

III.

APPELLANT’S SIXTH AND FOURTEENTH AMENDMENT FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE COURT COMMITTED HIM TO THE CALIFORNIA YOUTH AUTHORITY WITHOUT SUBSTANTIAL EVIDENCE OF PROBABLE BENEFIT TO APPELLANT FROM THE COMMITMENT

There was no evidence of *any* benefit to Appellant from a commitment to the California Youth Authority (“CYA”), because the only mention of any treatment Appellant might receive from a CYA commitment was contained the probation report, which contained nothing more than conclusionary statements. (CT 88-89.) Therefore, without *any* evidence of benefit to Appellant from a CYA commitment, the court committed Appellant to CYA for the maximum term allowed by law in violation of his right to due process of law.

A. The Due Process Clause Requires That A State Meet Its Statutorily Defined Burden of Proof Before A Minor Can Be Deprived of His Liberty

The Due Process Clause of the Fourteenth Amendment requires fundamental fairness in state proceedings which deprive a person of his liberty. (*Bearden v. Georgia* (1983) 461 U.S. 660, 673.) In *Hicks v. Oklahoma* (1980) 447 U.S. 343, the United States Supreme Court held that the failure of a state to observe its own statutory procedural law in criminal sentencing violates the federal due process rights of a criminal defendant by depriving him of a liberty interest. (*Id.* at pp. 346-347.) Therefore, when a state has provided a specific method of determining whether a commitment which results in a loss of liberty, shall be imposed, “‘it is not correct to say that the defendant’s interest’ in having that method adhered

to ‘is merely a matter of state procedural law.’” (*Fetterly v. Paskett* (9th Cir. 1993) 997 F.2d 1295, 1300.).

The United States Supreme Court “repeatedly has recognized that ... commitment *for any purpose* constitutes a significant deprivation of liberty that requires due process protection.” (*Addington v. Texas* (1979) 441 U.S. 418, 425. Italics added.) And, “[t]he Court has on numerous occasions acknowledged that children are in many circumstances possessed of constitutionally protected rights and liberties. See *Parham v. J. R.* (1979) 442 U.S. 584, 600 [liberty interest in avoiding involuntary confinement].” (*Troxel v. Granville* (2000) 530 U.S. 57, 89; *Reno v. Flores* (1993) 507 U.S. 292, 316.) The due process protections applicable to juvenile proceedings include the right to have the state meet its *statutorily defined burden of proof* before the juvenile loses his liberty. (*Alfredo A. v. Superior Court* (1994) 6 Cal. 4th 1212, 1225, citing *Schall v. Martin* (1984) 467 U.S. 253, 253.) The standard of proof which is required to be applied to the facts in reaching a judgment implicates federal due process rights.

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to “instruct the factfinder concerning the degree of confidence our society thinks [s]he should have in the correctness of factual conclusions for a particular type of adjudication.” *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision. (*Addington v. Texas, supra*, 441 U.S. at p. 423.)

B. In California, Due Process Requires, As Defined By State Statute, That

There Be Substantial Evidence of Benefit To A Minor From A Disposition Order Before He Can Be Deprived of His Liberty

In California, the statutes that govern the commitment of juvenile wards to CYA have resulted in the creation of a protected liberty interest. By statute, in California, sections 202¹ and 734² require that “[t]o support a CYA commitment, it is required that there be *substantial evidence* in the record (1) supporting the court’s disposition order committing a juvenile to CYA, (2) which demonstrates probable benefit to the minor, and (3) supports a determination

¹Section 202 states in pertinent part:

(a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. ... (b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, *receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.*

(d) *Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter.* Participants in the juvenile justice system shall hold themselves accountable for its results. (Italics added.)

² Section 734 states, in pertinent part: “No 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.*” (Italics added.)

that less restrictive alternatives are ineffective or inappropriate. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576, 579; *In re Domanic B.* (1994) 23 Cal.App. 4th 366, 373-374; *In re Michael D.* (1987) 188 Cal.App.3d 1302, 1397.) “Substantial evidence is defined as ‘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.)

