structure]. [¶] (3) Robbery. [¶] (4) Rape with force, violence, or threat of great bodily harm. [¶] (5) Sodomy by force, violence, duress, menace or threat of great bodily harm. [¶] (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 [lewd act upon body of child under the age of 14, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury]. [¶] (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm. [¶] (8) An offense specified in subdivision (a) of Section 289 [penetration by foreign object by force, violence, duress, menace, or fear of immediate bodily injury]. [¶] (9) Kidnapping for ransom. [¶] (10) Kidnapping for purposes of robbery. [¶] (11) Kidnapping with bodily harm. [¶] (12) Attempted murder. [¶] (13) Assault with a firearm or destructive device. [¶] (14) Assault by any means of force likely to produce great bodily injury. [¶] (15) Discharge of a firearm into an inhabited or occupied building. [¶] (16) An offense described in Section 1203.09 [crimes against elderly or disabled victim during commission of certain felonies]. [¶] (17) An offense described in Section 12022.5 [personal use of a firearm or assault weapon in commission or attempted commission of a felony] or 12022.53 [additional punishment for use or discharge of a firearm for specified felonies]. [¶] (18) A felony offense in which the minor personally used a weapon described in any provision in Section 16590 [prohibited firearms, knives, clubs, other weapons]. [¶] (19) A felony offense described in Sections 136.1 or 137 [preventing or dissuading a victim or witness, or inducing false testimony]. [¶] (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code [certain depressants, including phencyclidine and similar substances]. [¶] (21) A violent felony, as defined in subdivision (c) of Section 667.5 . . . , which also would constitute a felony violation of subdivision (b) of Section 186.22 [criminal street gang activity]. [¶] (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of [Welfare and Institutions Code] section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape. [¶] (23) Torture as described in Sections 206 and 206.1 [torture inflicting great bodily injury]. [¶] (24) Aggravated mayhem, as described in Section 205 [¶] (25) Carjacking, as described

Noticeably absent from the list is a lewd act on a child under the age of 14 years in violation of subdivision (a) of section 288. Similar to Jared, the minor in *In re C.H.* had also been declared a ward of the court as a result of admitting a violation of subdivision (a) of section 288. After violating his probation several times, C.H. was ordered committed to DJF. *In re C.H.* states that when “[r]ead together, [Welfare and Institutions Code] sections 731(a)(4) and 733(c) limit the class of wards who may be committed to the DJF to those wards who (1) have committed an offense described in section 707(b) and (2) whose most recent offense alleged in any petition and admitted or found to be true by the court is listed either in [Welfare and Institutions Code] section 707 subdivision (b) or . . . 290.008 subdivision (c).” (*In re C.H., supra*, 53 Cal.4th at p. 102, italics added.)

Based on the holding in *In re C.H., supra*, 53 Cal.4th 94, Jared moved for summary reversal of the dispositional order. The Attorney General was invited to file opposition to appellant’s motion for summary reversal, but failed to do so. Accordingly, the motion is granted. (*People v. Browning* (1978) 79 Cal.App.3d 320, 323.)

DISPOSITION

The juvenile court’s order that Jared continue as a ward of the court is affirmed. The dispositional order entered September 8, 2011, committing Jared F. to the DJF is reversed, and the cause is remanded for a new dispositional hearing in accordance with this court’s opinion and *In re C.H., supra*, 53 Cal.4th 94.

in Section 215 . . . while armed with a dangerous or deadly weapon. [¶] (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of section 209 [¶] (27) Kidnapping as punishable in Section 209.5 [kidnapping during carjacking]. [¶] (28) The offense described in subdivision (c) of Section 26100 [firing at pedestrian from a motor vehicle]. [¶] (29) The offense described in Section 18745 [exploding destructive device with intent to commit murder]. [¶] [and] (30) Voluntary manslaughter, as described in subdivision (a) of section 192”