

I. THE JUVENILE COURT'S ERROR IN FAILING TO EXPRESSLY EXERCISE STATUTORY DISCRETION REQUIRES REMAND

As of January 1, 2004, the California legislature amended Welfare and Institutions Code section 731, subdivision (b) to provide juvenile courts with new discretion to impose less than the maximum term when ordering California Youth Authority placements.¹ The juvenile court in this case did not exercise this newly conferred discretion when it committed appellant to the California Youth Authority, and instead, simply imposed the maximum allowable term of confinement pursuant to section 726, subdivision (c).² This failure was error, and requires remand so that the court may properly exercise the discretion the legislature has recently conferred upon it.

A. Welfare and Institutions Code Section 731 Requires the Court at the Time of Committing a Minor to Youth Authority to Set a Maximum Term of Commitment Based on an Individual Minor's Facts and Circumstances

Prior to January 1, 2004, sections 726, subdivision (c) and 731 required a juvenile court committing a minor to the California Youth Authority to impose the maximum term of confinement for a minor committed to the California Youth Authority that was equivalent to the adult term for the same offense. (Welf. & Inst. Code §§ 726, subd. (c), and 731.) Effective January 1, 2004, however, Senate Bill 459 significantly changed the equation and the court's responsibility.

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

² Section 726, subdivision (c) states in pertinent 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."

New section 731, subdivision (b), provides:

“A minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section.”

While the legislative intent behind the amendment has yet to be judicially recognized, the legislative history demonstrates that the amendment's intent was to change the calculation of confinement and provide discretion to the juvenile court to impose a term that is something less than the maximum. The intent was to give to the juvenile court a sentencing choice and ability to choose a term that was based on the individual minor's circumstances and mitigating or aggravating factors. Conferring such discretion eliminated the prior automatic maximum sentence.

The primary task when construing a statute is to determine the Legislature's intent, beginning with the words of the statute. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724.) The Legislature is presumed to intend each of those words, phrases and provisions to have meaning and to perform a useful function. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476; *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Ass'n* (1991) 231 Cal.App.3d 1450, 1454.)

If the statutory language is not ambiguous, then the Legislature is presumed to mean what it said, and the plain meaning of the language governs. (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227; *People v. Coronado* (1995) 12 Cal.4th 145, 151.) In amending section 731, subdivision (b), the Legislature added this statutory language: "...based upon the facts and circumstances of the matter or matters which brought or

continued the minor under the jurisdiction of the juvenile court." The words here are not ambiguous; the Legislature intended the juvenile court to determine the term of confinement in a California Youth Authority commitment by reviewing and weighing the facts and circumstances of the underlying violation and of the minor.

The legislative history supports this plain language. Reports of legislative committees as part of a statute's legislative history may be considered when construing the meaning of a statute. The rationale for considering committee reports when interpreting statutes is the reasonable inference that those who voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it. (*Hutnick v. U.S. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.) Statements in legislative committee reports concerning the statutory objects and purposes are legitimate aids when determining legislative intent. (*National R.V., Inc. v. Foreman* (1995) 34 Cal.App.4th 1072, 1083.) Further "... a legislative staff analysis ... may be relevant to ascertaining legislative intent when the analysis is consistent with a reasonable interpretation of the enactment." (*Pacific Bell v. California State and Consumer Services Agency* (1990) 225 Cal.App.3d 107, 116.) "In a search to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute." (*Schmidt v. So. California Rapid Transit District* (1993) 14 Cal.App.4th 23, 30, fn. 10.)

In this case, arguments advanced in favor of Senate Bill 459 included the goal of greater local control and enhanced accountability of the California Youth Authority through greater involvement of the local juvenile court judges "who know the wards and understand what

rehabilitations efforts are needed before the young offenders can return to their communities.” (Senate Rules Committee, Office of Senate Floor Analyses, April 4, 2003, p. 9; *also see* p. 4 [this bill “authorizes the court to set a maximum term of confinement that is not necessarily the adult term maximum”]; Senate Committee on Public Safety, Report for March 13, 2003 hearing, pp. I-J [new § 731 “ would provide for court consideration of factors about the offense and the offender’s history which would be comparable to those employed now for the triad sentencing of adults, and have those considerations reflected in the CYA confinement term ordered by the court.”].) Amended section 731, subdivision (b), is intended to provide local courts with discretion to order less than the maxi term in California Youth Authority commitments based on the individual circumstances of the minor.

