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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The People of the State of California respectfully petition this Court to grant review of the decision of the California Court of Appeal, Third Appellate District (“Third District”), filed on October 31, 2012¹. Of relevance to the instant petition, the Third District remanded this matter to the juvenile court with instructions to reverse the dispositional order committing D.B. to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (“DJF”) after determining that D.B. was ineligible for DJF commitment pursuant to Welfare and Institutions Code² section 733, subdivision (c). A copy of the Third District’s decision, which was certified for publication, is attached to this petition as Exhibit A.

ISSUE PRESENTED

Should a juvenile who has been charged with multiple crimes in a petition, including one or more violent or serious offenses that qualify for DJF commitment (i.e., murder, rape, or robbery), nonetheless be exempt from DJF commitment simply because the last crime committed by the juvenile was a non-qualifying offense (i.e., simple battery, petty theft, or providing false identification information to the police)?

¹ The Third District subsequently filed a modified opinion on November 7, 2012. However, the modifications to the opinion have no material effect on the issue raised in this petition.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

STATEMENT OF THE CASE

A. Factual and Procedural Background

In its published opinion, the Third District summarized the relevant factual and procedural background for this matter as follows:

D.B. was 16 years old in May 2010. The first seven counts of D.B.'s juvenile wardship petition were alleged to have occurred on May 23, 2010. On that date, D.B. and another person approached Marcus Robinson as Robinson was sitting in his car, which was parked in front of Robinson's mother's house. D.B. punched Robinson in the jaw, and when Robinson tried to run away, D.B. and two others punched him six or seven times, took his car keys, wallet, and necklace, then drove away in Robinson's car. Robinson suffered a fractured jaw, abrasions, and bite marks. One of the charges resulting from this occurrence was carjacking, a violation of Penal Code section 215. Carjacking is an offense described in section 707(b).

The last two counts of D.B.'s juvenile wardship petition were alleged to have occurred one week later, on May 30, 2010. On that date, a police officer stopped D.B. and asked for his name. D.B. gave a false name, and, suspecting as much, the officer attempted to detain him. D.B. ran away but was soon caught by other officers. Robinson happened to see D.B. as he was fleeing the police, and identified D.B. to the officers as the person who had attacked him and taken his car the week before.

The occurrence on May 30, 2010, resulted in two counts: violation of Penal Code section 148, subdivision (a)(1) (resisting a police officer), and violation of section 148.9, subdivision (a) (false identification to a police officer). Neither of these offenses is described in section 707(b).

The trial court found all the charges to be true, and sustained the petition.

D.B. argued below that he did not qualify for a DJF commitment because the most recent offense alleged in the wardship petition was not an offense described in section 707(b). The juvenile court found that the phrase "most recent offense" as used in section 733, subdivision (c) referred to the date the petition was filed and not the date the offense was

committed. The juvenile court committed D.B. to the DJF for the maximum confinement term of 11 years 8 months.

(Ex. A at pp. 2-3.)

B. The Third District's Decision

The Third District was faced with the issue of determining whether D.B. was statutorily eligible for commitment to DJF in light of section 733, which was adopted ““to reduce the number of youth offenders housed in state facilities by enacting realignment legislation which shifted responsibility to the counties for all but the most serious youth offenders. . . .” [Citation.]’ [Citation.]” (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469, disapproved of on other grounds by *In re Greg F.* (2012) 55 Cal.4th 393.) Section 733 provides in pertinent part:

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 to be true by the court is not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.

(§ 733, subd. (c).)

D.B. argued that he was ineligible for DJF commitment because under the plain meaning of section 733, subdivision (c), a juvenile can be committed to DJF only if “the most recent offense alleged in any petition and admitted or found to be true by the court” is a qualifying offense (i.e., a violent or serious offense such as robbery or carjacking) under section 707, subdivision (b), or Penal Code section 290.008, subdivision (c). The Third District agreed with D.B.’s reading of the statute, holding that section 733’s reference to “the most recent offense alleged in any petition’ means the

most recently occurring offense” in a temporal sense. (Ex. A at p. 2.) In other words, under the Third District’s reading of the statute, as long as the last offense committed by a juvenile, temporally speaking, is a non-qualifying crime, he or she is statutorily ineligible for a DJF commitment even if all or some of the other crimes alleged in the petition and found to be true are qualifying offenses.

