Filed 3/19/12 In re D.M. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IN RE D.M., a Person Coming Under the Juvenile Court Law.	H037009 (Monterey County Superior. Ct. No. J43185)
THE PEOPLE, Plaintiff and Respondent, v. D.M., Defendant and Appellant.	

On April 6, 2011, the juvenile court adjudged D.M. a ward of court, and calculated his theoretical maximum term of confinement at 10 years four months. The court ordered D.M to serve 160 days in juvenile hall with credit for 160 days already served. The court ordered that the juvenile probation department develop a case plan for D.M. and investigate placement in an appropriate group home. On April 20, 2011, D.M. was formally placed on probation on various terms and conditions and placed in a group home.

D.M. has appealed. We appointed counsel to represent D.M. in this court. Counsel has briefed no issues, but requests that we review the record of the proceedings.

(*People v. Wende* (1979) 25 Cal.3d 436.) Counsel attests that D.M. was advised of his right to file a supplemental brief in a timely manner. Furthermore, on December 2, 2011, we notified D.M of his right to submit written argument on his own behalf within 30 days. D.M. has not filed a supplemental brief.[1] We have reviewed the record and affirm the juvenile court's jurisdictional and dispositional orders.

Facts and Proceedings Below

On May 10, 2010, the Monterey County District Attorney filed a Welfare and Institutions Code section 602 petition (602 petition) alleging that on or about May 6, 2010, D.M. committed a lewd and lascivious act on a child under 14 years of age (Pen. Code, § 288, subd. (a)(1), count one) and engaged in oral copulation with the same victim who was under 14 years of age and more than 10 years younger that D.M. (Pen. Code, § 288a, subd. (c)(1), count two). The petition contained an allegation that previous dispositions of the juvenile court had been ineffective in rehabilitating the minor such that prior sustained petitions should be aggregated in calculating the total amount of time that D.M should be removed from the custody and control of his parents.

On October 4, 2010, the 602 petition was amended to change the allegation in count two to a felony violation of Penal Code section 286, subdivision (c) (sodomy) and to drop the aggregation allegation.

On October 12, 2010, the Monterey County District Attorney filed an additional 602 petition alleging that while in juvenile hall D.M committed vandalism in violation of Penal Code section 594, subdivision (a)—a misdemeanor.

At the contested jurisdictional hearing, the mother of the alleged victim testified that she lived with her son (John) and his two sisters in a trailer park in Seaside.[2] John

---

[1] In response to our letter informing D.M. that he could submit a supplemental brief this court received a one inch stack of assorted papers, letters and photographs, which appear to be from D.M.'s father.

[2] We refer to the victim as John to protect his anonymity.

was two years old at the time. D.M., who was 15 years old, lived with his parents in an adjacent trailer. The families had been friends for more than a year.

On May 6, 2011, John was playing outside. D. M. was on his porch reading a magazine. While John's mother went inside to make a sandwich for John's sister, John stayed outside riding his bicycle. When John's mother went back outside she could not find John or D.M.

After looking for John and D.M for a short while, John's mother went to D.M.'s trailer. When she reached the front door she heard John crying. She went into the trailer and went in the direction where she heard John's voice. She heard John say, " 'No, no, hurt. My butt hurt.' "

John's mother opened the door to D.M's room and saw John and D.M. John was naked on his hands and knees on the bed. D.M. was wearing only his boxer shorts and John's mother could see his erect penis. D.M. was making thrusting movements with his pelvis toward John. John was crying and saying, " 'No, my butt hurt.' "

John's mother confronted D.M. about what he was doing, telling D.M. " 'You're molesting him.' " D.M said, " 'No, I'm not.' " John's mother grabbed John and ran outside and then back to her trailer. At her trailer, John's mother put a diaper on John. She smelled baby oil and saw blood on John's backside. D.M. came into her trailer with a lollypop for John. John's mother ordered him to leave, which he did.

After D.M. was arrested, he was taken to juvenile hall. Seaside Police Officer Gabriel Anderson gave D.M. *Miranda* advisements, which D.M. waived.[3] Initially, D.M. denied that he had sexually assaulted John, but eventually he told the officer that he put his penis into John's "butt." D.M. explained that he had been watching a movie and thinking about a girl; he had an erection. D.M. said he went to the bathroom, got some

---

[3] *Miranda v. Arizona* (1966) 384 U.S. 436

Vaseline, put it on his penis and placed his penis in John's "butt." D.M. denied that John screamed and said he "fe[lt] really bad" about what he had done.

As to the vandalism charge, Juvenile Institutional Officer Ezequiel Cervantes, testified that on October 2, 2010, D.M. left his room in juvenile hall to get a drink of water. While Officer Cervantes was escorting D.M back to his room, D.M. began arguing with another minor in front of that minor's room. Officer Cervantes told D.M. to go back to his room. However, before complying, D.M. hit the glass window, which was in the door to the other minor's room, cracking it.

At the conclusion of the jurisdictional hearing, the court found the allegations in both 602 petitions to be true. The court referred the matter to the probation department for a dispositional report.

At the April 6, 2011 dispositional hearing, the court considered the probation report and a JSORT[4] assessment conducted by Dr. Abbott. Based on concerns addressed in Dr. Abbott's report, the court found that it was in the best interests of D.M. to be removed from the custody of his parents and placed in the custody and care of the probation department. As noted, the court ordered that the probation department develop a case plan for D.M.

Subsequently, on April 20, 2011, the court formally adopted the case plan. At the hearing on the case plan, in order to facilitate D.M.'s full participation in treatment, counsel stipulated any statements made by D.M. about the case in the course of therapy could not be used against him in any future proceedings.

On April 21, 2011, D.M. was taken to a group home in keeping with the case plan.

On May 9, 2011, D.M.'s counsel advised the court that she would be filing a motion pursuant to Welfare and Institutions Code section 778.[5] The court expressed

---

[4] JSORT stands for Juvenile Sex Offender Response Team.

[5] Welfare and Institutions Code section 778 provides that "Any parent or other person having an interest in a child who is a ward of the juvenile court . . . may, upon

concern that D.M. was still not participating in therapy based on unrealistic beliefs fostered by his parents that his case was going to "go away." The court noted that if the behavior of D.M.'s father continued to be detrimental to D.M., the court would order that all communication between them be cut off.

On June 6, 2011, D.M.'s counsel dropped the Welfare and Institutions Code section 778 petition leaving the parents to pursue the matter if they so chose.

Our review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 has disclosed no reasonably arguable issues on appeal. The court's jurisdictional findings are supported by substantial evidence. Throughout all of these proceedings D.M. was represented by competent counsel. Competent counsel has represented D.M in this appeal.

Disposition

The jurisdictional and dispositional orders are affirmed.

_____

ELIA, J.

WE CONCUR:

_____

RUSHING, P. J.

_____

PREMO, J.

---

grounds of change of circumstances or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of the court previously made or to terminate the jurisdiction of the court."