

II. THE JUVENILE COURT FAILED TO EXERCISE ITS STATUTORY DISCRETION IN CALCULATING APPELLANT'S MAXIMUM PERIOD OF CONFINEMENT, AND THE MATTER MUST BE REMANDED TO THE JUVENILE COURT

Prior to January 1, 2004, Welfare and Institutions Code 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 equivalent to the adult term for the same offense.¹ (Welf. & Inst. Code §§ 726, subd. (c) and 731.) Pursuant to recent amendments to Welfare and Institutions Code section 731(b), juvenile courts now have the discretion to set a lower maximum period of confinement for minors committed to CYA based upon the facts of the offense. In this case, there is no evidence in the record to show that the juvenile court was aware of this discretion or exercised its discretion. Rather, the record shows that the juvenile court simply imposed the maximum allowable term of confinement pursuant to Welfare and Institutions Code section 726(c).² The juvenile court's failure to properly exercise its discretion was an error requiring remand to allow the court to comply with section 731(b).

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

² Welfare and Institutions Code section 726(c) provides as follows: "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."

A. Welfare and Institutions Code Section 731(b) Requires Juvenile Courts to Exercise Discretion in Determining the Maximum Term of a CYA Commitment Based Upon the Individual Facts and Circumstances of the Matter

Prior to January 1, 2004, Section 726(c) and Section 731 required a juvenile court to calculate the maximum term of confinement as equal to the adult term for the same offense or offenses. This applied to all minors, including those committed to the CYA. (Welfare and Institutions Code §§ 726(c) and 731.) However, effective January 1, 2004, Senate Bill 459 amended Section 731(b) and gave juvenile courts the discretion to commit a minor to CYA for less than the maximum allowable term. (*In re Jacob J.* (2005) 130 Cal.App.4th 429, 434-38; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1537-40; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-83.) With the amended language in italics, Section 731(b) now provides as follows:

A minor committed to the Department of the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period 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. *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.* This section does not limit the power of the Youth Authority Board to retain the minor on parole status for the period permitted by Section 1769.

(Welf. & Inst. Code § 731(b).)

The legislature's intent in amending Section 731(b) was to provide juvenile courts with the discretion to impose a term that is less than the maximum possible term, thereby eliminating the prior practice of automatically calculating a maximum sentence. (*In re*

Jacob J., 130 Cal.App.4th at 434-36; *In re Carlos E.*, 127 Cal.App.4th at 1537-40; *In re Sean W.*, 127 Cal.App.4th at 1181-83.) The legislative intent of Section 731(b) has been determined in numerous recent decisions including *In re Sean W.*, 127 Cal.App.4th 1177, as well as in *In re Jacob J.*, 130 Cal.App.4th at 434-36 and in *In re Carlos E.*, 127 Cal.App.4th at 1537-40. In *Sean W.*, Division Two of this court state: "...[T]he straightforward language of amended section 731, subdivision (b), as well as its legislative history, demonstrate that the Legislature intended to give the juvenile court discretion to set a maximum confinement time that is less than the adult maximum term when committing a minor to CYA." (*In re Sean W.*, 127 Cal.App.4th at 1185; *see also*, *In re Carlos E.*, 127 Cal.App.4th at 1540; *In re Jacob J.*, 130 Cal.App.4th at 434.)

When construing the legislature's intent, courts will first consider the plain meaning of the statute. (*Burden v. Snowden* (1992) 4 Cal.4th 556, 562; *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724.) 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.) The 2004 amendments added the following 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 statute itself unambiguously states that juvenile courts are to determine the term of a CYA confinement by reviewing the specific facts and circumstances of the minor and the offense. Because the statute is unambiguous, the plain language of the

statute should govern here. (*In re Jacob J.* (2005) 130 Cal.App.4th 429, 434-38; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1537-40; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-83.)

The legislative history of Section 731(b), including committee reports, support the above interpretation of the plain language of the statute. (*National R.V., Inc. v. Foreman* (1995) 34 Cal.App.4th 1072, 1083 (Legislative committee reports may be considered when construing a statute's legislative intent.)) Arguments advanced in support of Senate Bill 459 include the need for more local control by 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* Senate Rules Committee, Office of Senate Floor Analyses, April 4, 2003, 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."].) The legislative history indicates that the amendments were intended to provide juvenile courts with greater discretion to impose less than the maximum term for CYA commitments based upon the individual circumstances of the matter. (*In re Jacob J.* (2005) 130 Cal.App.4th 429, 434-38; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1537-40; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-83.)

