

ARGUMENT

I.

The Juvenile Court Abused its Discretion When it Committed Appellant, A Seriously Mentally Ill Child, To The Youth Authority.

“Try to stay out of the gangs because they have a lot of gangs up there.”

Those were the parting words, not of a older street-savvy relative or mentor watching out for a child moving to a new neighborhood, but of a juvenile court judge committing a severely mentally ill child to the California Youth Authority. (CT 5.) That commitment to CYA must be reversed, not just because there are gangs at CYA, but because all the evidence in the record shows that CYA is unable to provide the mental health treatment appellant needs. There also was no evidence presented on whether CYA could meet his educational needs.

A. Standard Of Review.

This Court reviews the juvenile court’s decision to commit a minor to the CYA for an abuse of discretion. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) “There must be evidence in the record demonstrating both a probable benefit to the minor by a CYA commitment and the inappropriateness or ineffectiveness of less

restrictive alternatives.” (*Id.*[citing *In re Pedro M.* (2000) 81 Cal.App.4th 550, 555; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576-577.) “A CYA commitment may be considered, however, without previous resort to less restrictive placements.” (*Id.*)

Substantial evidence must support the placement order. (See, *In re Domanic B.* (1994) 23 Cal.App. 4th 366, 373-374, citing *Michael D.*, 188 Cal.App.3d at 1397; *Teofilio A.*, 210 Cal.App.3d at 579.)

Substantial evidence is “evidence that inspires confidence and is of ‘solid value.’” (*People v. Marshall* (1997) 15 Cal.4th 1, 34 [citing *People v. Morris* (1988) 46 Cal.3d 1, 19 and *People v. Bassett* (1968) 69 Cal.2d 122, 139].) Considering the evidence in the light most favorable to the judgment, the Court must determine whether a reasonable fact-finder would made the finding under the governing standard of proof. (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

B. The Evidence of a Probable Benefit from a CYA Commitment Was Insufficient.

In assessing whether the court abused its discretion, this Court “must examine the evidence at the disposition hearing in light of the purposes of Juvenile Court Law.” (*In re Michael R.* (1977) 73 Cal.App.3d 327, 333.) An abuse of discretion may be found when

there is no substantial evidence to support the juvenile court's findings or when the juvenile court's decision is unreasonable in light of those findings. (*Id.*; see also, *Teofilio A.*, 210 Cal.App.3d at 579.) In this case, appellant's history establishes that placing him with criminally sophisticated juveniles at CYA will be detrimental to him; and that there was no evidence before the court that there would be any benefit to appellant from a CYA commitment, or that he would receive the mental health treatment he so desperately needs. To the contrary, the evidence suggested a CYA commitment would be to appellant's detriment.

Prior to 1984, juvenile commitment proceedings were aimed at rehabilitation and treatment, not punishment. (*Teofilio A.*, 210 Cal.App.3d at 575-576; see also *In re Aline D.* (1975) 14 Cal.3d 557, 567.) In 1984, the Legislature expressly recognized that punishment and protection of the public were also proper purposes for the juvenile court to consider. (Welf. & Inst. Code § 202(a) and (b); *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) Nevertheless, treatment and rehabilitation of the minor remain paramount, and

any punishment must be “consistent with the rehabilitative objectives of the [juvenile court law].” (Welf. & Inst. Code § 202(b).)

Thus, while there has been a slight shift in emphasis, rehabilitation continues to be an important objective of the juvenile court law. To support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate.

(*Teofilio A.*, 210 Cal.App.3d at 576.). A determination of suitability for commitment to the CYA must be assessed in accordance with section 734, which mandates a finding of probable benefit from the CYA commitment:

[n]o ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.

In this case, there is insufficient evidence that appellant will likely benefit from a CYA commitment. Not only was the evidence insubstantial, there was affirmative evidence that appellant would not benefit from, and would be harmed by, a CYA commitment.

Appellant had no history of violence until the onset of his psychotic break. Once treated with medication, while not cured, his

condition stabilized and he was no longer violent and he no longer exhibited extreme behavior like the assaults, exhibitionism, urinating on others and playing with feces. (CT 152.) Mental health treatment was imperative to his rehabilitation. But appellant's medication doesn't work on its own. It needs to be monitored and tweaked, i.e. "getting the so-called cocktail correct." ((RT Mar. 2, 2004 at 3.) And it needs to be supplemented with family visits. (CT 128.)

The probation officer and the psychologist agreed that appellant would not receive the treatment he required at CYA and that CYA commitment would put him too far from his family. (CT 119, 128.) Not only was there a lack of a benefit, but there was a potential for grave harm to appellant at CYA stemming from untreated mental illness.

