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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re JOHN N., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN N.,

Defendant and Appellant.

A107840

(San Francisco County
Super. Ct. No. JWO26369)

The primary issue presented is whether the juvenile court abused its discretion by ordering a commitment to the California Youth Authority (CYA) in the following circumstances:

Appellant John N. has been a ward of the juvenile court since October of 2002, when it placed him on home-supervised probation after he admitted committing second degree robbery (Pen. Code, § 212.5, subd. (c)). The following year he admitted committing another second degree robbery and grand theft from a person (Pen. Code, §§ 212.5, subd. (c), 487, subd. (c)). In October of 2003, the court rejected the probation's officer's recommendation of a CYA commitment, again granted probation and placed appellant in the Delancey Street program. Two months later the probation officer moved the court to revoke appellant's probation because appellant "awoled the Delancey Street Foundation Facility without successful completion . . . and his whereabouts are

unknown. . . .” Appellant was discovered in Idaho; when returned to California in July of 2004 he admitted violating probation. At the conclusion of a contested dispositional hearing, the juvenile court accepted the probation officer’s renewed recommendation and ordered appellant committed to CYA for a period not to exceed six years and eight months.

Having perfected this timely appeal from the order of commitment, the minor filed an opening brief raising the contention mentioned at the start of this opinion. The principles governing disposition of such a claim are well-established: “The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision. [Citations.] Nonetheless, 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. [Citations.] A CYA commitment may be considered, however, without previous resort to less restrictive placements. [Citations.]” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

At the dispositional hearing the juvenile court heard from appellant and a number of his relatives. The gist of their statements showed that appellant had fled from Delancey Street because he feared for his safety and wanted the support of his family, most of who lived in Idaho, where appellant was born and spent most of his youth.¹ Once back in Idaho, appellant spent five and a half months in treatment programs until he voluntarily returned to California.² While in Idaho, he stayed drug-free, went to AA meetings, committed no criminal offenses, and was trying to enroll in college.

¹ Appellant came to California after receiving his General Educational Development (GED) in 2002. He stayed in San Francisco with the former husband of his mother. Appellant took classes at San Francisco City College.

² The word “voluntarily” must be qualified. Appellant made no move to return to California until he was detained by Idaho authorities, at which time it was discovered that there was an outstanding bench warrant from the juvenile court. It was only then that he “volunteered” to return to California. On the other hand, it should be noted that neither appellant nor any member of his family made any attempt to contact his probation officer after he left California.

Appellant's efforts to reform his life are commendable, and, as the juvenile court noted, he is very fortunate to have the support of a loving family.

In his opening brief appellant argues that "an examination of the record . . . demonstrates that there is insufficient evidence that a less restrictive placement than the California Youth Authority would be ineffective or inappropriate. Additionally, the record shows that the court failed to fully consider all of the circumstances surrounding appellant's case and failed to adequately consider less restrictive alternatives to a CYA commitment."

For present purposes, we can and do assume that appellant can be rehabilitated from his substance abuse difficulties. However, insofar as he appears to argue that his amenability to rehabilitative efforts required the court to adopt a less restrictive placement, we cannot agree for several reasons. First, as previously noted, there is no legal prohibition against a CYA commitment in the first instance.³ (*In re Angela M.*, *supra*, 111 Cal.App.4th 1392, 1396.) Second, the court had twice already imposed less restrictive placements to no avail. Third, the juvenile court expressly found that appellant "may have a very, very serious substance abuse problem . . . [b]ut . . . I do not see anything in this record before me that indicates that [the] crimes that you committed were attributable to you being under the influence of a substance."

Nor does the record support appellant's contention that the juvenile court failed to adequately consider less restrictive alternatives. "I weighed and considered less-restrictive alternatives, specifically those that had been presented to me and I reject them as not appropriate to this case. [¶] And I'm fully satisfied that the mental and physical conditions and qualifications of [appellant] are such to render it probable that the Minor will be benefited by the reformatory, educational, discipline or other treatment provided by the California Youth Authority." In light of this finding, we cannot conclude the court

³ This point bears particular emphasis in light of the fact that appellant's initial offense involved his use of a double-barrel shotgun and was made a "strike" for purposes of the three strikes law. Even appellant's counsel characterized the offenses committed as "horrendous."

failed to consider the alternative placements suggested by appellant at the dispositional hearing, specifically, “the maximum probation period possible under the juvenile court authority,” “another program outside San Francisco,” “a county jail sentence,” or some kind of placement in Idaho. Prior to ordering appellant’s commitment, the court was advised of the benefits offered by CYA.⁴ Moreover, the probation officer told the court that appellant’s age and his having a GED precluded local placements that would be anything beyond “just . . . warehousing appellant,” and only the CYA “provides an array of services and vocational training that could help [appellant] transition into his adult life and provide skills that could offer him a chance for employment upon his release. . . . CYA could supply the 24 hour supervision, structure and services needed” Appellant suggested less restrictive placements but the juvenile court rejected them as “not appropriate.” That determination is supported by substantial evidence. The court’s decision to order a CYA commitment did not exceed the bounds of reason and thus does not amount to an abuse of its discretion. (*In re Angela M.*, *supra*, 111 Cal.App.4th 1392, 1396.)

Effective January 1, 2004, the Legislature added this sentence to Welfare and Institutions Code section 731, subdivision (b): “A minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period 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.” Prior to completion of briefing on this appeal, two Courts of Appeal interpreted this amendment as giving a juvenile court the discretion to fix a CYA commitment term at less than the adult statutory maximum

⁴ According to the prosecuting attorney: “The young man has a G.E.D. He can, on-line, get his A.A. credential. He can find a vocational trade. They have fire and rescue. They have refrigeration, air conditioning. They have a culinary arts program.” In addition, the probation officer informed the court that CYA offers “several programs under the A.A. associate degree curriculum that [appellant] could participate in and actually receive an A.A. degree.”

considering the individual circumstances of the minor before it for disposition. (*In re Carlos E.* (2005) 127 Cal.App.4th 1529; *In re Sean W.* (2005) 127 Cal.App.4th 1177.) Appellant filed a supplemental brief asking that, even if the juvenile court's decision to order a CYA commitment is not found to constitute an abuse of discretion, his case should be remanded in order for the juvenile court to have the opportunity to use this new, unsuspected, grant of statutory discretion to fix the commitment term at less than the statutory maximum. The Attorney General filed a supplemental brief raising a number of objections that were considered and rejected in *Carlos E.* and *Sean W.* We have examined the reasoning of these decisions and find them persuasive.

The record does not establish that the court here was aware that it had this discretion. There is likewise nothing indicating that the court was unalterably opposed to fixing the commitment at less than the statutory maximum. Because the record is silent on these points, we will remand the matter to allow the juvenile court to consider whether to exercise such discretion, if it be so advised. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 942-943.)

The order of commitment is remanded for that sole purpose. The order is affirmed in all other respects.

Kay, P.J.

We concur:

Reardon, J.

Sepulveda, J.