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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re DANTE B., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DANTE B.,

Defendant and Appellant.

A107545

(Alameda County
Super. Ct. No. J186186)

Dante B., a minor, appeals from juvenile court findings and orders sustaining a petition under Welfare and Institutions Code section 602,¹ and committing him to the California Youth Authority (CYA) for a maximum period of confinement of six years and four months, less 143 days of custody credit. He contends there was insufficient evidence to support the juvenile court's decision to commit him to CYA, and that the court erred in failing to exercise its statutory discretion under recently amended section 731, subdivision (b) (hereinafter section 731(b)) in setting the maximum term of appellant's confinement at CYA. While we disagree with appellant's first contention and conclude the juvenile court did not abuse its discretion in committing appellant to CYA, we must remand to provide the juvenile court an opportunity to consider whether to exercise its discretion under section 731(b) to set a shorter maximum commitment term.

¹ Unless otherwise indicated, all further unspecified statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

In view of appellant's admissions and waiver of any contested hearings, the facts are taken from probation reports and supporting documents contained in the juvenile record. Appellant first became a ward of juvenile court on April 22, 2003, based on his admission of the charging allegations of a section 602 petition for felony possession of marijuana for sale (Health & Saf. Code, § 11359). At the time, two additional charges alleging felony battery (Pen. Code, § 243, subd. (d)) and attempted robbery (Pen. Code, § 664/211) were dismissed on the motion of the district attorney, with the facts and restitution left "open." Appellant was placed on home supervision.

On November 19, 2003, based on his unsatisfactory compliance with the terms of his home supervision and failure to appear, the juvenile court ordered appellant detained at juvenile hall pending placement. On December 9, 2003, appellant was reported to have left the court-ordered placement at Thunder Road without notification, and to have remained away without permission.

At 1:45 p.m., on January 5, 2004, Maria Sandoval was walking home after collecting rent from tenants in an Oakland apartment complex. Appellant approached her from behind, pushed her to the ground, seized her purse, and punched her in the head when she tried to hold onto it. After wresting the purse from her, appellant got into the front passenger seat of a car, which then drove away. The victim sustained injury and lost about \$4,000 in cash. On January 14, 2004, a subsequent section 602 petition was filed alleging that appellant had committed a strong arm robbery (Pen. Code, § 211). On January 26, 2004, appellant admitted the robbery allegation. By order filed on February 9, 2004, appellant was committed to the care, custody and control of the Probation Officer to be placed at Camp Wilmont Sweeney.

On February 23, 2004, after being at Camp Sweeney for just four days, appellant ran away without permission. On March 1, 2004, a petition was filed alleging that appellant had escaped from Camp Wilmont Sweeney in violation of section 871. On April 14, 2004, appellant admitted the allegation of escape and was detained at juvenile hall, with his

maximum period of confinement set at six years. On April 28, 2004, the juvenile court recommitted appellant to Camp Sweeney.

On May 22, 2004, after only two days at Camp Sweeney, appellant jumped over the fence and ran away without permission. On May 27, 2004, a section 602 subsequent petition was filed alleging that appellant had again escaped from Camp Sweeney. For purposes of determining disposition and maximum length of physical confinement, the petition also alleged appellant's two prior sustained juvenile wardship petitions for felony robbery and misdemeanor escape. Appellant admitted the allegations of this petition on July 9, 2004. At the dispositional hearing held on July 23, 2004, after finding it probable that appellant would "benefit from the reformatory educational discipline or other programs provided by the California Youth Authority," the juvenile court committed him to CYA for a maximum term of six years and four months, with credit for time served of 143 days. On August 12, 2004, the juvenile court denied appellant's request for a rehearing. This appeal from the dispositional order timely followed.

CYA COMMITMENT

Appellant first contends that there was insufficient evidence to support the juvenile court's decision to commit him to CYA. The contention is meritless.