REASONS FOR GRANTING REVIEW

Under the rules of court, review is appropriate and should be granted when it is necessary for this Court to settle an important question of law. (Cal. Rules of Court, rule 8.500(b)(1).)

I. THE PETITION SHOULD BE GRANTED TO SETTLE AN IMPORTANT QUESTION OF LAW

Simply put, the Third District has misinterpreted and misapplied section 733, subdivision (c). In short, the Third District has erroneously concluded that the phrase “the most recent offense alleged in any petition and admitted or found to be true by the court” refers to the very last offense, chronologically speaking, committed by the juvenile without regard to the nature of any other offenses alleged in the petition. The Third District is incorrect, and if its faulty interpretation of section 733 is left to stand, it will cause absurd consequences in this case and other matters that surely were not contemplated by the Legislature when section 733 was enacted.

Specifically, the Third District’s published opinion in this case essentially creates a “Get Out of Jail (DJF) Free” card for juveniles who commit violent and serious crimes. As discussed above, the court’s opinion allows a juvenile who commits such crimes to avoid incarceration at DJF merely by committing a non-qualifying offense as his or her last criminal act. Thus, this case has the illogical and unwarranted effect of removing

sentencing discretion from the juvenile courts and placing it in the hands of the juvenile offenders.

Review is now necessary in order to clarify the true meaning of section 733, subdivision (c), so that justice can be served in this case as well as in future cases. As the People argued on appeal, the phrase “the most recent offense alleged in any petition and admitted or found to be true by the court” is more reasonably interpreted as referring to both the date the allegations occur (i.e., when the petition is filed) and the date of adjudication (i.e., when the charges are admitted by the juvenile or found true by the court). This interpretation is supported by the use of the conjunctive “and” between the phrases “alleged in any petition” and “admitted or found to be true by the court.” More importantly, this reading of section 733 comports with the stated legislative purpose for enacting the statute, which is ensuring that “only currently violent or serious juvenile offenders be sent to DJF.” (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at pp. 1467-1468 [“The import of the [Senate Floor and Assembly Floor Analyses] seems clear; the Legislature intended only currently violent or serious juvenile offenders be sent to DJF”].)

Recently, this Court commented on this same issue in *In re Greg F.* (2012) 55 Cal. 4th 393. In *Greg F.*, this Court was concerned with the situation in which a juvenile ward on probation for a DJF-eligible offense commits a new offense that is not listed in section 707, subdivision (b). As this Court explained, if the prosecution files a notice of a probation violation for the new offense, the juvenile court has the power to revoke the ward’s probation and commit the ward to DJF. However, if the prosecution instead files a new petition, section 733, subdivision (c), prohibits the court from ordering a DJF commitment if the allegation is admitted or found true because the new offense is the “most recent offense alleged in any petition” and is not DJF eligible. The question before this Court was whether, under

such circumstances, a juvenile court has discretion to dismiss the second petition so that the matter can be treated as a probation violation, thereby allowing the ward to be committed to DJF. Relying on the plain language of the statutes at issue, the relevant legislative history, and the policies served by the juvenile court law, the Supreme Court concluded that such discretion exists.

While addressing arguments raised by the dissent in *Greg F.*, a majority of this Court offered the following analysis which pertains directly to the issue in this matter:

The dissent's interpretation could also reward gamesmanship in the context of multicount petitions. If a minor commits a series of criminal offenses and all are alleged in the same 602 petition, there is an argument that section 733(c) prohibits commitment to DJF unless the last offense committed is one listed in section 707(b) or Penal Code section 290.008, subdivision (c). *Although section 733(c) premises eligibility for DJF on the nature of "the most recent offense alleged in any petition," focusing on the most recently committed offense could lead to arbitrary and potentially absurd results in a multicount case.* A minor who commits a string of violent acts would be immunized from a DJF commitment if the crime spree happened to end with a nonqualifying offense. An arguably more sensible interpretation of section 733(c) would require simply that an offense alleged in the most recent petition, and admitted or found true, be listed in section 707(b) or Penal Code section 290.008, subdivision (c).[fn 3]

(*In re Greg F.*, *supra*, 55 Cal.4th at p. 412, italics added.) At the end of the foregoing paragraph, this Court added the following footnote, which succinctly sums up the main reason for granting review in this case: "We need not, and do not, resolve this controversy here. We note, however, that focusing on the most recent petition, and not the most recent offense described in a multicount petition, would appear to avoid absurd consequences and remain consistent with the Legislature's intent to reserve DJF commitments for specific recent offenses."

