## ARGUMENT

I. THERE WAS A LACK OF EVIDENCE IN THE RECORD DEMONSTRATING THAT APPELLANT WOULD LIKELY BENEFIT FROM A COMMITMENT TO THE CALIFORNIA YOUTH AUTHORITY

After admitting to the offense of sexual battery committed when he was 13 years old, Appellant was placed at the TW Program to obtain sexual offender treatment in a highly structured living environment. (CT 198.) While at TW, Appellant received weekly sex offender counseling in a group setting and he performed satisfactorily during his residence there. (RT 3/22/05 at 13.) After adjusting to his environment and spending two months in the program, Appellant's probation officer abruptly removed Appellant from TW because she believed Appellant was not receiving adequate sex offender services. (*Id.* at 12-13.) She believed that once per week sex offender treatment was not adequate for Appellant and that he required daily and individual treatment. (*Id.* at 12-13, 17.) After the probation officer told Appellant that he would be required to start over with a new placement, Appellant had difficulty transitioning into his subsequent placements and ran away twice. (*Id.* at 14-16.) The overriding concern in securing an appropriate placement for Appellant has always been to provide him with adequate sex offender treatment. The implicit assumption has been that Appellant's primary need is for sex offender treatment, and that he would benefit from such treatment. (CT 198, 223, 226, 227, 228, 229, 279, 290, 292, 295, 323, 344.) The juvenile court committed Appellant to the CYA and ordered that the CYA provide immediate sex offender treatment for Appellant. (RT 3/22/05 at 41; CT 299).

Nevertheless, the juvenile court committed Appellant to the CYA and found that he would probably be benefitted by placement at the Youth Authority, with absolutely no evidence as to whether CYA could provide Appellant with any sex offender treatment. There was zero evidence that the Youth Authority could provide Appellant with the daily and individualized sex offender counseling that his probation officer believed he needed, or that Appellant would promptly be placed in a sex offender program as the court ordered. (CT 279-81; RT 3/22/05 at 19-22.) To the contrary, the probation officer testified that she had absolutely no idea as to whether Appellant would be admitted into CYA's sex offender program or receive any sex offender treatment whatsoever at the Youth Authority. The juvenile court acknowledged a report indicating that the sex offender treatment program at CYA was inadequate and understaffed, and also acknowledged his familiarity with the consent decree in *Farrell v. Allen,* in which the CYA director admitted the conclusions contained in this report. Because there was insufficient evidence upon which the juvenile court could conclude that Appellant would probably be benefited by the treatment provided by the Youth Authority, the juvenile court's order committing Appellant to CYA must be reversed. (*See*, Welf. & Inst. Code section 734; *In re Teofilio A*. (1989) 210 Cal.App.3d 571, 576.)

### A. Before Committing a Minor to the CYA, the Juvenile Court Must Find That He Will Probably Be Benefited By the Treatment Provided by the Youth Authority, and that Finding of Probable Benefit Must Be Supported By Substantial Evidence

Welfare and Institutions Code section 734 sets forth the circumstances under which a juvenile court may commit a minor to CYA:

> 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 to render it *probable that he will be benefited* by the reformatory, educational, discipline or other treatment provided by the Youth Authority.

(Welf. & Inst. Code § 734 (emphasis added); *In re John H.* (1978) 21 Cal.3d 18, 22.) Therefore, there must be evidence in the record demonstrating (1) a probable benefit to the minor from the CYA commitment, and (2) that less restrictive alternatives would have been ineffective or inappropriate. (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-56; *In re Teofilio A.*, 210 Cal.App.3d at 576; *In re Michael D.*, 188 Cal.App.3d at 1396.)

The decision of the juvenile court to commit a minor to CYA will be reversed on appeal upon a showing that the court abused its discretion. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) An abuse of discretion may be found when there is no substantial evidence to support the juvenile court's dispositional order. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; *In re Michael D.*, 188 Cal.App.3d at 1397; *In re Michael R.* (1977) 73 Cal.App.3d 327, 332-40.) Substantial evidence is required to support the juvenile court's finding of probable benefit to the minor from a CYA commitment. (*In re Teofolio A.*, 210 Cal.App.3d at 576; *In re Jose R.* (1983) 148 Cal.App.3d 55, 58-61; *In re Aline D.* (1975) 14 Cal.3d 557, 567.) "Substantial evidence" is "evidence that inspires confidence and is of 'solid value.'"

