

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re G.F.,)
 A Minor.)
 _____)
)
 THE PEOPLE OF THE STATE OF)
 CALIFORNIA)
)
 Plaintiff and Respondent,)
)
 v.)
)
 G.F.,)
)
 Defendant and Appellant.)
 _____)

S191868

SUPREME COURT
FILED

APR 20 2011

Frederick K. Ohlrich Clerk
Deputy

ANSWER TO PETITION FOR REVIEW

After Decision by the Court of Appeal
First Appellate District, Division Five
Filed February 23, 2011
Case No. A127161

LISA M. ROMO
State Bar No. 134850
2342 Shattuck Avenue, PMB 112
Berkeley, CA 94704
Tel: (510) 644-2621

Attorney for Appellant
By appointment of the Court of
Appeal under the First District
Appellate Project's Independent
Case System

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ANSWER TO PETITION FOR REVIEW

Appellant Greg F. respectfully submits this answer to the petition for review filed by respondent on April 1, 2011, pursuant to rule 8.500(a)(2) of the California Rules of Court, following the decision of the Court of Appeal, First Appellate District, Division Five, filed on February 23, 2011.

STATEMENT OF THE CASE

On September 18, 2008, a petition was filed pursuant to Welfare and Institutions Code (WIC) section 602, alleging that appellant assaulted Joe C. in violation of Penal Code section 245, subdivision (a)(1). The petition also alleged that appellant personally inflicted great bodily injury on Joe C., in violation of Penal Code section 12022.7, subdivision (a). Finally it was alleged, pursuant to Penal Code section 186.22, subdivision (b)(1)(c), that appellant committed the assault for the benefit of a criminal street gang. (CT 1-3.)¹ On September 23, 2008, appellant admitted each of the allegations and the petition was sustained. (1 CT 8-12; 09/23/08 RT 3-5.)²

The Sonoma County Juvenile Court declared appellant to be a ward of the court and he was placed at the Wilderness Recovery Center. (1 CT 32-34, 69; 12/22/08 RT 41-48.) Six months later, appellant was terminated

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Appellant uses "1 CT" (pages 1-172) and "2 CT" (pages 173-256) to refer to the original two volumes of clerk's transcripts. He refers to the first augmented volume of clerk's transcripts (pages 257-264) as "3 CT" and the second augmented volume (pages 265-272) as "4 CT."

2

The original reporter's transcript consists of three volumes, only two of which are sequentially paginated. The first augmentation includes volumes 1-3, which are sequentially paginated. The second augmentation includes three individual volumes. Appellant refers to the reporter's transcript by date and the page number in the volume containing the date referred to.

from the center and sent back to juvenile hall pending suitable placement. (1 CT 68-69; 06/11/09 RT 65-69.)

On August 18, 2009, a WIC 602 petition was filed arising from an incident that occurred in the Sonoma County Juvenile Hall on August 16. Count I of the petition alleged that appellant committed a battery upon three boys, in violation of Penal Code section 242. A felony enhancement was included, alleging that the offense was committed for the benefit of a criminal street gang, pursuant to Penal Code section 186.22, subdivision (d). Count II alleged that appellant actively participated in a gang, in violation of Penal Code section 186.22, subdivision (a). (1 CT 104-106, 132) On August 19, appellant admitted Count I and Count II was dismissed. (1 CT 111-112, 117-118; 08/19/09 RT 3-6.)

On August 24, 2009, a violation of probation was filed pursuant to WIC 777, arising from the August 16 juvenile hall incident. (1 CT 120-122; 09/02/09 RT 79.) The prosecutor also filed a motion to dismiss the WIC 602 petition filed August 18, 2009, so that appellant could be committed to DJJ pursuant to the petition filed September 18, 2008. (1 CT 131-134.) On October 23, 2009, the juvenile court granted the prosecutor's motion to dismiss the August 18, 2009 petition. (1 CT 152-154; 10/23/09 RT 14.) On October 27, appellant admitted the probation violation. (2 CT 173-175, 178-180; 10/27/09 RT 4-6.)

The juvenile court ordered appellant to be committed to the Division of Juvenile Justice (DJJ). (2 CT 186-188.) The court set the maximum time of confinement at 17 years. (2 CT 188.)

In a published opinion filed on February 23, 2011, the Court of Appeal, First Appellate District, reversed the dispositional order after finding that the juvenile court lacked authority to dismiss the August 18,

2009 petition in order to commit appellant to DJJ based on the petition filed September 18, 2008.

WHY REVIEW SHOULD NOT BE GRANTED

Respondent asks this Court to decide whether a juvenile court has the authority to dismiss a minor's most recent section 602 petition solely for the purpose of evading the clear limitations the Legislature has placed on the category of wards who may be committed to DJJ. Respondent urges this Court to grant review because "A square conflict among the Courts of Appeal requires resolution of the question presented." (Petition for Review [Pet.], p. 3.) Appellant disagrees that such a conflict exists, for the reasons which follow.

