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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re LADAYSHA C., a Person Coming Under  
the Juvenile Court Law.

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

LADAYSHA C.,

Defendant and Appellant.

A107845

(Contra Costa County  
Super. Ct. No. J9001448)

Ladaysha C. appeals a dispositional order committing her to the California Youth Authority (CYA) for a maximum term of confinement of eight years. She contends that the juvenile court abused its discretion in committing her to CYA, and also failed to exercise its discretion in determining her time of confinement. Respondent contests the first issue and concedes the second. We affirm the juvenile court’s judgment, except that we remand for further proceedings so that the court may clarify what it considers to be the maximum time of confinement based upon its exercise of its discretionary powers.

**BACKGROUND**

In September 2003 a petition pursuant to Welfare and Institutions Code section 602 (section 602) was filed in Solano County charging appellant, then 15 years old, with second degree robbery in violation of Penal Code section 459, to which appellant admitted. The case was transferred for disposition to Contra Costa County because appellant was a minor dependent there pursuant to Welfare and Institutions Code

section 300. The juvenile court placed appellant on six months probation and continued her section 300 status.<sup>1</sup>

On February 2, 2004, a supplemental section 602 petition was filed in Contra Costa County. As subsequently amended, it charged appellant with one count of second degree robbery in violation of Penal Code sections 211 and 212.5, subdivision (c), and alleged as an enhancement that she was armed with a deadly or dangerous weapon in violation of Penal Code section 12022, subdivision (b)(1). The petition also alleged that previous dispositions had not been effective in appellant's rehabilitation. Appellant pled no contest to the charges and the petition was sustained. The probation department report indicated that appellant was arrested soon after she struck a 49-year-old woman twice in the head with a frying pan and took the woman's purse in a Pleasant Hill store.

On April 1, 2004, the juvenile court ordered appellant removed from her home and placed under the supervision of the probation department, ordered a psychological assessment, and imposed certain conditions of probation. Three weeks later, the Contra Costa County Probation Department filed a notice of probation violation alleging that appellant had left her placement at a girl's center after one day without permission and that her whereabouts were unknown. Appellant later admitted to the probation violation.

Around this same period of time, three supplemental juvenile wardship petitions against the appellant were filed in Solano County charging her with additional Penal Code violations for incidents occurring from September 2003 to May 2004, including petty theft in a store; vandalism of a group home; grand theft of a purse; second degree robbery; assault with a deadly weapon likely to produce great bodily injury (again with a frying pan); evading a police officer with willful disregard in a motor vehicle; unlawful driving or taking of a motor vehicle; resisting, obstructing or delaying a police offer; and driving without a valid driver's license. The last three violations were alleged to have occurred after appellant left her placement in April 2004 in violation of her probation.

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<sup>1</sup> It was undisputed that appellant suffered significant abuse as an infant and was a dependent child of the court since the age of two.

Appellant subsequently admitted to two counts in these supplemental petitions, namely assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1), and the unlawful driving or taking of a motor vehicle in violation of Vehicle Code section 10851, subdivision (a). The remaining counts were dismissed. According to the subsequent probation department report on January 21, 2004, appellant struck a woman in the head with a stainless steel egg poacher inside a Fairfield Walmart, knocking her unconscious, and stole her purse. Appellant told the probation officer that she did not recall the incident because she was high on Ecstasy at the time, and indicated that she had a substance abuse problem. In May 2004, appellant was arrested for stealing a car belonging to a woman with whom she had been staying and leading police on a high-speed chase. Appellant's case was transferred from Solano County to Contra Costa County for disposition.

At a subsequent disposition hearing, the juvenile court, after reviewing the dispositional report prepared by the probation department, appellant's alternative dispositional report, and appellant's file, and after hearing evidence and argument, committed appellant to CYA for a maximum term of confinement of eight years. Appellant then filed a timely notice of appeal.

## **DISCUSSION**

### **I. The Court Did Not Abuse Its Discretion in Committing Appellant to CYA**

Appellant contends that in light of the evidence presented at the dispositional hearing, the juvenile court abused its discretion by committing appellant to CYA. Appellant contends there was no substantial evidence of probable benefit to her in support of the court's finding that she be committed to CYA, or that she needed to be in CYA as opposed to a secure residential treatment facility.

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.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) The juvenile court law was revised in 1984 to place “an increased emphasis on punishment as a tool of rehabilitation, and on a concern for the safety of the public.” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; see Welf. & Inst. Code, § 202, subd. (b) [“Minors . . . 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”].)