We review a juvenile court's commitment decision for abuse of discretion only. All reasonable inferences must be indulged to support the juvenile court's decision, and we will not disturb its findings when there is substantial evidence to support them. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) In making our determination, moreover, we must evaluate the record presented at the disposition hearing in light of the purposes of the juvenile justice system. (*In re Michael D., supra*, 188 Cal.App.3d at p. 1395.) It is true that, as appellant argues, the evidence "must demonstrate probable benefit to the minor from commitment to the CYA and that less restrictive alternatives would be ineffective or inappropriate." (*In re George M.* (1993) 14 Cal.App.4th 376, 379.) Nevertheless, these objectives "must be taken together with the Legislature's purposes in amending the Juvenile Court Law," which "place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of

protecting the public safety.” (*In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) In keeping with these latter purposes, a juvenile court may make a CYA commitment in the first instance, without *any* previous resort to less restrictive placements. (*In re Eddie M.* (2003) 31 Cal.4th 480, 507; *In re Angela M.*, *supra*, 111 Cal.App.4th at p. 1396.) In the final analysis, a juvenile court’s decision to commit a minor to the CYA will be reversed on appeal only when an abuse of discretion has been shown. (*In re George M.*, *supra*, 14 Cal.App.4th at p. 379; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.)

Reviewing the record under this standard and in light of these principles, it is clear that appellant’s contentions are without merit. The juvenile court’s dispositional hearing finding of appellant’s probable benefit from CYA commitment was supported both by the severity of appellant’s crime of strong-arm robbery—in which he knocked a woman down, punched her in the head when she would not let go of her purse, and then ran off with her purse containing over \$4,000—and by the overwhelming evidence that less restrictive alternatives had been ineffective in his rehabilitation, as shown by his record of failure on home supervision and escapes from both Thunder Road and Camp Sweeney. Appellant did not object to or express any disagreement with the facts of his history as outlined in the record, including the dispositional report submitted by the juvenile Probation Officer prior to the dispositional hearing.

Appellant urges that “recent studies” critical of the CYA support his assertion that CYA commitment would neither be beneficial to him, nor protective of the public. However, appellant never presented any of these “studies” to the juvenile court for its consideration. Because they could have no relevance to the question whether the juvenile court abused its discretion in committing him to CYA, appellant has effectively waived this argument for purposes of appeal. (Cf. *In re Zeth S.* (2003) 31 Cal.4th 396, 405 [appellate court reviews correctness of judgment upon record of those matters which were before the trial court for its consideration]; *People v. Preslie* (1977) 70 Cal.App.3d 486, 492-493 [as a general rule, an appellate court should not take judicial notice of documents or matters that were not presented to and considered by the trial court in the first instance].)

Finally, appellant asserts that the CYA commitment is unwarranted because he “is not a sophisticated hardened criminal but a youth with a highly traumatic background who was forced to fend for himself on the streets with little or no adult supervision.” Nothing in the statutes governing the determination to commit a juvenile to CYA requires that a minor be shown to have become “a sophisticated hardened criminal.” (§§ 726, 731; see also Cal. Rules of Court, rule 1494.5.) The juvenile court in this case made its decision to commit appellant to CYA on the basis of appellant’s record of absconding within days from every placement to which he had theretofore been assigned. The decision was fully supported by the seriousness of appellant’s most recent robbery offense. There was no abuse of discretion. (*In re George M.*, *supra*, 14 Cal.App.4th at p. 379; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.)

JUVENILE COURT DISCRETION UNDER SECTION 731

Appellant’s remaining contention is that the juvenile court erred when it committed him to CYA because it “fail[ed] to exercise statutory discretion in setting the maximum term of confinement” based on the facts and circumstances of his individual case, in accordance with language added to section 731(b) by a legislative amendment effective January 1, 2004. Based on the language of the amendment and recent appellate decisional authority interpreting it, we agree with appellant.

With the relevant language italicized, section 731(b) now provides: “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.” (§ 731, as amended Stats. 2003, ch. 4, § 1, eff. April 8, 2003, operative Jan. 1, 2004.)

Appellant contends that the recent amendment to section 731(b) requires a juvenile court committing a minor to CYA to set a maximum term of commitment based on the particular “facts and circumstances” of the individual minors’ record, and authorized the juvenile court to fix a maximum term of commitment “that is something less than the maximum” period of imprisonment applicable to an adult offender. Because the juvenile court failed to exercise the statutory discretion newly conferred upon it by the legislative amendment to section 731(b), and instead simply imposed the adult upper term for the robbery count, appellant maintains the matter must be reversed and remanded for resentencing so the juvenile court can exercise its discretion in accordance with the statute.