Therefore, under California law, to satisfy the requirements of due process, there had to be *substantial evidence* on the record that there be probable benefit to Appellant from his commitment to CYA. Because no such evidence existed on this record, the State failed to meet its statutorily required burden before depriving Appellant of his liberty.

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C. Appellant’s Social History

As discussed in the statement of facts, except for the time he spent with his grandparents, who died when Appellant was 11, he has been without a stable and functional home and without the socialization and education that comes from attending school. With his sisters he was the subject of 14 CPS referrals. He never had the opportunity to know his father well, and at 11 had to accept that he never would because his father was shot dead, an unintended victim of a gang shooting. (CT 54-55.)

It is respectfully submitted that it is completely understandable that Appellant would seek out the attention from older males like O and T, two 19-year olds, who let him “hang

out” with them. It is understandable that, barely out of puberty, he would be greatly influenced by their concept of what makes a man, and would feel bound to emulate them and to do as they told him to do. It is significant, however, that according to almost all of the independent witnesses, as fully discussed *ante*, that Appellant was the *only* one of the three that was horrified when C slipped off the rock and went into the water, and he was the *only* one of the three that stayed and made any attempts to save C’s life.

D. Evidence At The Disposition Hearing, the Probation Report, and The Court’s Finding and Order

1. Probation Department Recommendation

The probation officer recommended a CYA commitment because of the belief that Appellant had to be “placed in a secure setting,” “removed from the community” and that CYA “is the only option.” (CT 89.)

2. Evidence Presented At Or Before the Disposition Hearing

a.) Evidence As To Appellant’s Behavior In Juvenile Hall

The evidence established that Appellant had great difficulty adjusting to his first real detention while he was at juvenile hall, and that his behavior reflected his attempt to adjust and his immaturity and acting out when he could not. The court’s comments that what led to its conclusion that Appellant was “dangerous” (RT 534) were not based on any violent act Appellant had committed towards anyone while housed at juvenile hall, but on the court’s

apparent out-of-touch attitude and failure to understand the way troubled adolescents act out when they are depressed and angry. The court said, “It’s not just the disrespect which this minor shows people, and insulting awful things he says -- hard things he says to the people. But it’s the threats, the physical threats, the violent physical threats: ‘I want to kill you.’ ‘I want to slap your ass’ - - the threatening of physical harm to staff. These are of great concern.” (RT 534.) The court ignored the fact that in Appellant’s 295 days at juvenile hall (RT 512), Appellant had never physically assaulted any staff member at juvenile hall.

b.) Evidence As To Alternative Placements

At the disposition hearing conducted on March 29, 2005, Dan Macallair testified on Appellant’s behalf as an expert in alternative placements for juveniles. (RT 513-517.)

Mr. Macallair testified that it was not unusual for a minor to have problems adjusting to the environment in Juvenile Hall. (RT 518.) It is not unusual for minors placed there to “act out” when placed there. (RT 519.) Mr. Macallair said that Appellant’s family situation had been known by the county child welfare system. He was not going to school, the family had been homeless, and Appellant and his sister had found employment to provide for the family. (RT 520.) There are two problems, the nature of the sustained offense and Appellant’s behavior in juvenile hall, that made finding an alternative placement. Eight placements had turned Appellant down, and there were five more that had been contacted and no decision yet reached. (RT 520-521.)

Mr. Macalliar said that Appellant could be placed in a level 12 (out of 14 levels) placement, where there would be a licensed clinical social worker, educational programs, psychologist and access to psychiatric care. (RT 521.) The level of treatment depends upon the identified needs, and a variety of factors considered, including the minor's psychological functioning, his educational needs, the seriousness and nature of the offense and the level of intensity of treatment that is required. (RT 524.)

Mr. Macallair was very familiar with CYA programs and facilities, and said it is difficult for most youths who are placed at CYA. Mr. Macallair said that given his background, Appellant would most likely be placed in the general population. He would be placed into the "standard educational program." (RT 523.)