Unlike *Greg F.*, this case is certainly an appropriate matter for resolving this important issue of juvenile law. The absurd consequences envisioned by this Court will certainly occur if review is not granted. Specifically, D.B., who committed a robbery and a carjacking and participated in a brutal attack that left the victim with a broken jaw, will avoid a lengthy DJF incarceration simply because a week after committing the foregoing crimes, he resisted arrest and provided false identification to a police officer. Thus, review is warranted in this matter.

CONCLUSION

For the foregoing reasons, plaintiff and respondent respectfully requests that this Court grant the petition for review.

Dated: December 6, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR REVIEW** uses a 13 point Times New Roman font and contains 1,970 words.

Dated: December 6, 2012

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink that reads "Michael Dolida". The signature is written in a cursive, flowing style.

MICHAEL DOLIDA
Deputy Attorney General
Attorneys for Plaintiff and Respondent

EXHIBIT "A"

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

C067353

(Super. Ct. No. JV125361)

APPEAL from a judgment of the Superior Court of Sacramento County, Stacy Boulware Eurie, Judge. Affirmed in part and reversed in part with directions.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Catherine Chatman, Supervising Deputy Attorney General, and Michael Dolida, Deputy Attorney General, for Plaintiff and Respondent.

A juvenile who is adjudged a ward of the court can be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) only if “the most recent offense alleged in any petition and admitted or found to be true by the court is . . . described in” Welfare and Institutions Code section 707, subdivision (b), or

Penal Code section 290.008, subdivision (c). (Welf. & Inst. Code, § 733, subd. (c).)¹

The issue presented here is whether a juvenile may be committed to the DJF if the petition alleges and the court finds that the juvenile committed several offenses on more than one occasion, but the most recent occurring offense was not one described in section 707, subdivision (b) (hereafter 707(b)).

Here, the wardship petition alleged nine counts. The “most recent offense[s]” alleged in the petition and found to be true by the court were alleged to have occurred on May 30, 2010, and were not offenses described in section 707(b). The remaining offenses were alleged to have occurred one week earlier, on May 23, 2010. One of these alleged offenses (robbery), which the court found to be true, was an offense described in section 707(b).

Defendant argues section 733, subdivision (c), means exactly what it says, and that he was therefore ineligible for commitment to the DJF. The People argue the phrase “most recent offense” does not refer to the date the offense was committed, but to the date the petition is filed and adjudicated. In other words, the People contend the statute means a ward may be committed to the DJF only if the most recent *petition* containing an allegation found true by the court alleges an offense that is described in section 707(b).

We discern no ambiguity in the statutory language, and conclude that the statute’s reference to “the most recent offense alleged in any petition” means the most recently occurring offense. We shall remand for further dispositional proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

D.B. was 16 years old in May 2010. The first seven counts of D.B.’s juvenile wardship petition were alleged to have occurred on May 23, 2010. On that date, D.B. and another person approached Marcus Robinson as Robinson was sitting in his car,

¹ References to an undesignated section are to the Welfare and Institutions Code unless otherwise indicated.

which was parked in front of Robinson's mother's house. D.B. punched Robinson in the jaw, and when Robinson tried to run away, D.B. and two others punched him six or seven times, took his car keys, wallet, and necklace, then drove away in Robinson's car. Robinson suffered a fractured jaw, abrasions, and bite marks. One of the charges resulting from this occurrence was carjacking, a violation of Penal Code section 215. Carjacking is an offense described in section 707(b).

The last two counts of D.B.'s juvenile wardship petition were alleged to have occurred one week later, on May 30, 2010. On that date, a police officer stopped D.B. and asked for his name. D.B. gave a false name, and, suspecting as much, the officer attempted to detain him. D.B. ran away but was soon caught by other officers. Robinson happened to see D.B. as he was fleeing the police, and identified D.B. to the officers as the person who had attacked him and taken his car the week before.

The occurrence on May 30, 2010, resulted in two counts: violation of Penal Code section 148, subdivision (a)(1) (resisting a police officer), and violation of section 148.9, subdivision (a) (false identification to a police officer). Neither of these offenses is described in section 707(b).