B. The Juvenile Court in this Case Failed to Exercise the Discretion Conferred by Statute, and thus, this Case Must be Remanded

At the March 28, 2004 dispositional hearing, the court failed to consider the evidence and argument presented as bearing on the appropriate term for appellant's California Youth Authority, failed to address and resolve the issue of the length of that commitment, and thus failed to exercise the statutory discretion newly-conferred by amended section 731, subdivision (b). Yet where the law gives the trial court discretion in sentencing, the trial court has a duty, one way or the other, to exercise that discretion. (*People v. Sparks* (1969) 262 Cal.App.2d 597, 600, fn.3.) "Where fundamental rights are affected by the exercise of discretion by the trial court, . . . such discretion can only be truly exercised if there is no misconception by the trial court as to the legal basis for its action." (*In re Carmaleta B.* (1978) 21 Cal. 3d 482, 496; *People v. Davis* (1984) 161 Cal. App. 3d 796, 802-803.) "To exercise the power of judicial discretion, all

material facts and evidence must be both known and considered, together with legal principles essential to an informed, intelligent and just decision.” (*People v. Lara* (2001) 86 Cal.App.4th 139, 165, citing *People v. Davis*, *supra*, 161 Cal. App. 3d at p. 804.) “A court which is unaware of the scope of its discretionary powers can no more exercise informed discretion than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant's record.” (*People v. Lara*, *supra*, at pp. 165-166, citing *People v. Belmontes* (1983) 34 Cal. 3d 335, 348, fn. 8.)

Accordingly, minor is entitled to have his commitment recalled and to have the court set an appropriate term after hearing all of the evidence in order to specifically and appropriately address this issue.

C. The Record in this Case Indicates the Trial Court Did Not Apprehend Its Discretion to Order a Commitment Less than the Maximum Provided by Statute

None of the parties in this case, including the probation department and juvenile court judge, indicated awareness that section 731, subdivision (b), had been amended.

The probation report only considered dispositional alternatives, i.e., the local juvenile detention facility, a group home-slash-foster home-slash-home of suitable relative placement, the Tulare Youth Service Bureau Sex Offender Treatment Program. (CT 171-172.) The probation report simply concluded that the most appropriate disposition was a California Youth Authority commitment. (RT 172.) The sections in which length of commitment was considered merely recited the maximum of eight years. (RT 173 ["Time Setting" 8 years]; RT 174 ["The maximum period of confinement is: 8 years."].)

Argument by both sides was limited to whether a California Youth Authority placement was appropriate. (See RT 1186-1197 [trial counsel

argues against CYA placement]; RT 1201-1205 [prosecuting attorney reiterates probation reports bases for CYA placement].)

The court addressed the issue of dispositional alternatives, and thus resolved it. Ultimately, however, it recited the statutory findings required to support the California Youth Authority placement, and imposed the maximum confinement time with no further comment. (RT 1214.)

Neither the transcript of the hearing nor the report of the probation officer reflect any awareness that a juvenile court is now vested with discretion to order a commitment less than the maximum term, but rather, reflected the previous commitment norm established by section 726, subdivision (c). Since there is no showing the trial court knew it could commit appellant to something less than the maximum term under appropriate circumstances, this case must be remanded so the court can expressly exercise its discretion. (*People v. Manners* (1986) 180 Cal.App.3d 826, 834-35 [departure from sentencing norm requires express justification].)

The failure to exercise a conferred discretion constitutes a denial of a fair hearing and deprivation of fundamental procedural rights, and thus, requires reversal. (*People v. Penoli* (1996) 46 Cal.App.4th 298, 306, citing *In re Ronnie P.* (1992) 10 Cal.App.4th 1079, 1091; *In re Geronimo* . (1985) 166 Cal.App.3d 573; *In re Willie T.* (1977) 71 Cal.App.3d 345; *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479; *In re Michael G.* (1977) 76 Cal.App.3d 872.) The error is not merely that the court failed to recite its determination on the issue; the error is a failure to exercise discretion and failure to address and resolve that issue. (*In re Ronnie P.*, *supra*, 10 Cal.App.4th 1079, 1091, see fn. 10.)

Here, the record indicates the juvenile court failed to address the issue of how long the minor should be committed, and thus, failed to

resolve it. Appellant's case should thus be remanded so that the court can properly exercise the discretion vested in it.

D. The Presumption of Regularity Should Not Apply

The juvenile court's reliance on the probation report in this case and its simple recitation of the maximum confinement time indicate the court was not aware it had discretion to order less than that term when ordering a California Youth Authority placement. Appellant asserts this record is sufficient to demonstrate the trial court did not understand its discretion. At the same time, appellant acknowledges the general rule of appellate review applies a presumption of regularity, and that a trial court's order is presumed to be correct. (See, e.g., *Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 321; *People v. Garcia* (1987) 195 Cal.App.3d 191, 198.) Under the circumstances presented here, it would be unreasonable to apply this presumption when none of the documents and reports that the court reviewed suggested anything other than the maximum was an option, the amendment to section 731, subdivision (b) was not only quite recent at the time of appellant's disposition but substantially changed prior mandates, and there has been no judicial decision on this issue. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 945 [not appropriate to rely upon the rule that a trial court ordinarily is presumed to have correctly applied the law or apply waiver principals in determining appropriate remedy in "silent record" cases subsequent to California Supreme Court's ruling in *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497].)