The court stated that it had considered all of the less restrictive alternatives, and that "even Mr. Macallair could not find any that would accept him," because Appellant had been rejected by eight out of the ten programs to which his record had been submitted. (RT 534.) The court did not find Appellant "acceptable to any program that is not a lockdown." (RT 534.) The court stated that it believed "this minor is very dangerous." (RT 535.) While the court was "sorry for his background," and that he "didn't have the right upbringing," the court had "an obligation to future people and other potential victims, and I think this minor is very dangerous, and I have absolutely no other recourse but to send him to the California Youth Authority." (RT 534.)

Without any evidence in the record that there was any probable benefit to Appellant from a CYA commitment, the court then stated that “the Youth Authority has some very good programs if” Appellant availed himself of them. The court said that, it was “really” “up to” Appellant about how well he was able to rehabilitate himself. (RT 537.)

The court appears to have judged Appellant by adult standards and it failed to recognize, as the United States Supreme Court recently did, that a juvenile’s mind is different from that of the mind of an adult. (*Roper v. Simmons, supra*, ___ U.S. ___ [125 S. Ct. 1183; 161 L. Ed. 2d 1]) In *Roper*, the United States Supreme Court held that executing persons who were under eighteen years old at the time that a capital murder was committed violates the 8th Amendment’s prohibition against cruel and unusual punishment. The Supreme Court looked at three categories of differences between juveniles and adults. First, lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults. These qualities often result in impetuous and ill considered actions and decisions. The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. The court acknowledged that youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. (*Id.* at p. 1195.)

Therefore, to attribute to Appellant the level of “dangerousness” that the court did, which attribute, the court stated required that he be locked up for the protection of the public ignores the fact that Appellant was a fatherless child influenced in these offenses by two adult males. To leave his rehabilitation “up to [Appellant]” is to doom him to failure. A 14-year old boy, housed with older, more sophisticated delinquents, in a facility that offers few, if any, programs to deal with Appellant’s issues will do nothing more than exacerbate Appellant’s anger.

Appellant’s father and grandparents are dead, his mother has failed to provide him even with minimal shelter and food, and kept him out of school, the two adults he was with the night C died both ran away and left him there to deal with the police, and the police pretended they were his “buddies” and “trying to help” him, leading to a 32-year to life commitment. It is difficult to imagine a 14-year old capable of rehabilitation in these circumstances without the proper treatment and support. It is difficult to imagine a 14-year old capable of overcoming his anger at his loss and the betrayals of those he trusted, without proper treatment and support. It is impossible to imagine that a 14-year old with Appellant’s history will be *less* of a threat to society after being warehoused at CYA for, at a minimum, the remainder of his teenage years.

E. Appellant Was Denied His Right To Due Process Of Law When He Was Deprived of His Liberty Without the Required “Substantial Evidence” To Support A Finding That He Would Receive Probable Benefit From a Commitment to CYA Before He Is Deprived of His Liberty

In the case at bar, it was fundamentally unfair, and a violation of Appellant’s right to due process, when he was committed to CYA with no credible or competent evidence that Appellant would receive any benefit from a CYA commitment, much less the required “substantial evidence” of probable benefit to him (§§202, 734; *In re Teofilio A.*, *supra*, 210 Cal.App.3d at pp. 576, 579; *In re Domanic B.*, *supra*, 23 Cal.App.4th at pp. 73-374; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1397.)

First, there was nothing that qualified as *evidence* of probable benefit to Appellant from a CYA commitment in this record. Evidence Code section 140 states: “‘Evidence’ means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.”