Appellant points out that while the prosecution chose not to put on any evidence at the dispositional hearing, appellant put on a witness who testified that appellant had done well at one less restrictive placement, Anderson Group Home. However, appellant’s probation officer informed the court that the probation department did not use that placement any longer “because of the lack of supervision.”

Appellant also points to the alternative dispositional report and the expert testimony at hearing by the director of the Sentencing Service Project at the Center on Juvenile and Criminal Justice in San Francisco regarding CYA and alternative placements. In the expert’s opinion, appellant had long-standing behavioral issues and psychological issues that would not be adequately addressed by CYA. The expert also opined that getting a proper education at CYA was a major problem. She believed that appellant had been placed in several different group homes that were low-level, shelter-type facilities that did not have the ability to treat appellant. She stated that a level 14 program designed to treat youths who have committed serious offenses, rather than CYA, would be the best placement for appellant.

Appellant makes much of the fact that the prosecution did not present any evidence at the disposition hearing regarding CYA. However, appellant ignores the probation department’s disposition report, which stated that appellant was no longer appropriate for placement based on her serious law violations and lack of cooperation in

previous placements, including placement “in the most structured and therapeutic program available.” The report indicated that appellant was “a wounded young woman” with substance abuse problems who needed therapy, the care of a psychiatrist, and “a highly supervised and structured environment where her behavior can be loosely monitored and she will not be allowed to victimize others. She also needs a locked secure environment to insure the safety of the community. With a history of poor school behavior and performance, she needs to focus on her academics so she can be successful in the future.” The department reported that it had screened appellant’s case with a CYA consultant who found her appropriate for CYA, and indicated that she would be required to complete her high school education and offered substance abuse counseling, individual counseling, group counseling, psychiatric services, anger management, and victim awareness, and would be screened for intensive mental health services. Accordingly, the department recommended that appellant be committed to CYA.

Furthermore, a probation officer stated at the hearing that “I really see [appellant] is a threat to the community.” She indicated that the issue was appellant’s “suitability for placement,” questioned whether she would be accepted into a level 14 program, and stated that she knew of women graduates of CYA who said they had been rehabilitated there.

The department’s report and statements of the probation officer at hearing were sufficient support for the court’s finding that appellant’s “mental and physical condition and qualifications are such as to render it probable that she will benefit by the reformatory discipline, education or other treatment resources provided by [CYA].”

The court also was appropriately concerned about protecting the public from any further misconduct by appellant. Appellant had engaged in a dangerous pattern of behavior prior to her CYA commitment, patterns that continued after she was placed in less restrictive alternatives. At hearing, the court stated that either of appellant’s prior assaults could have killed the victim, and in both cases were unprovoked. In addition, the juvenile court stated that appellant, by taking a car and riding down the road at 90 miles per hour, could have killed someone. The court also noted that appellant left her

placement at a girl’s center after one day, and had run away on two prior occasions from another placement. The court addressed appellant directly and stated: “I know you’ve been treated badly at times. And I know there might be . . . reasons for why you acted out and did various things, but . . . I have to be concerned about your next victim . . .

[¶] And unfortunately, I have no faith that if I put you anywhere, unless I locked you down someplace, you would not leave. And then that next victim . . . is on my watch. . . .

[¶] . . . [¶] I empathize with your background, I’m concerned for you as a person, but you are truly dangerous right now. And you need to take whatever resources are available and I have to protect this community.”

In short, the record shows clearly that the court committed appellant to CYA after careful consideration of appellant’s misconduct and circumstances, the appropriateness of a CYA commitment as compared to alternatives, and public safety. There was ample reason for the court to conclude that it should commit appellant to CYA. Accordingly, the court did not abuse its discretion by doing so.

## **II. The Record Does Not Show that the Court Exercised Discretion in Setting Appellant’s Maximum Term of Confinement**

Appellant next contends that remand is appropriate because the juvenile court failed to exercise its statutory discretion pursuant to Welfare and Institutions Code section 731, subdivision (b),<sup>2</sup> in setting appellant’s maximum time of physical confinement at CYA. Respondent concedes the issue. We agree that remand is appropriate for further proceedings regarding the maximum time of confinement only.

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<sup>2</sup> Section 731, subdivision (b), states in relevant part: “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.”

