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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re D.L., a Person Coming Under the  
Juvenile Court Law.

H038499  
(Monterey County  
Super. Ct. No. J44643)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.L.,

Defendant and Appellant.

The juvenile court found D.L. (minor) to be a person described by Welfare and Institutions Code section 602 (wardship for violation of the law) in that he had committed robbery, residential burglary, and dissuading a witness. It also found that minor had violated probation by disobeying laws and possessing prescription medication. It removed minor from his home and placed him at the Monterey County Youth Center (Youth Center) for 354 days. On appeal, minor contends that the trial court erred by failing to make several findings required by Welfare and Institutions Code section 726, subdivision (d) (requiring that the juvenile court shall specify and note in the minutes the maximum period of confinement; shall specify previous petitions which were sustained; and shall specify the aggregate term of the current offense and previously sustained petitions). We conclude that any error was harmless. Alternatively, minor contends that we should reverse so that the juvenile court can specify his maximum term of

confinement (MTC). In this regard, he urges that the probation officer's recommended MTC of nine years failed to take into account Penal Code section 654 (prohibiting multiple punishment for a single act or course of conduct), and that his MTC should instead be seven years, eight months. The People concede that minor's MTC should be seven years, eight months, and we agree that the concession is appropriate. We therefore modify the judgment to specify minor's MTC and affirm the judgment as modified.

#### SCOPE OF REVIEW

“The record of a disposition hearing in juvenile court ordinarily will provide an adequate appellate record from which to determine the reasons supporting any Youth Authority commitment. The probation report, together with a transcription of the hearing and the referee's remarks and conclusions usually will accompany every record on appeal. [Where] the record herein does contain the various reasons given by the referee in support of his order . . . we discern no valid purpose which would be served by requiring the juvenile court judge to repeat those or other reasons in his commitment order.” (*In re John H.* (1978) 21 Cal.3d 18, 24.) “ ‘ ‘ ‘A judgment or order of the lower court is *presumed correct*[, and a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” ’ ” (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499.) With this criterion in mind, we summarize the evidence.

#### FACTUAL BACKGROUND

Avnil Prasad lives in Seaside, California, along with his parents and older siblings. He testified to the following. On March 15, 2012, around 2:30 p.m., he went outside his home and into a storage shed located in the backyard. Thereafter, he returned to the house and witnessed minor standing in the hallway, stealing money from the family's religious shrine, and placing the cash in his backpack. He had never spoken to minor before but recognized him from around the neighborhood. Upon encountering minor, he

questioned: “What are you doing here?” Minor did not respond and instead ran at him, pushing him to the ground. Minor stated: “If you call police, I’m going to kill you.” Minor then fled the house, and Prasad called the police and detailed the incident.

Corporal Jeff Higgins and Sergeant Nicholas Borges, police officers for the Seaside Police Department, were dispatched separately to Prasad’s house after reports of the burglary and were given a description of the suspect. Corporal Higgins testified that he was the first to reach the Prasad residence, took a statement from Prasad before examining the house, and learned that the following items were missing: \$40-\$50 in cash from the shawl in the prayer place; a \$500 laptop computer; and two Vicodin pills.

Sergeant Borges testified to the following. While in route to the Prasad residence, he saw minor two or three blocks away from the crime scene and concluded that minor matched the description of the suspect. He made contact with minor, who did not try to run or evade him. Minor was wearing a backpack containing the stolen laptop computer, two Vicodin pills, and loose change. When he asked minor about the Vicodin pills, minor replied that he had a prescription for the pills.

Minor testified and denied the charges. He claimed that Prasad had solicited oral sex from him in exchange for the cash and items. He stated that similar transactions had occurred over the last three to four months and minor would take the cash and flee without performing oral sex. Minor acknowledged that he never told Sergeant Borges about the purported solicitation at the time of his arrest and admitted lying to Sergeant Borges when he told Sergeant Borges that he had purchased the computer from Prasad and had a prescription for the medication.

In regard to minor’s claims, Sergeant Borges testified that he had searched the Prasad residence and found no evidence to support minor’s allegations. He added that no one else had made such a report about Prasad to the police. Prasad also testified and denied making solicitations for oral sex.

Minor's girlfriend testified that she saw minor and Prasad talking in front of Prasad's house on the day of the burglary and that she had heard Prasad soliciting sex from minor over the phone on a prior occasion. She acknowledged previously lying to the police to protect her boyfriend and that she had four prior convictions involving moral turpitude.

The juvenile court found the following: "Specifically with regard to the allegation of [Penal Code section] 212.5, the Court does feel that all elements of CALCRIM 1600 and 1602 have been met. The Court does find that there was a robbery, the robbery was of the first degree. The Court does find that that is a [Welfare and Institutions Code section] 707[, subdivision] (b) offense. [¶] With regard to the burglary, the Court does feel that all the elements of CALCRIM 1700 and 1701 have been met. [¶] And the Court does find beyond a reasonable doubt as to both the first degree robbery and the burglary that they have been proved beyond a reasonable doubt, and they're both in the first degree. [¶] And the Court does feel that the elements of CALCRIM 2622 and 2623 have been met to prove the [Penal Code section] 136.1[, subdivision] (c)(1) beyond a reasonable doubt."