1. There Are No Educational Programs At CYA To Meet Appellant’s Needs

The probation officer made the unfounded assumption that Appellant would “be able to complete his high school education” at CYA. (CT 89.) There was no evidence presented in the case at bar as to which CYA facility Appellant would be placed. The expert report on the educational programs available to wards placed at CYA establishes that there are significant problems at the various the facilities reviewed which include “teacher positions eliminated immediately if the ward population at the site drops” “[d]ue to the budgetary restraints...” (Exhibit C, pp. 5); “a shortage of general education teachers in the main school program” at Chaderjian (Ex. C. p. 6); 20 to 30% of all CYA wards are absent from school each day (Ex. C. p. 8); an insufficient number of credentialed teachers allocated to the

facilities to meet the general staffing ratio, and that if all of the wards were to attend high school programs simultaneously, some CYA wards would have to be sent back to their rooms because the class numbers far exceed current allowable limits. (EX. C, p. 11.)

While the record clearly establishes that Appellant was out of school for over two years, and thereby severely deficient in credits, there is no evidence on this record that Appellant's need for educational guidance will be satisfied at any CYA facility.

2. There Is No Evidence That Appellant Will Receive Any Of The Contemplated Counseling At CYA

On this record, there was no evidence of benefit to Appellant from a CYA commitment other than the assumptions of the probation officer that Appellant would be able to complete his high school degree and have anger management and victim impact counseling. (CT 89) In litigation brought because of the deficiencies and horrendous conditions at CYA, respondent has stipulated to the essentially accuracy of the reports and conclusions of the experts.³ As demonstrated by the expert's reports in the *Farrell* case, these assumptions are more likely than not to be completely erroneous in Appellant's case.

³ Under separate cover, Appellant is requesting, *inter alia* that this Court take judicial notice of the following documents from the court file in *Farrell v. Allen*, Alameda County No. RG 03079344: "Consent Decree" executed by the Attorney General and the Director of the California Authority (Exhibit A); the "Stipulation Regarding California Youth Authority Remedial Efforts" (Exhibit B); the "Educational Program Review of California Youth Authority" (Exhibit C); and, the "Report of Findings of Mental Health and Substance Abuse Treatment Services To Youth In California Youth Authority Facilities" (Exhibit D).

The probation officer assumed that Appellant would receive anger management counseling and victim awareness counseling. Despite the fact that Appellant was clearly a troubled young man, neither the probation officer nor the court saw fit to have a psychological evaluation done of him to establish what specific counseling needs Appellant had, the severity of his mental health issues, and any expert recommendation for treatment.

At CYA, the expert reports establish, the policies on the use of force and restraint do not distinguish mentally ill children from those in the general population, and use is made of dangerous restraining beds and cages. (Exhibit D, p. 18.)

“The mental health care provided by CYA is not adequate and does not conform to community standards...” (Exhibit D, p. 9.)

3. “Punishment” Is Not, By Itself, Rehabilitative

The probation officer stated as “case needs,” that “the killing of another human being is the ultimate criminal act, and the most serious consequences must be imposed. For the protection of the public and the community *as well as for the punishment and rehabilitation*” of Appellant, he had to be placed in CYA. (CT 88-89.)

From the court’s comments about Appellant, and its failure to explicitly find any probable benefit to him from a CYA commitment, it is expected that respondent will argue, by relying on section 202, subdivision (b) and *In re Michael D.*, *supra*, 188 Cal.App.3d at

p. 1396, that there “rehabilitative punishment” that would provide sufficient “probable benefit” to support Appellant’s commitment to CYA. This argument is, quite simply, wrong.

Section 202, subdivision (b), clearly states that minors who are wards of the court,

shall receive care, treatment and guidance consistent with their best interests and protection of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance that is consistent with their- best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. (Italics added.)

Subdivision (e) of Section 202 states, in pertinent part:

As used in this chapter, “punishment” means the imposition of sanctions. ... Permissible sanctions, *may include* 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.
- (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 Department of the Youth Authority.

“Punishment,” for the purposes of this chapter, does not include retribution.

As the legislative history of section 202 (added by Stats. 1984, ch. 756, §§1, 2 pp. 2726-2727) establishes⁴ that while “punishment” could be a consideration in any disposition

⁴ Appellant is requesting under separate cover that the court take judicial notice of the legislative history of section 202, to attached to the request as Exhibit E.)

ordered by the court, that the use of punishment as a tool for rehabilitation *must* be accompanied by “treatment and guidance.”

