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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re X.R., a Person Coming Under the  
Juvenile Court Law.

H040558  
(Santa Cruz County  
Super. Ct. No. J22680)

THE PEOPLE,

Plaintiff and Respondent,

v.

X.R.,

Defendant and Appellant.

Appellant X.R. appeals from a dispositional order continuing him as a ward of the court in his parents' home. He contends that the maximum term of confinement is eight years, two months and the juvenile court incorrectly calculated his custody credits. We reverse the order and remand the matter to the juvenile court for a determination of custody credits.

**I. Statement of the Case**

In September 16, 2013, the Santa Cruz County District Attorney filed a juvenile wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a).

The petition alleged that appellant possessed alcohol in a public place (Bus. & Prof. Code, § 25662, subd. (a)) and violated the terms of his probation.

About a week later, the petition was amended to add a count of misdemeanor battery against a peace officer (Pen. Code, § 243, subd. (b)). The following day, the prosecutor moved to add a third count, misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)).

On November 21, 2013, the juvenile court held a combined suppression and jurisdictional hearing. The juvenile court granted appellant's motion to suppress evidence as to possession of alcohol in a public place and dismissed the allegation for lack of evidence. However, the motion was denied as to the remaining counts. Following the hearing, the juvenile court sustained the misdemeanor allegations of battery against a peace officer and resisting a peace officer.

On January 8, 2014, the juvenile court continued appellant's wardship in the custody of his parents. He was also credited with 65 days of custody credits. A week later, appellant filed a timely notice of appeal.

## **II. Discussion<sup>1</sup>**

### **A. Maximum Term of Confinement**

Appellant contends that the supplemental probation report erred in stating that his maximum term of confinement was eight years, six months. He requests that this court find that his maximum term of confinement is eight years, two months. The Attorney General argues, however, that appellant's request to change an error in a probation report, which is not a final judgment, is not appealable. We agree with the Attorney General.

“[T]he right of appeal is statutory and . . . a judgment or order is not appealable unless expressly made so by statute.” [Citations.]” (*People v. Mazurette* (2001) 24

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<sup>1</sup> Since appellant's contentions pertain to his maximum confinement time and custody credits, a statement of facts is unnecessary to the resolution of this appeal.

Cal.4th 789, 792.) An appeal by a minor subject to a juvenile wardship proceeding is governed by Welfare and Institutions Code section 800, subdivision (a), which authorizes an appeal from “[a] judgment in a proceeding under Section 601 or 602 . . . .”

“Only when a court orders a minor removed from the physical custody of his parent or guardian is the court required to specify the maximum term the minor can be held in physical confinement.” (*In re Danny H.* (2002) 104 Cal.App.4th 92, 106 (*Danny H.*); former Welf. & Inst. Code, § 726, subd. (d).)<sup>2</sup>

Here, the juvenile court continued appellant’s wardship and placed him in the custody of his parents. Thus, the juvenile court did not state a maximum term of confinement, because it had no duty to do so. (*Danny H., supra*, 104 Cal.App.4th at p. 106.) Since any error in the probation report was not made part of the dispositional order, it is not appealable.

Appellant points out that the juvenile court advised him during the resolution of a previous petition in 2012 that his maximum term of confinement would then be seven years, six months. The juvenile court issued a dispositional order on June 20, 2012, placing him in the custody of his parents “for private placement with aunt and uncle.” The order also states that the maximum term of confinement was seven years, six months. Appellant asserts that it should have been seven years, two months at that time. Appellant did not appeal from the order.

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<sup>2</sup> Former Welfare and Institutions Code section 726, subdivision (d) provides in relevant part: “If 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 which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.”

Relying on *In re Ricky H.* (1981) 30 Cal.3d 176 (*Ricky H.*),<sup>3</sup> appellant contends that this court should now correct the error in his maximum term of confinement. In *Ricky H.*, the California Supreme Court considered two deficiencies in the dispositional order that had not been raised by the parties: the juvenile court erroneously specified the maximum term of confinement as three years rather than four years on an assault offense; and failed to specify whether an offense was a misdemeanor or a felony. (*Id.* at pp. 190-191.) *Ricky H.* stated: “Authority exists for an appellate court to correct a sentence that is not authorized by law whenever the error comes to the attention of the court, even if the correction creates the possibility of a more severe punishment. [Citation.]” (*Id.* at p. 191.) However, unlike in *Ricky H.*, here, the juvenile court was not required to specify the maximum term of confinement when it entered the order from which appellant now appeals.

Appellant also argues that “once a calculation error occurs, it is easily perpetuated in subsequent juvenile court records and proceedings.” However, if appellant is removed from his parents’ custody at any future dispositional hearing, defense counsel may raise this issue at that time or on appeal from any future dispositional order.

### **B. Custody Credits**

Appellant contends that he should be credited with 72 days of predisposition custody credits instead of the 65 days listed in the dispositional order.

On September 14, 2013, appellant was arrested and taken to juvenile hall. The probation report, dated January 8, 2014, indicates that he was released the same day, but several other documents in the record indicate that he was released on electronic monitoring on September 17, 2013, which was his initial court appearance. Thus, the

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<sup>3</sup> *Ricky H.*, *supra*, 30 Cal.3d 176 has been superseded by statute on other grounds, as stated in *In re Michael D.* (1987) 188 Cal.App.3d 1392.

record is unclear as to whether appellant should receive four days custody credit for this period.

On October 6, 2013, appellant was arrested for violating his home supervision rules and detained in juvenile hall. He was released on electronic monitoring three days later on October 8, 2013. On October 10, 2013, appellant was again taken into custody for violating his electronic monitoring rules. He then remained in juvenile hall for 65 days until December 13, 2013.

At the dispositional hearing, the juvenile court ordered appellant to serve 65 days in custody and credited him with 65 days served.

In response to appellant's contention that he is entitled to seven additional days of custody credit, the Attorney General argues that, pursuant to Evidence Code section 664, this court must presume that "official duty has been regularly performed." However, the probation officer's supplemental report, which was prepared for the dispositional hearing, supports a finding of at least an additional 4 days of custody credit. Thus, the record does not support the juvenile court's finding. Since there is some discrepancy in the record as to whether appellant is entitled to one or three days custody credit prior to his initial court hearing, the matter is remanded for a determination of custody credit.

Appellant also contends that the probation department did not accurately calculate the custody credit he accrued in juvenile hall since the filing of his original wardship petition in November 2011. However, as previously discussed, any error in the probation report was not made part of the dispositional order and thus is not appealable.

### **III. Disposition**

The order is reversed. The matter is remanded for calculation of appellant's custody credit from September 14, 2013 through December 13, 2013.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Márquez, J.