(*People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Bassett* (1968) 69 Cal.2d 122, 139.)

In determining whether there was substantial evidence to support the CYA commitment, the appellate court must consider the record at the disposition hearing in light of the rehabilitative purposes of Juvenile Law. (*In re Michael R.*, 73 Cal.App.3d at 333.) The goal of rehabilitation for the minor and the provision of care, treatment and guidance consistent with the minor's best interest remains paramount in any CYA commitment. (Welf. & Inst. Code § 202(b); *In re Ismael A.* (1989) 207 Cal.App.3d 911, 918; *In re Teofilio A.*, 210 Cal.App.3d at 576.)

B. There Was Absolutely No Evidence in the Record From Which the Juvenile Court Could Conclude that the Youth Authority would Provide Appellant With His Primary Need for Sex Offender Treatment

In the present case, there was no evidence presented at the dispositional hearing from which the Juvenile Court could conclude that a CYA commitment would result in a probable benefit to Appellant. Specifically, from the evidence presented, the court could not find that Appellant would likely receive the sex offender treatment he requires at CYA, or that he would be benefited from any other treatment provided at the Youth Authority. Rather, the evidence supports the contrary conclusion – that Appellant would not get adequate sex offender treatment at CYA.

To make a finding of probable benefit, the juvenile court must first identify the minor's rehabilitative needs and then determine that the programs provided at CYA will adequately address these needs. This required finding of probable benefit is particular to

the individual minor at the time of commitment and cannot be based on generalized observations about CYA's services. (*In re Joe A.* (1986) 183 Cal.App.3d 11, 29 ("[a] particularized consideration… underlies the entire juvenile court system").)

Ever since the probation department assumed custody over Appellant, the overriding concern has been to find a placement for Appellant to address his primary need for sexual offender treatment.[1] (CT 198, 223, 226, 227, 228, 229, 279, 290, 292, 295, 323, 344.) Appellant's probation officer, TP, was assigned to Appellant's case in May 2004 when Appellant was accepted into the TW Program, a residential sex offender program. After Appellant had settled into his program and was performing satisfactorily at TW, P decided to remove him from that facility two months later because she felt Appellant was not receiving the level of services he required. (RT 3/22/05 at 12-13.) According to her testimony at the disposition hearing, Appellant was receiving weekly group therapy at TW, but P claimed that it was not the level of treatment sought by Contra Costa Probation Department. (*Id.* at 13.) Specifically, P felt that Appellant needed daily and individual sex offender treatment and it was solely on this basis that P removed Appellant from TW. (*Id.* at 13, 17.) P also rejected outpatient programs for Appellant because they only provided weekly and not daily sex offender treatment. (*Id.* at 17.)

[1] It has been assumed that Appellant needs sex offender treatment because his most serious offense to date was a sexual battery committed when he was 13 years old, in which he fondled the breasts of an older, female acquaintance.

The identification of sex offender treatment as a primary need for Appellant is documented throughout probation records in this case. (CT 198, 223, 226, 227, 228, 229, 279, 290, 292, 295, 323, 344.) For instance, in a probation case plan prepared on November 10, 2004, P reported that Appellant was in need of counseling to address his sexually offending behavior and that he must complete a sexual offender program prior to returning home. (CT 226, 227.) In fact, where requested to describe the most appropriate placement for Appellant, P simply wrote: "a placement that has sex offender counseling." (CT 229.) Although P also noted that Appellant needed tutoring and education, anger management, assistance with decision-making skills, family counseling, and substance abuse counseling, P regarded sex offender treatment as Appellant's primary need. (CT 228, 229; RT 3/22/05 at 12-13, 16-18.)

Indeed, P rejected other placement alternatives simply because they did not satisfy what she regarded to be Appellant's primary need for sex offender treatment. P rejected the Boys Ranch primarily because the facility does not provide sex offender treatment. (RT 3/22/05 at 18-19, CT 279.) P also declined to recommend placing Appellant in the home of his grandmother because outpatient programs typically do not provide sex offender treatment on daily basis. (RT 3/22/05 at 17.) P recognized that Appellant's grandmother had raised Appellant for eight years, was willing provide a home for him, and that she was very supportive of her grandson. (*Id.* at 16, 18.) However, P did not recommend placement with Appellant's grandmother because her overriding concern was that he receive daily sex offender treatment. (*Id.* at 17.)