Welfare and Institutions Code section 733, subdivision (c) prohibits commitment of a minor to the Division of Juvenile Justice (DJJ) unless the minor's most recent offense is one enumerated in section 707, subdivision (b).³ (Welf. & Inst. Code, § 733, subd. (c); *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1467.)⁴ Section 733, subdivision (c) was enacted by the Legislature in 2007, to narrow the number of minors eligible for DJJ commitment and to shift to the counties the responsibility for rehabilitating all but the most serious youth offenders. The change was motivated "by a desire to reduce the cost and increase the effectiveness of juvenile confinement" (*In re N.D.* (2008) 167 Cal.App.,4th 885, 892; see also,

³

Also eligible for DJJ commitment under section 733, subdivision (c) are minors who have committed sex offenses listed in Penal Code section 290.008. This part of section 733 is not applicable to appellant's case.

⁴

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

V.C. v. Superior Court, supra, 173 Cal.App.4th at pp. 1468-1469.)

Despite this clear limitation created by the Legislature on DJJ commitments, some juvenile courts have used the general dismissal statute, section 782, to circumvent the dictates of section 733 and commit to DJJ a minor whose most recent offense is not a 707(b) offense.⁵ These courts have dismissed a minor's most recent section 602 petition if it does not allege a 707(b) offense, in order to reach back to a previous petition that does allege a DJJ-eligible offense.

As appellant explains below, in *V.C. v. Superior Court, supra*, 173 Cal.App.4th 1455, and appellant's case (*In re G.F.* (2011) 192 Cal.App.4th 1252), the Courts of Appeal concluded that using section 782 to avoid the proscription of section 733, subdivision (c) was an inappropriate use of the dismissal statute. Although a different outcome was reached in *In re J.L.* (2008) 168 Cal.App.4th 43, it does not appear that the reviewing court therein actually considered the issue of whether the juvenile court's use of section 782 was appropriate, in light of the statutory language and legislative history of section 733(c). Thus, no actual conflict in reasoning exists among the Courts of Appeal which this Court need resolve.

In *V.C. v. Superior Court, supra*, 173 Cal.App.4th 1455, the juvenile court dismissed pursuant to section 782 the minor's most recent section 602 petition, which alleged an offense that was not listed in section 707, subdivision (b) and therefore rendered him ineligible for commitment to DJJ. The juvenile court dismissed the petition for the purpose of making a

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Section 782 permits the juvenile court to dismiss a petition, at any time before the minor reaches the age of 21, if it finds "that the interests of justice and the welfare of the minor require such dismissal or if it finds that the minor is not in need of treatment or rehabilitation. . . ."

707(b) offense in a previous 602 petition “the most recent offense,” so that the minor could be sent to DJJ. (173 Cal.App.4th at pp. 1459-1461.)

In a thorough and persuasive opinion written by now-Chief Justice Tani Cantil-Sakauye, the Third Appellate District held that the juvenile court’s dismissal of the minor’s most recent section 602 petition was an abuse of discretion because it was not in the interests of justice, as required by section 782. (*Id.*, at pp. 1459, 1469.) In so finding, the court in *V.C.* determined, in part, that the dismissal would “frustrate the legislative policy expressed by the language of section 733(c).” (*Id.*, at p. 1468.) It further found that, “[i]n light of the legislative history and budgetary context for section 733(c), it would obstruct the Legislature’s purpose” to allow section 782 to be used to circumvent the restrictions of section 733. (173 Cal.App.4th at p. 1469.)

In the instant case, the First Appellate District similarly concluded that the juvenile court therein had abused its discretion in dismissing appellant’s most recent section 602 petition, which alleged an offense not eligible for DJJ commitment, in order to reach back to an earlier petition alleging a 707(b) offense, and commit him to DJJ. (*In re G.F. supra*, 192 Cal.App.4th 1252, 1261.) The First Appellate District agreed with Third Appellate District in *V.C.* that the section 782 dismissal statute should not be used to defeat the restrictions of section 733, subdivision (c), stating:

We agree with *V.C.* that the phrase “the most recent offense” in section 733(c) indicates the Legislature’s intent to limit DJJ commitments to minors who are *currently* serious or violent offenders, and to disallow a DJJ commitment for minors based on their overall juvenile history. We also agree with *V.C.* that utilizing section 782 to dismiss the most recent

petition adjudicating a nonviolent, nonserious offense to reach back to an earlier petition adjudicating a violent or serious offense undermines section 733(c)'s prohibition against committing a minor to DJJ for any offense other than "the most recent offense alleged . . . and admitted or found true by the court." This use of section 782 also undermines the budgetary purpose underlying section 733(c). []

(192 Cal.App.4th 1252, 1260.) The First Appellate District used principles of statutory construction to conclude that the juvenile court lacked authority under section 782 to dismiss appellant's most recent 602 petition and reach back to an earlier one alleging a DJJ-eligible offense. (*Id.*, at p. 1260-1261.)