No evidence to the contrary was presented at the hearing and the juvenile court gave no explanation as to how its finding of a probable benefit could be reconciled with the unanimous opinion that appellant would not get the mental health treatment he needs. ((RT Apr. 5, 2004, *passim*.) The lack of any substance behind the probable benefit finding is reflected by the court's oral recitation,

without any embellishment ((RT Apr. 5, 2004 at 4-5), of the statutory language (Welf. & Inst. Code § 734), which is also found, again without embellishment, in the form minute order and the commitment order. (CT 150, 154.)

The experts' predictions that appellant would not receive the mental health treatment he required appear prophetic. On January 3, 2005, the California Inspector General issued a report concluding that at CYA "Mental health and counseling services for wards are ... lacking." At one facility, "not a single ward in a sample from the general population ... had received the minimum amount of required counseling." And many wards do not receive the treatment needs assessment in the first 21 days, as required by department policy.¹

The probation officer's uncontradicted report, supported by the psychologist's report, is entitled to great weight. A probation officer must "represent the interests of each person" who has been

¹ Matthew L. Cate, Inspector General, *The California Youth Authority Has Not Corrected Deficiencies Identified by Past Audits in Its "Core Mission" of Providing Rehabilitation Services to Wards*, Press Release, Dated Jan. 3, 2005, p. 2. (See <http://www.oig.ca.gov/press-rlse/PR01-03-05.pdf> (last viewed Jan. 5, 2004).) The full audit report can viewed at: <http://www.oig.ca.gov/pdf/AccountabilityAudit-CYA.pdf> (last viewed Jan. 5, 2004).

adjudged a ward of the court and to “furnish the court such information and assistance as the court may require.” (Welf. & Inst. Code § 280.) “Since the inception of the juvenile court system the probation officer has borne the duty to advise and care for the juvenile defendant.” (*In re Michael C.* (1978) 21 Cal.3d 471, 477 [reversed on other grounds in *Fare v. Michael C.* (1979) 442 U.S. 707, 725].) The probation officer, upon learning of appellant’s grave mental illness and of appellant’s treatment needs, changed his position and recommended against CYA. There was no contrary evidence of specific treatment programs that appellant would be eligible for at CYA.

Dr. Montalvo also emphasized the need for appellant to be in a structured educational program. (CT 128.) There is absolutely no evidence in the record that CYA would be able to satisfy appellant’s special educational needs.

There was a time when courts assumed that CYA has programs to benefit wards. (*See e.g. In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153.) But those days are over (and perhaps no such assumptions should ever have been made). Factual findings about CYA, like all

factual findings, should no longer be based upon assumptions or reputation. CYA, like all institutions, is not static. Its ability to meet the needs of minors as a class is fluid, changing from month to month, greatly affected by changes in leadership, staff, client population, policy, and funding, among other things. And CYA, like all institutions, is not everyone, even when it operates optimally. There just some kids whose needs cannot be met there.

It is a small burden on the probation departments and litigants to present evidence in each juvenile case about the specific needs of the juvenile and about how, based on current government reports, expert evidence, or first-hand current reports from CYA staff, CYA can serve those needs. This was actually done in this case – with the experts finding that CYA would not meet appellant’s needs – but the juvenile court ignored that clear evidence.

Most likely, the juvenile court made the probable benefit finding because the probation department and defense counsel had not yet found another facility to take appellant. The lack of alternatives certainly is a concern. But CYA is not the default dumping ground for children and the lack of alternatives does not relieve the court of

its duty to find a probable benefit.² There may be cases – those with difficult-to-place juveniles – where the creativeness and aggressiveness of the probation department and the judge will be tested, but if CYA cannot provide a mentally ill minor with the treatment he needs, he must remain in the county (juvenile hall or elsewhere) until a beneficial placement is found.

Because there was no evidence of a probable benefit from a CYA commitment, the juvenile court erred in committing appellant to CYA.

² This Court need not determine now what will happen on remand if there remain no residential facilities that will have appellant. By the time appellant is returned to juvenile court, a full year will likely have passed since his last dispositional hearing. And that year will be full of new information about appellant's needs and what risks he poses. Despite the suggestions in the record that there were no alternatives, it appears that some options were never explored, including out-of-state facilities. Also ignored was the Lanterman-Petris-Short Act (LPS Act) (§ 5000 et seq.), which "is a comprehensive scheme designed to address a variety of circumstances in which a member of the general population may need to be evaluated or treated for different lengths of time." (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) A person who, "as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled," may be taken into custody and placed in a designated facility for varying periods, depending on the circumstances. (§ 5150.) Such proceedings can apply to wards of the juvenile court. (§ 6550; *In re Patrick H.* (1997) 54 Cal.App.4th 1346.)