The juvenile court agreed with the probation officer's assessment that Appellant's primary need is for sex offender treatment. At the disposition hearing, the court ordered that the CYA refer Appellant to a sex offender treatment program immediately. (*Id.* at 42.) On the minute order, the court also noted its order that Appellant promptly enter a sex offender class at the CYA. (CT 299.) As with probation, the trial court considered sex offender treatment to be Appellant's primary need.

Nevertheless, there was absolutely no evidence presented to the court upon which to conclude that a CYA commitment would provide Appellant with any sex offender treatment, let alone daily and individual treatment. In the probation report, P represented to the court that Appellant will have all of his basic needs met. (CT 281.) However, her testimony at the disposition hearing showed that this conclusion was based on pure speculation. P acknowledged that despite her recommendation for a CYA commitment, she knew virtually nothing about sex offender treatment programs offered by the CYA. (RT 3/22/05 at 21-24.) For instance, P did not know what kinds of services are provided by the CYA for sex offenders. (*Id.* at 22.) She had "no idea" how often participants in the sex offender program met. (*Id.*) She did not know what was required for wards to be accepted into the sex offender programs at CYA and did not know whether Appellant would be eligible for those programs. (*Id.* at 21.) Remarkably, P even admitted that Appellant might not be eligible for sex offender treatment at the CYA. (*Id.*) P also testified that she did not know if CYA provided more services for sex offenders than TW, the facility from which she decided to remove Appellant because she believed that the sex

offender treatment provided there was inadequate for him. (*Id.* at 22.) P further testified that she met with a CYA intake screener only once regarding Appellant's assessment. (*Id.* at 19.) During that meeting, P failed to ask the intake screener about what sex offender services would be available to Appellant. (*Id.*)

The record is devoid of any evidence to show that the CYA would provide sex offender services to Appellant, thereby resulting in a probable benefit to Appellant. Rather, the juvenile court's conclusion that Appellant would likely benefit from the CYA was based on pure speculation. It was not supported by any evidence, let alone substantial evidence. As such, the court's commitment of Appellant to the CYA was an abuse of discretion. (*See*, *In re Teoflio A.*, 210 Cal.App.3d at 578 (court's disposition order relying on probation report that was based on supposition and speculation, without evidentiary support, was an abuse of discretion.)

Not only was there an absence of evidence to show that the CYA would result in a probable benefit to Appellant, but the juvenile court had knowledge that the CYA could actually result in harm to the minor. At the disposition hearing, Appellant's counsel sought judicial notice of an expert report by Jerry Thomas entitled "*Evaluation of Sex Offender Programs at the California Youth Authority*" ("Sex Offender Report".) The juvenile court denied judicial notice in part because the court was familiar with the report and its conclusions, as well as the consent decree entered in *Farrell v. Allen*, Alameda County Super. Ct. No. RG03079344, filed Nov. 16, 2004.

Among other findings, the Sex Offender Report most notably concludes that CYA fails to treat the majority of wards who are committed for sexual offenses. (Sex Offender Report at 12 (noting that approximately 160 wards who are committed for sex offenses receive treatment, while more than 900 do not.)) The report also concludes that CYA's sex offender programs do not meet recognized standards of practice in the field (*Id.* at 4,) there is inadequate staffing for those programs (*Id.* at 44,) the staff lack proper training (*Id.* at 13-14, 42-43,) and the program fails to provide offense specific treatment. (*Id.* at 13, 16.) Moreover, the juvenile court was aware that the CYA admitted to the truth of all these findings in the consent decree referenced by the court. (*Farrell v. Allen*, Alameda County Super. Ct. No. RG03079344, Consent Decree at P. 2, pp. 2-3, filed Nov. 16, 2004.) In the absence of any evidence presented that Appellant would benefit from sex offender treatment at the CYA, the juvenile court had good reason to believe Appellant would not receive any such treatment at the CYA based on the court's familiarity with the Sex Offender Report. Given the court's repeated concern that Appellant receive sex offender treatment at the disposition hearings for both the underlying offense and the probation violations, the CYA commitment was far from likely to benefit Appellant and was more likely to be to his detriment. The irony of this case is that Appellant was removed from TW, where he was performing well and receiving weekly sex offender treatment, solely for the purpose of providing Appellant with daily and individual sex offender treatment. Yet Appellant has now been committed to the CYA where he is unlikely to obtain any sex offender treatment and will be housed with older, sophisticated