The “Enrolled Bill Report” of the Youth and Adult Correctional Agency,” stated that, “the bill is consistent with the Youth Authority’s emphasis on offender accountability and public protection.” But, it was cautioned, “At the same time, delinquent minors must receive intervention services that will increase their knowledge, employment skills, and ability to get along in society.” (Ex. E, p. 4.) The committee reports on the bill also conclude, not that punishment is rehabilitation, but that punishment “that is consistent with rehabilitation” can be considered by a court in fashioning a disposition order. (Ex. F., pp. 23, “Report of Senate Committee on Judiciary;” Ex. E, p. 26, “Report of Assembly Criminal Law and Public Safety Committee.”

Indeed, the California Supreme Court recently recognized this distinction between “punishment” and “rehabilitation”:

The juvenile court system and the adult criminal courts serve fundamentally different goals. The punishment for serious crimes tried in the criminal courts is imprisonment, and “the purpose of imprisonment for crime is punishment.” (Pen. Code, § 1170, subd. (a)(1).) California Rules of Court, rule 4.410 identifies *seven objectives in sentencing a criminal defendant*. They *include punishment, deterrence, isolation, restitution, and uniformity in sentencing, but they do not include goals important in the treatment of juvenile offenders such as maturation, rehabilitation, or preservation of the family*.

In contrast, the juvenile court system seeks not only to protect the public safety, but also the youthful offender. Section 202, subdivision (a) states that the purpose of the juvenile court system is “to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible . . .

.” The statute further provides that “[w]hen the minor is removed from his or her own family it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents.” (*Ibid.*) Indeed even for the most serious offenders--those who will be committed to the California Youth Authority--*“community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.”* (§ 1700.) (*Manduley v. Superior Court* (2002) 27 Cal. 4th 537, 593. Italics added.)

Therefore, respondent’s expected argument that the punishment inherent in a CYA commitment has, by itself, any “rehabilitative value” *without* substantial evidence that a ward will receive the appropriate guidance and treatment must be rejected.

F. The State Should Be Estopped From Arguing On Appeal That CYA Can Provide Effective Rehabilitation Treatment Or Educational Programs For Appellant When the Director of CYA and The Attorney General Have Effectively Stipulated to the Absence and/Or Ineffectiveness of Such Programs at the Youth Authority

A state’s actions can “offend the standards of fundamental fairness under the Due Process Clause...” (*Michigan v. Tucker* (1974) 417 U.S. 433, 441.) “Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.” (*In re Gault* (1967) 387 U.S. 1, 13. Citation omitted.) The Due Process Clause, in its most basic protection, requires that the state act with fundamental fairness when depriving an adult or juvenile of his or her liberty. ⁵

⁵ “For all its consequence, ‘due process’ has never been, and perhaps can never be, precisely defined. ‘[Unlike] some legal rules,’ this Court has said, due process ‘is not a technical conception with a fixed content unrelated to time, place and circumstances.’ [Citation] Rather, the phrase *expresses the requirement of ‘fundamental fairness,’* a requirement whose meaning can be as opaque as its importance is lofty. Applying the Due Process Clause is

Through a Consent Decree entered in litigation brought against CYA, the State of California, through the Attorney General's Office and the Director of the California Youth Authority, effectively stipulated to the ineffectiveness, unavailability and the failure of CYA to meet professional standards in its CYA substance abuse and rehabilitation programs. It is, therefore, fundamentally unfair for the State to seek, in the case at bar, to deprive Appellant of his liberty and to argue that there is substantial evidence of probable benefit to him from these very programs. The only distinction in the State's diametrically opposite legal positions is the nature of the governmental act involved.

When the mental health, welfare and rehabilitation of a juvenile is at stake, it cannot be ignored that the State has chosen to adopt diametrically divergent positions depending upon which hat the Attorney General is wearing and that there is an essential contradiction in the position which it must be assumed will be taken by respondent on appeal in the case at bar, by arguing that there is probable benefit to Appellant from his commitment to CYA when it has previously consented to a judgment which effectively holds otherwise.

