

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re T. S., a Person Coming Under the  
Juvenile Court Law.**

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**T. S.,**

**Defendant and Appellant.**

**A112421**

**(Alameda County  
Super. Ct. No. J171904)**

Appellant minor T. S. contends the trial court erred in failing to exercise its independent judgment in reviewing the ruling by a court commissioner committing the minor to the California Youth Authority (CYA). We conclude that the record does not reflect that the juvenile court exercised its independent judgment as required, but that it instead improperly deferred to the subordinate judicial officer’s determination. We must therefore vacate the order denying appellant’s rehearing request, and remand for a new hearing.

**I. FACTS AND PROCEDURAL HISTORY**

The facts of the minor’s offenses are not relevant to the legal issue presented here. In brief, in September 2004, the minor admitted that he and an older adult robbed a gas station. A CYA commitment was imposed, but stayed, and appellant was placed at the Trinity Ukiah group home.

The placement at the group home was not a success. Appellant ran away from the group home. Appellant was then placed at the Mid Valley Youth Center in Southern California.

On February 23, 2005, in Los Angeles County, a petition was filed alleging that the minor had committed an assault by means of force likely to cause great bodily injury. Appellant

admitted the offense. The Los Angeles Juvenile Court transferred the matter back to Alameda County for disposition.

After several hearings on the issue of the proper placement for the minor, a commissioner, acting as a referee, concluded that appellant should be committed to CYA. The maximum period of confinement was set at six years, but was later modified by the referee to four years eight months. Appellant then exercised his right to independent review by a juvenile court judge. (See Welf. & Inst. Code, § 252.)<sup>1</sup>

At the hearing on the application, the trial judge upheld the findings of the commissioner, observing as follows: “I think what Commissioner Culver did when he got the case, and it’s quite clear from the transcripts of these proceedings, as policy, extensive briefing and reporting was done to him both by the probation department and by counsel, he has considered it very carefully. He took not one and not two, but three passes at making sure that he addressed as carefully as possible the maximum time issue. I just don’t think that there is a basis on which to go behind the reasoning that he brought to bear in deciding this whole issue. It may have been an issue had it been presented to me initially that I would have decided differently, but this is not how these motions need to be disposed of. [¶] He looked at it. He looked at it carefully. I can find no fault with his approach except that I might have come out differently than he did and I am not going to begin to grant these motions simply on that basis. [¶] . . . [¶] He did basically the same careful job of considering the commitment issue and there, quite frankly, I’m not sure I would have come out any different. I think that [T.] [the minor] has been tried in a number of places and they haven’t worked. I wish they had, but they didn’t.”

## II. DISCUSSION

Under section 252, a minor may apply to the juvenile court for a rehearing of matters heard and orders entered by a juvenile court referee. Section 252 provides in pertinent part that: “At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor . . . may apply to the juvenile court for a rehearing.” The application must contain a statement of reasons why “rehearing is requested.” If no transcript has been made of the proceedings before the referee, the court must grant the application. If a transcript has been prepared, the “juvenile court may, after reading the transcript of those proceedings, grant or deny the application.” (§ 252.) Section 252 is silent regarding the standard

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

the court must apply in ruling on an application for rehearing.<sup>2</sup> Our decisions, however, have made clear that section 252 mandates de novo consideration of the issues.

“A referee is constitutionally limited to the performance of ‘subordinate judicial duties.’ [Citations.]” (*In re Edgar M.* (1975) 14 Cal.3d 727, 732 (*Edgar M.*)). Thus, a referee lacks full judicial powers, absent a stipulation by the parties that he or she may assume such powers. (*Ibid.*) In *Edgar M.* our high court approved the statutory procedure for review based on transcripts of the prior proceedings<sup>3</sup>, noting that the required statement of reasons by the applicant “afford[s] the applicant full opportunity for written objections and argumentation. Thus a judge’s decision to deny the application and hence adopt the referee’s determinations as those of the court is based on data amply sufficient for forming a judgment independent from that of the referee. Under these circumstances, the referee’s initial findings and orders become only advisory and their rendition constitutes no more than a subordinate judicial duty. [Citation.]” (*Edgar M., supra*, at pp. 735-736, fn. omitted.)