The trial court found all the charges to be true, and sustained the petition.

D.B. argued below that he did not qualify for a DJF commitment because the most recent offense alleged in the wardship petition was not an offense described in section 707(b). The juvenile court found that the phrase "most recent offense" as used in section 733, subdivision (c) referred to the date the petition was filed and not the date the offense was committed. The juvenile court committed D.B. to the DJF for the maximum confinement term of 11 years 8 months.

DISCUSSION

The Legislature enacted section 733, subdivision (c), in order to implement the Budget Act of 2007. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469.) Its purpose was " " "to reduce the number of youth offenders housed in state facilities by

enacting realignment legislation which shifted responsibility to the counties for all but the most serious youth offenders. . . .” [Citation.]’ [Citation.]” (*Id.* at p. 1469.)

Section 733 states in its entirety:

“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:

“(a) The ward is under 11 years of age.

“(b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.

“(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 to be true by the court is not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007.”

In *V.C. v. Superior Court, supra*, 173 Cal.App.4th 1455, this court held that the juvenile court could not dismiss the most recently sustained petition, which did not contain an offense that qualified for a DJF commitment, in order to make a qualifying offense in an earlier sustained petition the most recent offense. As we recognized in that case, our interpretation of any statute begins with an analysis of the language, and if the meaning of the language is unmistakable, we need go no further. (*Id.* at p. 1467.) Only if the language of the statute is ambiguous when applied to the facts before us do we examine the Legislature’s intent in drafting the statute. (*Id.* at pp. 1467-1468.) As to the plain meaning of section 733, we stated:

“The language of section 733(c) allows commitment to DJF only when ‘*the most recent offense* alleged in any petition and admitted or found to be true by the court’ (italics added) is an eligible offense. The statute does not focus on the overall or entire delinquent history of the minor or on

whether the minor may be generally considered a serious, violent offender. The language looks to the minor's 'most recent offense.' The Legislature has specifically determined it is the minor's most recent offense that determines the minor's eligibility for DJF commitment." (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.)

The People urge us to interpret the words "most recent" as modifying the petition and adjudication, rather than the offense. According to this interpretation, the minor could be confined to the DJF if any *offense* alleged in the most recent *petition* and admitted or found to be true by the court is described in section 707(b). The language of section 733, subdivision (c), is simply not susceptible to this interpretation.

The People argue we should ignore the plain meaning of the statute because it results in an absurd consequence that the Legislature did not intend. We may ignore the plain meaning of an unambiguous statute only when a literal interpretation would yield absurd results. (*People v. Albillar* (2010) 51 Cal.4th 47, 55.) A literal interpretation of the statute does not produce absurd results.

The purpose of section 733, subdivision (c), was to reduce the number of youth offenders housed in the DJF. (*In re N.D.* (2008) 167 Cal.App.4th 885, 891-892.) The Legislature chose to do this by targeting currently violent or serious juvenile offenders to be sent to the DJF. (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.) The Legislature chose to determine those who were currently violent or serious offenders by looking to their "most recent offense." The Legislature could have chosen any 707(b) qualified offense committed in the past year or 6 months. This, arguably, would have insured that every currently violent or serious offender was sent to the DJF. However, the Legislature chose to consider only the "most recent offense."

The People's proposed interpretation could result in consequences inimical to the statute's purposes under different circumstances. As D.B. notes, such an interpretation would allow the court to send a juvenile to the DJF for a 707(b) offense committed years before the most recent non-707(b) offense, as long as the 707(b) offense is filed in the

most recent wardship petition. Such a result would not further the legislative intent of sending only currently violent or serious juvenile offenders to the DJF. (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.)

In light of our determination that D.B. was ineligible for a DJF placement, we need not consider his argument that the juvenile court abused its discretion when it committed him to the DJF.

DISPOSITION

The matter is remanded to the juvenile court with instructions to reverse the dispositional order committing D.B. to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities and conduct a new dispositional hearing in accordance with the views expressed herein. The judgment is affirmed in all other respects.

BLEASE, Acting P. J.

We concur:

BUTZ, J.

DUARTE, J.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. D.B.**

No.: **C067353**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 6, 2012, I served the attached **PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 6, 2012, at Sacramento, California.

Declarant