In *In re J.L.*, *supra*, 168 Cal.App.4th 43, the Sixth Appellate District found that the minor's "most recent offense" was that alleged in a section 602 petition filed in March 2006, since the juvenile court had dismissed a December 2006 petition pursuant to section 782. The appellate court held that because the earlier petition alleged an offense listed in section 707(b), the juvenile court was not precluded by section 733(c) from committing the minor to DJJ. (168 Cal.App.4th at pp. 47, 55-57.)

Respondent asserts that the Sixth Appellate District in *In re J.L.* and the Third Appellate District in *V.C. v. Superior Court* "disagree as to the relationship between sections 733, subdivision (c), and 782." (Pet., p. 3.) A careful reading of *In re J.L.* demonstrates that respondent is mistaken. In *J.L.*, the Sixth Appellate District seems simply to assume, without actually deciding, that it was appropriate for the juvenile court to dismiss the December petition pursuant to section 782. The opinion includes no discussion or analysis as to whether the juvenile court erred in finding that

the dismissal was in the best interests of the minor or required by his welfare, as required by section 782. The opinion includes no discussion about the interplay between sections 782 and 733(c). In fact, it may be that the minor J.L. did not even argue that the juvenile court's use of section 782 to dismiss a petition alleging a non-707(b) offense in order to reach back to an earlier petition was an abuse of discretion. The whole of the Sixth Appellate District's analysis on this point is as follows:

As the minor points out, section 733 does not specifically authorize the dismissal of a petition containing the most recent offense admitted or found to be true. However, section 782 does authorize the juvenile court to set aside findings and to dismiss a petition "if the court finds that the interests of justice and the welfare of the minor require such dismissal," and it was pursuant to *this* section that the court dismissed the December 15, 2006 petition. Because the December 15, 2006 petition was dismissed, and the minor's admission to the allegations in that petition was set aside, the offense alleged in the December 15, 2006 petition could not be considered the "most recent" offense "admitted or found to be true by the court" under section 733, subdivision (c). Therefore, the court was not precluded by the December 15, 2006 petition from committing the minor to the DJJ under section 733, subdivision (c).

(168 Cal.App.4th 43, 57.)

This discussion in *In re J.L.*, *supra*, which does not address whether the juvenile court erred in utilizing section 782 in this manner, begs the question respondent urges this Court to consider. Although the result in

J.L. is different from that in *V.C. v. Superior Court* and appellant's case, the *J.L.* opinion does not speak to the interplay between sections 733, subdivision (c) and 782.

Under California Rules of Court, rule 8.500(b)(1) this Court may order review of a Court of Appeal decision when "necessary to secure uniformity of decision or to settle an important question of law." Because the appellate court in *In re J.L.* appears not to have considered the question of whether dismissal of a 602 petition pursuant to section 782 may be used to circumvent the clear language and legislative purpose behind section 733, subdivision (c), there is no lack of uniformity among the Courts of Appeal to rectify. Nor is there an important question of law to settle, as the exhaustive analyses contained in *V.C. v. Superior Court* and *In re G.F.* persuasively establish that a juvenile court may not use section 782 to defeat the limitations of section 733, subdivision (c).

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CONCLUSION

For the foregoing reasons, respondent's petition for review should be denied.

DATED: April 19, 2011

Respectfully submitted,



LISA ROMO
Attorney for Appellant

Certificate of Word Count

Pursuant to California Rules of Court, rule 8.504(d)(1), I certify that appellant's Answer to Petition for Review in *In re G.F.* contains 2518 words, according to the computer program I used to prepare it.



LISA ROMO
Attorney for Appellant

DECLARATION OF SERVICE

In re G.F., No. A127161

I, LISA M. ROMO, declare that I am over 18 years of age, and not a party to the within cause; my business address is 2342 Shattuck Avenue, PMB 112, Berkeley, California 94704. I served a true copy of the attached:

ANSWER TO PETITION FOR REVIEW

on each of the following, by placing same in an envelope addressed (respectively) as follows:

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

FDAP
730 Harrison Street, Suite 201
San Francisco, CA 94107
Attn: Kathryn Seligman

Sonoma County Superior Court
7425 Rancho Los Guilicos Rd., Dept. C
Santa Rosa, CA 94509
Attn: Hon. Raima Ballinger

G.F.
(Appellant)

Sonoma County District Attorney
Juvenile Division
7425 Rancho Los Guilicos Rd., Dept. D
Santa Rosa, CA 94509

Court of Appeal
First Appellate District, Div. Five
350 McAllister Street
San Francisco, CA 94102

Each said envelope was then, on April 19, 2011, sealed and deposited in the United States Mail at Berkeley, California, Alameda County, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 19, 2011, at Berkeley, California.


LISA M. ROMO