B. The Juvenile Court Erroneously Believed that It Had To Impose the Maximum Allowable Term of Confinement and It Failed to Exercise Discretion as Mandated by Welfare and Institutions Code Section 731(b)

At the dispositional hearing on March 22, 2005, Appellant's counsel raised numerous circumstances that might have warranted the juvenile court's consideration if it had exercised its discretion in calculating the maximum confinement time. Specifically, trial counsel noted that Appellant was only 13 years old at the time of the offense, that Appellant's particular need for sex offender services would not be appropriately addressed at the CYA, and his relatively minor criminal record. (RT 3/22/05 at 36-38.)

However, in determining the maximum confinement time of 61 months, the juvenile court did not consider any of the above factors. To the contrary, the record indicates that the juvenile court incorrectly believed that Appellant's maximum period of confinement was prescribed by law and that it had to be the maximum possible term. (*Id.* at 41 ("The minor is hereby committed to the Department of Youth Authority for a term prescribed by law for a period not exceeding – I believe it was 61 months.").)

Moreover, none of the parties in this case, including the probation department, indicated any awareness that Section 731(b) had been amended. In regards to Appellant's maximum period of confinement, the report does not indicate any awareness of the court's discretion pursuant to Section 731(b). To the contrary, the probation report calculated the maximum period of confinement according to pre-amendment standards and simply recited the maximum term of 61 months. (*Id.* at 288.) Similarly, counsel for both parties limited their argument to whether a CYA commitment was warranted in this case and neither party indicated any awareness of the court's discretion to impose less

than the maximum period of confinement for Appellant. (RT 3/22/05 at 34-38.)

Therefore, at the disposition hearing, the trial court simply recited what it erroneously believed to be the maximum confinement term prescribed by law.

C. Remand of this Matter is Required to Allow the Juvenile Court to Exercise its Discretion Pursuant to Welfare and Institutions Code section 731(b)

Because the juvenile court failed to exercise its discretion pursuant to Section 731(b), remand of this matter is required to allow the court to exercise its discretion. (*In re Jacob J.*, 130 Cal.App.4th at 438; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1543; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1188-89.) The juvenile court's failure to exercise a statutorily mandated discretion constitutes a denial of the minor's state and federal due process rights, thereby requiring reversal. (U.S. Const, Amend. XIV; Cal. Const., art.1, § 7; *Hicks v. Oklahoma* (1980) 447 U.S. 343, 346-47 [65 L.Ed.2d 175, 100 S.Ct. 2227]; *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.)

The error here is not merely that the juvenile court failed to explicitly state the basis for its determination on the maximum confinement time. Rather, the record here indicates that the juvenile court was not aware of its discretion and therefore failed to comply with Section 731(b). Because Appellant's maximum period of confinement was based upon the juvenile court's misunderstanding of the law, this matter must be

remanded.³ (*People v. Downey* (2000) 82 Cal.App.4th 899, 912 (remand required when sentencing choice was based on erroneous understanding of the law); *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).)

³ If this Court finds that the juvenile court exercised its discretion in setting the maximum term of confinement, that term nevertheless needs to be corrected. The juvenile court indicated a maximum period of confinement of 61 months (5 years, 1 month) for the sustained finding on Count I (Penal Code § 243.4(a).) (CT 299.) When aggregating the maximum period of confinement based on multiple petitions, courts are required to calculate the sum of the principal term and one-third of the middle term of imprisonment for all subordinate terms. (Welf. & Inst. Code § 726(c) and Penal Code § 1170.1(a).) Appellant had three prior sustained petitions against him: (1) on December 11, 2002, for violation of Health and Safety Code section 11357(e) (punishable by fine) and violation of Penal Code section 415(1) (punishable by 90 days maximum); (2) on March 11, 2003 for violation of Penal Code section 459/460(b) (punishable by one year maximum) (CT 29-33, 74-75); and (3) on December 10, 2003 for violation of Penal Code section 243.4(a) (punishable by 2-4 years imprisonment.) (CT 158-59.)

The juvenile court correctly calculated the consecutized term for Penal Code section 415(1) to be one month. However, the court erroneously calculated the consecutized term for the second-degree violation of Penal Code section 459 to be eight months. In fact, the correct consecutized term for a second-degree violation of Penal Code section 459 is four months. Therefore, the juvenile court should have calculated Appellant's maximum period of confinement to be 53 months (4 years, 5 months.)

CONCLUSION

For the reasons stated above, Appellant respectfully requests that this Court reverse the juvenile court's dispositional order committing him to the California Youth Authority. Alternatively, Appellant's case should be remanded so that the juvenile court may properly exercise its discretion to order a maximum term of confinement based on a consideration of the facts and circumstances of Appellant's specific case.