Effective January 1, 2004, the Legislature added the following 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 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.” In *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1183 (*Sean W.*), this court held that the plain meaning of the statute provides that the juvenile court has discretion to set a maximum confinement time that is less than the adult maximum term when committing a minor to CYA, based on the facts and circumstances of the case. This court further concluded that the legislative history of the amendment “clearly reflects an intent to expand the juvenile court’s discretion in CYA commitments.” (*Id.* at p. 1184.) Finding that the juvenile court failed to exercise this statutory discretion, we remanded the case to the juvenile court with directions to “exercise its discretion” in setting the minor’s maximum term of confinement “pursuant to section 731, subdivision (b).” (*Id.* at p. 1189.)

Two cases determined after *Sean W.*, *supra*, 127 Cal.App.4th 1177, are also noteworthy. In *In re Carlos E.* (2005) 127 Cal.App.4th 1529, the court based its decision solely on the maximum adult term. (*Id.* at p. 1534.) The court remanded the matter for further proceedings because “section 731 unmistakably requires the trial court to set a maximum term of physical confinement in CYA based upon the facts and circumstances of the matter.” (*Id.* at p. 1543.)

In *In re Jacob J.* (2005) 130 Cal.App.4th 429, the court remanded the case because the record was silent as to whether the juvenile court had exercised its discretion. The court acknowledged that normally, on a silent record, a trial court is presumed to be aware of the applicable law when exercising its discretion. (*Id.* at pp. 437-438.) The court continued:

“But we think the matter goes somewhat beyond the question of whether the juvenile court was aware of and exercised the discretion granted by the statute. . . .

Before the statute was amended, it said the maximum term of physical confinement at CYA could not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same offenses. After its amendment, the statute spoke of a second and separate, although perhaps not different, period of physical confinement, that is, confinement set by the court given the particular facts and circumstances of the case under consideration. . . . [¶] Thus, while the statute does not require a recitation of the facts and circumstances upon which the trial court depends, or a discussion of their relative weight, the record must reflect the court has considered those facts and circumstances in setting *its* maximum term of physical confinement even though that term may turn out to be the same as would have been imposed on an adult for the same offenses.” (*In re Jacob J.*, *supra*, 130 Cal.App.4th at p. 438.)

In the present case, the court at the disposition hearing (which preceded our publication of *Sean W.*, *supra*, 127 Cal.App.4th 1177) discussed at some length the specific facts and circumstances of appellant’s case just prior to committing the minor to CYA, and then ordered that her time of confinement be for a period of time equal to the maximum adult term. The court’s comments indicate that its discussion was intended to explain its decision to commit appellant to CYA.

The court’s discussion of the length of time for appellant’s confinement was very limited in comparison. At a previous dispositional hearing, it requested an updated CYA commitment from a probation officer and was told in response the maximum period of confinement was eight years. At the September 2, 2004 dispositional hearing, the court set the period of confinement by stating only the following: “I commit the minor to CYA for a period of time based on her complete record of law violations and we calculate that as eight years.” This statement, particularly given the reference to “calculate,” does not establish that the court considered any facts and circumstances about appellant’s case in determining the length of time for her confinement. Thus, the record is silent as to whether the court took facts and circumstances about appellant’s case into account when it set her maximum time of confinement.

In addition, there are affirmative indications in the record that the court, if it were aware of its discretion, may well have set appellant’s length of confinement at something different than the adult maximum. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 942-943 [requiring remand when the record is silent about the trial court’s awareness of its new discretion to strike a prior felony conviction, and there are affirmative indications in the record that the court would have exercised this discretion if aware of it].) For example, the court stated about sending her to CYA, “I do not want to do this,” and that “I wrestled with this decision.”

Accordingly, we remand this matter to the juvenile court for further proceedings so that the court may clarify what should be the maximum time of appellant’s confinement at CYA based upon its exercise of its discretionary powers. (*Sean W.*, *supra*, 127 Cal.App.4th 1177; *In re Carlos E.*, *supra*, 127 Cal.App.4th 1529; *In re Jacob J.*, *supra*, 130 Cal.App.4th 429; *People v. Fuhrman*, *supra*, 16 Cal.4th 930.)

**DISPOSITION**

We affirm the judgment in all respects, but remand to the juvenile court for further proceedings with regard to the time of confinement consistent with this opinion.

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Lambden, J.

We concur:

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Kline, P.J.

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Ruvolo, J.