A juvenile court must, therefore, in ruling on an application for a rehearing under section 252, exercise its “independent judgment” and make its “own determination” of the matter that was before the referee. (*In re Randy R.* (1977) 67 Cal.App.3d 41, 43-44 (*Randy R.*)). In *Randy R.*, a referee conducted both the jurisdictional and dispositional hearings. The minor applied for rehearing on both proceedings. The juvenile court reviewed the referee’s findings only for substantial evidence and denied the minor’s application. The appellate court first confirmed the principle that, once the minor sought rehearing, the referee’s findings and orders became advisory only, stating that the juvenile court judge is then required to “weigh the evidence that was before the referee and make his own determination thereon. The substantial evidence test used by the judge is a much more limited type of review and would merely require that the court determine whether the referee’s findings were supported by substantial evidence in light of the entire record.” (*Id.* at pp. 43-44.) The court concluded that the juvenile judge’s error in failing to exercise independent judgment required reversal of the order denying the minor’s rehearing

---

<sup>2</sup> If rehearing is granted, the standard is clear. Section 254 requires that “All rehearsings of matters heard before a referee shall be before a judge of the juvenile court and shall be conducted de novo.” If an application for rehearing is granted, the referee’s order becomes a nullity and a complete new trial is required. (*Jesse W. v. Superior Court* (1979) 26 Cal.3d 41, 44; *In re Anthony M.* (1976) 64 Cal.App.3d 464, 468.)

<sup>3</sup> The court in *Edgar M.* applied former section 558. (See also *In re John H.* (1978) 21 Cal.3d 18, 25; *In re Anthony H.* (1980) 108 Cal.App.3d 494, 500.)

application. “‘Because the finding was not effectively made by a judge but was made instead by a referee authorized to exercise only “subordinate judicial duties” it [was] jurisdictionally defective.’ (*In re Damon C.* [1976] 16 Cal.3d [493,] 498.)” (*Randy R.*, *supra*, 67 Cal.App.3d at p. 44.)

There is no meaningful distinction between *Randy R.* and the case before us. The exercise of independent judgment requires a juvenile court judge to review the record in aid of “forming a judgment *independent* from that of the referee.” (*Edgar M.*, *supra*, 14 Cal.3d at p. 736; italics added.) Here, as reflected by the judge’s remarks quoted above, the juvenile court did not make a judgment independent of the referee. Although his statements were equivocal, the judge seemed to indicate he might in fact have reached a different result, had he addressed the issues *de novo* as he was required to do.<sup>4</sup> The failure to expressly exercise independent judgment requires remand to allow the trial court to explicitly perform a *de novo* review of the commissioner’s determinations. (See *Randy R.*, *supra*, 67 Cal.App.3d at p. 44.)<sup>5</sup>

---

<sup>4</sup> The Attorney General suggests that it should generally be presumed that the trial court knows and follows the law, until the contrary is shown. (See *People v. Coddington* (2000) 23 Cal.4th 529, 645.) While we agree with the general principle that the trial court is presumed to follow the law until the contrary is shown, here the trial court’s comments do show the contrary, and establish error. (*Randy R.*, *supra*, 67 Cal.App.3d at p. 44.) The Attorney General is also correct that if the record clearly shows a proper application of the law, any unfortunate “secondary remarks” by the trial court may be discounted. (*People v. Cartier* (1960) 54 Cal.2d 300, 313.) Here however the record does not clearly show a proper application of the law, and instead shows a jurisdictional defect in the proceedings. (*Randy R.*, *supra*, 67 Cal.App.3d at p. 44.)

<sup>5</sup> We do not intimate any view as to what the result of the exercise of that independent judgment should be in this case.

III. DISPOSITION

The order denying the application for rehearing is vacated. The matter is remanded to allow the juvenile court to reconsider the application de novo, in accordance with the views expressed herein.

---

BRUINIERS, J.\*

We concur.

---

JONES, P. J.

---

SIMONS, J.

---

\* Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.