In opposition, respondent insists that the amendment to section 731(b) does not authorize the juvenile court to set a maximum term of confinement that is less than that applicable to adult offenders; instead, asserts respondent, it is merely “a clarification of existing juvenile court law,” and “a directive to the *custodial institution*, the CYA, that the adjudged ward cannot be physically confined beyond the maximum term set by the juvenile court.” Respondent contends that the only discretion a juvenile court has in setting the maximum term of confinement is in determining whether a wobbler offense is a misdemeanor or a felony, and in deciding whether to aggregate terms when there are multiple counts or juvenile petitions. According to respondent, appellant’s interpretation of section 731(b) giving discretion to the juvenile court to set a lesser maximum term of confinement “would conflict with, and essentially nullify, section 726, subdivision (c).”

Two recently published decisions considering this issue have both agreed with appellant, and have held that the new language in section 731(b) unequivocally gives the juvenile court discretion to fix a maximum commitment in CYA cases at less than the adult statutory maximum, based on the individual facts and circumstances of the juvenile record before it. (*In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1533, 1543 (*Carlos E.*); *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1185 (*Sean W.*)). Thus, in *Carlos E.*, the Fifth District Court of Appeal held that the amended language of section 731(b) required the juvenile

court to exercise its discretion to determine the maximum term of a juvenile offender's confinement "based on the facts and circumstances placing the minor before the court, not to exceed the maximum time prescribed by adult sentencing law." (*Carlos E.*, *supra*, 127 Cal.App.4th at p. 1533.) Specifically rejecting the identical counter-arguments advanced by respondent in this case, the *Carlos E.* court held that the amended language of section 731(b) unambiguously authorized a juvenile court to impose a maximum term of confinement *below* that which could be imposed pursuant to section 726, subdivision (c), which in turn sets the outer limit for a juvenile period of physical confinement at the maximum term of imprisonment which could be imposed upon an adult convicted of the same offense.² (*Id.* at pp. 1536-1538, 1542.) Because the juvenile court in *Carlos E.* had committed the minor to CYA with a maximum term of physical confinement based solely on the maximum an adult would face, the appellate court concluded it had failed to exercise its mandatory statutory discretion under section 731(b), and therefore remanded the matter

² Section 726, subdivision (c) provides 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.

"As used in this section and in Section 731, 'maximum term of imprisonment' means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code

"If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the 'maximum term of imprisonment' shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code

"If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the 'maximum term of imprisonment' is the longest term of imprisonment prescribed by law.

"'Physical confinement' means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority."

for it “to set a maximum term of confinement in CYA based on the facts and circumstances that brought the minor before the juvenile court.” (*Id.* at p. 1543.)³

Division Two of this Court has also agreed with the arguments advanced by appellant, holding in *Sean W.* that the amendments to section 173(b) require a juvenile court to exercise its discretion to determine a juvenile offender’s maximum term of physical confinement based upon the particular facts and circumstances before it, and on that basis remanding to the juvenile court with directions to exercise its discretion pursuant to section 731(b). (*Sean W.*, *supra*, 127 Cal.App.4th at pp. 1179, 1189.) Like the court in *Carlos E.*, the *Sean W.* court specifically rejected the same arguments made by respondent herein to the effect that the amended language of section 173(b) was merely a clarification of existing law barring a juvenile ward from being physically confined beyond the maximum term set for adult offenders, and that any interpretation of the amended language of section 173(b) to give a juvenile court discretion to set a lower maximum term of confinement would be in conflict with section 726. (*Sean W.*, *supra*, 127 Cal.App.4th at pp. 1183, 1185-1186.)

Statutory language may not be interpreted in isolation. Rather, it must be harmonized with the entire statutory scheme of which it is a part, avoiding any construction that renders some language superfluous or meaningless. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040; *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) If, as

³ “Under the changes to section 731, the juvenile court must determine the maximum period of confinement to CYA based on the facts and circumstances, this maximum may not be more than that for a comparable adult, but may be less. The maximum period of confinement set by the court is not a determinate term, it is the ceiling on the amount of time that a minor may be confined in CYA, and recognizes that the committing court has an interest in and particularized knowledge of the minors it commits to CYA. The Youth Authority Board retains the power, subject to the applicable rules and regulations, to determine the actual length of confinement at or below the ceiling set by the juvenile court and to determine the conditions of the minor’s confinement. Thus, the indeterminate nature of the system remains in accordance with the distinct purposes of the juvenile system. . . .