At disposition, the juvenile court stated the following: "[I]n terms of you getting back to the family sooner, the youth center recommendation actually . . . could . . . get you back to your family sooner than a placement . . . . [¶] . . . [¶] It is ordered that you be continued a ward. It is in the best interest that you to [*sic*] be removed from the home. It would be detrimental for you to remain in the home." The probation officer had recommended a total MTC of nine years, but the juvenile court did not make a specification.

### FAILURE TO MAKE SEVERAL REQUISITE FINDINGS

Minor first generally contends that the juvenile court failed to orally pronounce the disposition and judgment with the required specificity. There is no merit to minor's contention.

The juvenile court is not required to recite the precise statutory language in placing a minor in a more structured environment; instead, the record need only reveal a "substance of a finding" under Welfare and Institutions Code section 726. (*In re John S.* (1978) 83 Cal.App.3d 285, 292.)

Here, the record plainly shows that the juvenile court believed placement in the Youth Center for less than one year would be beneficial to minor and would provide him a safe environment.

Minor next argues that the juvenile court failed to follow the literal language of Welfare and Institutions Code section 726, subdivision (d), that requires specification of the MTC for the current offense, the previous petitions sustained, and the aggregate term of the current offense. The People acknowledge that the juvenile court failed to check boxes 3, 4, and 5 of Judicial Council form JV-665 or otherwise orally specify these requirements. They argue that this oversight does not require a reversal, since it is, at most, harmless error. We agree with the People.

Welfare and Institutions Code section 726, subdivision (d), provides that "[i]f the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment."

"Even if we were to take the view that Youth Authority commitment in the case at bench should be considered error because of the lack of findings more detailed than in the language of Welfare and Institutions Code sections 726 and 734, such an error does *not*

automatically constitute prejudicial error to require a reversal.” (*In re Robert W.* (1977) 68 Cal.App.3d 705, 720.)

The harmless error test states: “That a ‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Here, defense counsel agreed that minor should be placed at the Youth Center and did not dispute the juvenile court’s order that minor would be placed there for 354 days. Thus, the failure to check three boxes was harmless error since a more favorable result to the minor would not have been reached in absence of that error.

#### MULTIPLE PUNISHMENT

The probation report noted that the robbery finding carried a maximum term of six years, the burglary finding carried a maximum term of one year, four months (one-third middle term), the dissuading finding carried a maximum term of one year (one-third middle term), and a previous attempted burglary finding carried a maximum term of eight months (one-third middle term). It then recommended an MTC of nine years.

Minor contends that the probation officer’s recommendation of a nine-year MTC is erroneous. He instead believes that, under Penal Code section 654, the correct calculation should be seven years and eight months because the robbery and burglary offenses were part of an indivisible act with a single intent. The People agree on this point.

Penal Code section 654, subdivision (a) states: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or

conviction and sentence under any one bars a prosecution for the same act or omission under any other.” “The statute ‘literally applies only where [multiple] punishment arises out of multiple statutory violations produced by the “same act or omission.” [Citation.] However, . . . its protection has been extended to cases in which there are several offenses committed during “a course of conduct deemed to be indivisible in time.” [Citation.]’ [Citations.] [¶] ‘It is defendant’s intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] . . . [I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once.’ ” (*People v. Hicks* (1993) 6 Cal.4th 784, 789.) The purpose of this provision is to ensure that a defendant’s punishment will commensurate with his culpability. (*People v. Perez* (1979) 23 Cal.3d 545, 550-551.)

In *People v. Le* (2006) 136 Cal.App.4th 925, 931, we barred punishment for both a burglary of a Long’s drugstore and a robbery of the drugstore’s employees where the defendant and his accomplices stole liquor and diapers from the drugstore and were confronted by the store’s managers while attempting to escape. (*Id.* at p. 928.) The trial court imposed two consecutive sentences--one for the burglary conviction and one for the robbery conviction. (*Id.* at p. 930.) We held that the sentence violated Penal Code section 654’s ban on multiple punishment because “the offenses of robbery and burglary were committed in an indivisible course of conduct with one purpose: to steal goods from Long’s drugstore.” (*Id.* at pp. 930-931.)

We find *Le* dispositive. Here, while minor was stealing money from the “prayer place” at the Prasad residence, Prasad confronted him. Minor ran towards Prasad, and pushed him to the ground in order to escape. The entry into the home to steal (burglary) and the use of force to steal (robbery) depict an indivisible transaction with a single larcenous motive of stealing money from Prasad. Therefore, Penal Code section 654

applies and multiple punishments are prohibited on these two counts. Eliminating the one-year, four-month MTC for burglary from the nine-year recommended MTC results in an MTC of seven years, eight months.

DISPOSITION

The judgment of wardship is modified to specify the maximum time of confinement at seven years, eight months. As so modified, the judgment of wardship is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.