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

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

H040683
(Santa Clara County
Super. Ct. No. JV39662)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

Appellant D.G. has timely filed an appeal from a dispositional order. He contends that the juvenile court exceeded its jurisdiction in committing him to 120 days in juvenile hall and to be housed in county jail on his 19th birthday. We dismiss the appeal as moot.

I. Statement of the Case

On December 3, 2012, the Santa Clara County District Attorney filed an amended petition (Welf. & Inst. Code, § 602, subd. (a)),¹ which alleged that appellant, who was

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

then 17 years old, committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1) – count 1), assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4) – count 2), false imprisonment (Pen. Code, §§ 236, 237 – count 3), battery on a person with whom he had a dating relationship, K.H. (Pen. Code, §§ 242, 243, subd. (e) – count 4), and battery on a cohabitant, H.G. (Pen. Code §§ 242, 243, subd. (e)). It was also alleged that during the commission of count 1 appellant personally used a dangerous weapon (Pen. Code, § 12022, subd. (b)(1)), and during the commission of count 2, he personally inflicted great bodily injury (Pen. Code, §§ 1203, subd. (e)(3), 12022.7, subd. (a)).²

On December 19, 2012, appellant entered negotiated admissions to counts 2, 3, 4, and 5. Appellant also admitted an added count 6, which alleged that appellant had brandished a weapon (Pen. Code, § 417, subd. (a)(1)). The juvenile court dismissed count 1 and the enhancement appended to count 2.

On January 9, 2013, appellant was declared a ward of the court. The juvenile court determined that his maximum term of confinement was five years and eight months. Appellant was placed on probation with various conditions, including participation in a domestic violence program, completion of community service hours, peaceful contact with his mother, and no contact with his girlfriend, K.H.

On September 4, 2013, the probation officer filed a section 777 violation of probation notice. Appellant was now 18 years old. The alleged violations included: (1) personal contact with K.H. in violation of the no contact order; (2) electronic contact with K.H. in violation of the no contact order; (3) digitized images of K.H. on his cell phone in violation of the no contact order; (4) possession of drug paraphernalia with marijuana

² The original petition was filed in November 2012.

residue; (5) positive tests for marijuana and MDMA on August 13, 2013, and marijuana on August 14 and 21, 2013; and (6) violation of curfew.

On September 27, 2013, appellant admitted the allegations. The juvenile court continued appellant on probation, including 90 days on an electronic monitoring program.

On November 19, 2013, the probation officer filed a second section 777 violation of probation notice. It was alleged that appellant violated the no contact order by having personal contact with K.H. and was terminated from the electronic monitoring program “when he failed to abide by the laws of the community.” The following day, appellant admitted the allegations.

In the social study prepared for the dispositional hearing, the probation officer recommended that appellant continue as a ward of the court and be committed to juvenile hall for 120 days. The probation officer stated: “[I]t is recognized the subject is 18 years old and will reach 19 years of age on February 2, 2014 and is ineligible for services through the Juvenile Justice Court. Consequently, he is ineligible for any alternative program. In fact, due to his age, the subject cannot be housed in Juvenile Hall after his 19th birthday and would complete his commitment in the Santa Clara County Jail. It is apparent the subject has not adjusted his behavior with Juvenile Probation Services and that he continues to violate the Protective Order. It is also troubling as the subject has appeared before the Court on numerous occasions and has been admonished. However, [appellant] blatantly disregards the Court’s Orders and continues to do as he pleases. Additionally, the subject has disregarded the laws of the community and has pending violations before the Adult Court. It is hoped [appellant] will recognize that he cannot dictate the Orders of the Court and the laws of the community as he will always be held accountable for his actions should he decide to disregard them.”

At the hearing on December 23, 2013, appellant’s counsel requested that appellant be released on the electric monitoring program. Following argument, the juvenile court committed appellant to juvenile hall for 120 days and to be housed in county jail on his 19th birthday on February 2, 2014. Appellant then filed a timely notice of appeal.

II. Discussion

Appellant contends that the juvenile court exceeded its authority when it effectively committed him to serving most of his custodial term in county jail.

As appellant acknowledges, this issue is moot since he has completed his commitment term. A party cannot maintain an action that involves only abstract or academic questions of law. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 749, p. 814.) A case is moot when the reviewing court cannot provide any relief if it should decide in the appellant’s favor. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.) In such cases, the appeal should generally be dismissed. (*Ibid.*) Appellant, however, requests that this court exercise its discretion to consider the merits of his claim, because the case presents “‘an issue of broad public interest that is likely to recur.’” (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) We will address the merits of appellant’s claim in order to provide guidance to the juvenile court and then dismiss the appeal as moot.

In *In re Jose H.* (2000) 77 Cal.App.4th 1090, 1097-1098, and *In re Kenny A.* (2000) 79 Cal.App.4th 1, 5-6 (*Kenny A.*), this court held that the juvenile court has no authority under section 202, subdivision (e)³ to commit an 18-year-old juvenile ward to

³ Section 202, subdivision (e) defines “punishment” as “the imposition of sanctions. It does not include retribution Permissible sanctions may include any of the following: [¶] (1) Payment of a fine by the minor. [¶] (2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.

(continued)

county jail. *Kenny A.* also recognized that section 208.5⁴ “does permit housing a ward in county jail under certain circumstances, but it does not allow the juvenile court to commit an 18-year-old to county jail as part of its disposition order. Instead, the statute permits an 18-year-old ward to remain in a county institution for juveniles until age 19. The statute permits even a 19-year-old ward to remain in a juvenile facility if the court so orders.” (*Kenny A.*, at p. 6.) In contrast to *Jose H.* and *Kenny A.*, here, the juvenile court committed appellant to juvenile hall and to be housed in county jail when he turned 19. Thus, the juvenile court did not exceed its authority under section 202, subdivision (e).

III. Disposition

The appeal is dismissed as moot.

[¶] (3) Limitations on the minor’s liberty imposed as a condition of probation or parole. [¶] (4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch. [¶] (5) Commitment of the minor to the Division of Juvenile Facilities, Department of Corrections and Rehabilitation.”

⁴ Section 208.5 provides in relevant part: “Notwithstanding any other law, in any case in which a minor who is detained in or committed to a county institution established for the purpose of housing juveniles attains 18 years of age prior to or during the period of detention or confinement he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility.”

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Grover, J.