The juvenile court in this case relied upon the probation report analysis when it made its findings and committed appellant to the California Youth Authority. That probation report analysis was identical to the one submitted after appellant's first jurisdictional hearing. (CT 39-44, 170-176.) The first report was filed prior to the effective date of the section 731, subdivision (b) amendment. (RT 28, report filed July 15, 2003.) There is

no indication that either the probation department or the trial court was aware that section 731, subdivision (b) had been amended to allow the court discretion when ordering a term of confinement in a California Youth Authority commitment.

Further, any previous appellate decisions concerning a juvenile court's exercise of discretion in the dispositional stage of juvenile proceedings are limited to discretion as it relates to placement. There are no decisions concerning a juvenile court's exercise of discretion when ordering a term of placement, and no Court of Appeal decision foreshadowed this legislative development. Under these circumstances, relief is appropriate when it is overwhelmingly likely that the juvenile court erroneously assumed it did not have the discretion to order something less than the maximum term of confinement.

Moreover, remand to allow the juvenile court to properly exercise its discretion would not be unduly cumbersome or any more costly than other remedies. (*Cf. People v. Fuhrman, supra*, 16 Cal.4th 930, 945 [compelling remand in all "silent record" *Romero* cases too costly and cumbersome; Superior Court petition for writ of habeas corpus is appropriate vehicle for relief].) Remand in this juvenile case would actually streamline the process since no section 778 Petition to Modify appellant's term would be required.

Further, remand directing the trial court to properly exercise its discretion and specifically frame the issue presented here permits the court to make a meaningful decision based on the evidence about an appropriate term of commitment. The court limited its evaluation of the conflicting psychological evaluations to placement. Rather than adopting either the position of the defense that appellant presented a low to moderate risk to the community, or the position of the prosecuting attorney that appellant presented a high risk of reoffending, the court adopted a middle ground. (RT 1120, 1122, 1153, 1205.) The court did not reference the aggravating

circumstances argued by the prosecutor (violence, deception, planning, sophistication), but instead ordered the CYA placement to provide counseling as a primary concern, with the secondary concerns of accountability and "training." (RT 1205.) Under these circumstances, the court should be given the opportunity to properly exercise its discretion based on appellant's circumstances and the circumstances of the matter that brought him before the court, particularly when the court adopted a middle road in its findings.

Finally, requiring an affirmative record that the court exercised its discretion and weighed the facts and circumstances of this matter that brought this minor under its jurisdiction furthers the stated goals of this legislation: greater local control, enhanced accountability of the California Youth Authority and local determination of the term of confinement in CYA. (Senate Rules Committee, Office of Senate Floor Analyses, April. 4, 2003, pp. 4, 9, *supra*.) Requiring an affirmative record would furnish the appellate courts with the record necessary for meaningful review of any claim of abuse of discretion, a record that any ruling is "the product of a mature and careful reflection on the part of the judge," and would "promote judicial deliberation before judicial action" (See *People v. Green* (1980) 27 Cal.3d 1, 24, [requirement to make affirmative record that court exercised its discretion and weighted probative value against prejudicial effect under Evidence Code § 352] citing *People v. Holt* (1972) 28 Cal.App.3d 343, 353 [disapproved on a different ground in *Evans v. Superior Court* (1974) 11 Cal.3d 617, 625, fn. 6, *Mercer v. Perez* (1968) 68 Cal.2d 104, 113.)

E. Remand is Required

Once an appellant has shown the trial court misunderstood its sentencing discretion, appellant is entitled to a resentencing hearing in front of the trial court. (E.g., *People v. Metcalf* (1996) 47 Cal.App.4th 248, 252 [once it is determined the trial court believed it had no discretion,

remand is required].) This entitlement stems from a defendant's due process right to sentencing by a court that is aware of the full scope of its discretionary sentencing choices. (U.S. Const, Amend. XIV; Cal. Const., art. 1, § 7; see, e.g., *Hicks v. Oklahoma* (1980) 447 U.S. 343, 346-347 [65 L.Ed.2d 175, 100 S.Ct. 2227]; *United States v. Tucker* (1972) 404 U.S. 443, 447 [30 L.Ed.2d 592, 92 S.Ct. 589]; *Townsend v. Burke* (1948) 334 U.S. 736, 741 [92 L.Ed.2d 1690, 68 S.Ct. 1252]; *People v. Belmontes*, *supra*, 34 Cal.3d 335.)

The juvenile court was not aware of the full scope of its discretionary choices as to the length of the California Youth Authority term it could impose. Instead, it reflexively relied on the commitment norm as expressed in section 726, that is, the maximum allowable term. In addition, to further the legislative goals and intention of the amendment to section 731, subdivision (b), appellant should be entitled to a dispositional hearing in which the court is fully aware of the scope of its discretion. The matter should therefore be remanded.

CONCLUSION

For all these reasons, appellant's case should be remanded so that the trial court can properly exercise its discretion and order a length of confinement based on that exercise.

Dated:

Respectfully Submitted,

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