CYA is an agency of the executive branch of state government (*In re Keller* (1965) 232 Cal.App.2d 520, 524), the same branch of government of which the Attorney General is a member. (*People v. Andrews* (1998) 65 Cal.App.4th 1098, 1104.) The Attorney General

therefore an uncertain enterprise which must discover what "fundamental fairness" consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." (*Lassiter v. Dept. of Social Services* (1981) 452 U.S. 18, 24-25. Italics added.)

has direct supervision over the district attorneys of the state and may take action to see to the adequate enforcement of the laws of the state. (Cal. Const., art. V, §13; Gov. Code, §12550 et. seq.)

Respondent's legal representative on appeal is the Attorney General's office, the same executive branch agency which stipulated in the Consent Decree (Exhibit A), that the Reports prepared to settle the litigation concerning CYA, an executive branch agency, are "substantially accurate." (Ex. A, p. 3.) After the Consent Decree was signed by the judge and filed with the court, the state later entered into a stipulation that the remedial action required has been delayed. (Exhibit E.)

Therefore, in its capacity as the legal representative of state government ("The People"), as a member of the executive branch and the legal representative of its agencies, because of its duty to directly supervise all county district attorneys, and in its capacity as legal counsel for CYA and respondent, the Attorney General should be estopped from arguing that there are educational and treatment programs currently available at CYA to benefit appellant when it has previously conceded in its capacity as legal representative of CYA and the State of California, that no such programs exist and/or those that exist are not effective in the rehabilitation of CYA wards with identifiable educational and substance abuse treatment issues. (See, *United States v. Powers* (7th Cir. 1972) 467 F.2d 1089, 1094 [suggesting in dictum that the prosecution's position in another defendant's trial could act as a judicial admission]; *People v. Valles* (1979) 24 Cal.3d 121 [defendant estopped from

raising issue settled by stipulation], *California State Auto. Ass'n Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664-665 [when a stipulation is signed by a representative of a party, the representative signatory is privy to the stipulation and can be estopped from relitigating the issues to which stipulation applied], *Duffy v. Duffy* (1894) 104 Cal. 602 [signatoires are estopped from denying the effect of their stipulation].)

G. Appellant's Commitment to CYA Must Be Reversed

Because the State of California has entered into a Consent Decree in which it stipulated that the expert's reports finding the educational and substance abuse programs at CYA were insufficient to meet the needs of wards in CYA who required those services for their rehabilitation, it has been established that it is highly unlikely that Appellant will receive *any* treatment or guidance from a CYA commitment. Appellant's right to due process of law was violated because it was fundamentally unfair to deprive Appellant of his liberty when the State could not, and did not, meet its required burden to produce substantial evidence of benefit from a CYA commitment. Appellant's commitment to CYA is, therefore, the equivalent of an adult sentence because he will simply be warehoused without the treatment and guidance he needs and which is required.

As the United States Supreme Court recognized decades ago, without provisions for the proper guidance, education and simply subjected to incarceration.

Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence -- and of limited

practical meaning -- that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours" Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents confined with him for anything from waywardness to rape and homicide.

(In re Gault, supra, 387 U.S. at p. 27.)

Appellant's commitment to CYA must be reversed.

Conclusion

The measure of a society can be based on how it treats its most vulnerable members. Appellant never received help from the State despite 14 CPS referrals that made it abundantly clear his childhood bordered on being a horror. When he was the only minor and the only one who stayed and tried to summon help for C while his two adult companions ran away, the court treated him as if he were a hardened criminal. The court even strongly implied that Appellant was solely and personally responsible for his own rehabilitation by "taking advantage" of programs which do not exist at CYA, despite the court's unsupported conclusions otherwise.

This young man is barely out of childhood. The clear violations of his due process rights and the complete lack of evidence that he will receive any probable benefit from a CYA commitment requires reversal of the jurisdiction and disposition

orders in this case.