“To adopt the People’s construction of the statute would fail to honor the plain reading of the statute, would involve misapplication of the canons of statutory construction, and would require judicial trespass into the legislative province. We decline to do so.” (*Carlos E.*, *supra*, 127 Cal.App.4th at pp. 1542-1543.)

respondent insists, the amendment to section 731(b) is simply intended as a restatement or “clarification” of the first sentence, and “does not authorize the *juvenile court* to do anything,” the amendment would be pointlessly redundant. To the contrary, the new language added to section 731(b) by the recent amendment is linked to the preexisting language—which specifically sets the outer limit of a juvenile’s period of confinement at the maximum period of imprisonment which could be imposed upon an adult convicted of the same offense—by the word “also.” This indicates the amendment is intended to *modify* the preceding sentence. A plain reading of this new language—directing that in the case of a CYA commitment, physical confinement may not exceed the maximum term “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”—clearly contemplates an *individualized determination* of the specific “facts and circumstances” of the juvenile’s case in the context of setting the maximum term of physical confinement at CYA.

Reading the entirety of section 731(b) together with subdivision (c) of section 726 to produce a coherently consistent construction, we conclude that a juvenile court may not fix a term of commitment that is greater than the maximum term of imprisonment which could be imposed upon an adult convicted of the same offense, but *may* fix a maximum commitment that is *less* than the adult statutory maximum based upon the individual circumstances of the matter before it. This construction does not intrude upon the statutory authority of the CYA to determine the *actual* period of the minor’s physical confinement, so long as that period does not exceed the maximum term set by the juvenile court. (§§ 1176, 1731.5, 1766.) Contrary to respondent’s insistence, there is no conflict between appellant’s interpretation of section 731(b) and the provisions of section 726, subdivision (c). The latter sets the upper limit for a term of confinement in *all* cases, by requiring that the court may not order a minor held in confinement in excess of the maximum term of imprisonment that could be imposed on an adult. Section 731(b) does not affect this requirement; it simply retains it, while permitting the juvenile court to impose a maximum CYA commitment at less than the statutory maximum based upon the particular facts and circumstances of the individual juvenile’s record.

There is no merit to respondent's additional contentions that interpretation of section 731(b) to grant a juvenile court authority and discretion to set a maximum term of confinement below the adult maximum "would require the dismantlement of juvenile court law's indeterminate disposition scheme," "inject an aspect of retributive punishment" into it, and "raise equal protection challenges." The amendment to section 731(b) "simply allows the [juvenile] court to set a shorter maximum term in CYA cases; it does not otherwise alter the administrative system for assessment and determination of the timing of successful rehabilitation of the minor, and does not alter the purposes and goals of juvenile law." (*Sean W.*, *supra*, 127 Cal.App.4th at p. 1188.) Rather than violating equal protection guarantees by empowering juvenile courts to arbitrarily impose different maximum terms of confinement on similarly situated minors, this interpretation of section 731(b) actually lessens the likelihood of such arbitrary treatment in CYA cases by allowing a juvenile court to tailor maximum terms of CYA confinement to the "facts and circumstances" of each individual case before it, rather than being obliged to impose one size fits all maximum adult terms on all juveniles regardless of their circumstances. (*Sean W.*, *supra*, 127 Cal.App.4th at p. 1188.)

In short, we agree with the analyses of the respective courts of appeal in *Carlos E.* and *Sean W.* that the new language inserted by the Legislature in section 731(b) unambiguously gives the juvenile court discretion to fix a maximum commitment in CYA cases at less than the adult statutory maximum, based on a consideration of the individual facts and circumstances of the record before it. (*Carlos E.*, *supra*, 127 Cal.App.4th at pp. 1533, 1543; *Sean W.*, *supra*, 127 Cal.App.4th at p. 1185.) The record in this case does not indicate that the juvenile court was aware it had this discretion. Neither is there anything in the record showing that the juvenile court would be unalterably opposed to fixing a term of commitment that was less than the statutory maximum. Because the record is silent on these issues, and because the juvenile court failed to exercise its statutory discretion to set a maximum term of confinement based on the facts and circumstances of appellant's case, we must remand the matter to allow the juvenile court to consider whether

to exercise such discretion. (*People v. Fuhrman* (1997) 16 Cal.4th 930, 942-944; *Carlos E., supra*, 127 Cal.App.4th at p. 1543; *Sean W., supra*, 127 Cal.App.4th at pp. 1188-1189.)

DISPOSITION

The order of commitment is reversed and the cause is remanded to the juvenile court for the possible exercise of its discretion pursuant to section 731(b). In all other respects the order is affirmed.

McGuiness, P.J.

We concur:

Corrigan, J.

Parrilli, J.