delinquents who are the very same influences that led him to commit his prior offenses in the first instance. (*See*, *In re Teofilio A.*, 210 Cal.App.3d at 577 ("The courts have persistently shown a realistic concern for commingling of unsophisticated, mildly delinquent minors "with the more criminally oriented groups of delinquents committed to California Youth Authority," thereby converting them to trained and sophisticated criminals.) (quoting *In re Maria A.* (1975) 52 Cal.App.3d 901, 903).)

C. With No Evidence that Appellant Would Likely Benefit by a CYA Commitment, the Juvenile Court Could Not Commit Appellant to the Youth Authority Simply Because He Posed a "Placement Problem"

In ordering a CYA commitment for Appellant, the juvenile court noted that probation had exhausted its placement efforts: Appellant was at TW for two months, although the court acknowledged it was not Appellant's fault that he was removed from that placement. Appellant then ran away from his two subsequent placements. (RT 3/22/05 at 38-41.) In her closing comments to the court, Probation Officer P stated that based on Appellant's prior two instances of running away, she did not believe any other placements would be willing to accept the minor. However, courts have held that it is inappropriate to commit youths to CYA because they are "placement problems." (*In re Teofilio A.,* 210 Cal.App.3d at 578; *In re Todd W.* (1979) 96 Cal.App.3d 408, 418; *In re Carrie W* (1979) 89 Cal.App.3d 642, 648; *In re Aline D.* (1975) 14 Cal.3d 557, 564-65, 567.)

In *In re Todd W.*, a 13-year-old minor admitted a charge of auto theft and was committed to the CYA for a maximum term of three years. The minor's prior history

consisted primarily of placement violations, in addition to one offense for joy riding. The juvenile court accepted the probation officer's recommendation for a CYA commitment and in doing so, the court noted the need to protect the community as well as the minor's need for discipline, remedial education and treatment of emotional problems. As with Appellant's case, the juvenile court rejected less restrictive placements because they were not locked, secure facilities. (*In re Todd W.*, 96 Cal.App.3d at 410-16.)

The Court of Appeal reversed the CYA commitment, concluding the minor was not criminally sophisticated and that his offense was not sufficiently serious to warrant a CYA commitment. Moreover, the court condemned CYA commitments that are the result of frustration or hopelessness by the probation department in dealing with a minor after various alternatives have been unsuccessfully tried. (*Id.* at 419 (citing *In re Carrie W.*, 89 Cal.App.3d at 648).) In circumstances where a minor will not benefit from a CYA commitment and no alternative placements are appropriate, the court stated that the proceeding should then be dismissed. (*In re Todd W.*, 96 Cal.App.3d at 418-19.)

It is certainly understandable that budgetary limitations and the lack of adequate resources pose difficulties for probation to place a minor with specialized needs and whose past conduct may require his exclusion from various placements. The lack of alternative placements for Appellant is certainly cause for concern. Nevertheless, courts should not allow the CYA to be used as a dumping ground for children and the lack of alternatives does not relieve the juvenile court of its duty to find a probable benefit to the minor from a CYA commitment. In the absence of any evidence to show that Appellant

would receive sex offender treatment at the CYA, the fact that he posed a "placement problem" for probation cannot be the basis for his CYA commitment. If CYA cannot provide a minor with his specialized need for sex offender treatment, he must remain in the county (juvenile hall or elsewhere) until a beneficial placement is found.

Taking into account Appellant's needs, the rehabilitative objectives of juvenile law, and the programs offered at CYA, there was no evidence upon which the juvenile court could conclude that commitment to CYA would result in a probable benefit to Appellant. The record demonstrates that Appellant's primary need was for sex offender treatment, and there was no evidence presented to show that Appellant would receive such treatment at the CYA. The lack of any evidence to show that Appellant will benefit from a CYA commitment warrants a remand for a new dispositional hearing. (*In re Teofilio A.*, 210 Cal.App.3d at 579; *In re Aline D.*, 14 Cal.3d at 567; *In re Michael R.* (1977) 73 Cal.App.3d 327, 340-41.)