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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.L., Defendant and Appellant.	A106464 (Contra Costa County Super. Ct. No. J0200484)

After sustaining a supplemental petition in which it was alleged that minor J.L. had committed second degree robbery and had four prior offenses, the juvenile court continued his status as a ward and committed him to the California Youth Authority (CYA) for a period not to exceed seven years and two months (less custody credits). Having perfected this timely appeal, J.L. contends: (1) the finding that he committed robbery is not supported by substantial evidence; (2) the juvenile court abused its discretion in ordering him committed to CYA; and (3) the record does not show that the court took into account the discretion in setting the maximum period of the commitment granted it by a recent statutory change. We conclude the first two of these contentions are without merit. Appellant's third contention is well-taken and requires a remand to provide the juvenile court with an opportunity to consider whether to exercise its discretion to fix a shorter maximum commitment period.

BACKGROUND

The evidence introduced at the contested dispositional hearing may be summarized as follows:

At about 9 o'clock on the evening of January 16, 2004, two persons came up to Liam Saengchanh and asked the time. Saengchanh said he did not have a watch, and kept walking. Half a block later, he was again approached by the pair. This time, the one he identified in court as appellant pointed a plastic replica of an Uzi at Saengchanh; the other person (a man called Wayne) aimed a sawed-off air rifle at Saengchanh. Appellant and Wayne grabbed Saengchanh from behind, threw him against "the pole and the fence," and demanded his wallet. Telling them "I don't know; I don't have," Saengchanh fell to the ground, where appellant "tried to get my wallet" while he and Wayne were beating Saengchanh with their fists and the weapons."

According to Mr. Saengchanh, appellant "[f]inally . . . get . . . my book, reading book" from "my back pocket."[1] While appellant was apparently examining the book, Saengchanh got off the ground and started running. Appellant threw the book away, then he and Wayne pursued Saengchanh. Saengchanh testified as to what happened next: "The second time they get me down on the ground again, and then they still try to get my wallet and still hitting me. [¶] Q. Now, were they saying anything to you during the second time that they had you down? [¶] A. The second time they say I will die if I don't give it to them. [¶] Q. Both of them say that? [¶] A. Yes. [¶] Q. And did they still have these guns? [¶] A. Yes. [¶] Q. Were they hitting you with the guns or their fists? [¶] Yes." The beating stopped when appellant and Wayne fled at the approach of a police vehicle driven by Richmond Police Officer Dobie, who heard Saengchanh yell out "They tried to kill me." Saengchanh retrieved his book. Saengchanh did in fact have a wallet, but it was empty. Officer Dobie pursued appellant and Wayne, apprehended them, and recovered the weapons they had discarded.

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[1] The book was described by the officer who subsequently arrived on the scene and arrested appellant as "a red paperback."

Appellant's counsel argued the evidence showed "this is an attempt only, . . . not a robbery. It's an attempted . . . theft . . . and I say that for the following reasons: First, with the robbery, there's the taking element. The taking element has two components. One, you have to gain possession of the item, and then, two, you have to carry it away . . . . It is clear that there was no asportation . . . . [Second, i]t was clear that [appellant] did not have the specific intent to permanently deprive this individual of the book. They were looking for a wallet. The book is taken from the pocket. It's thrown away immediately. . . . [T]hat does not reflect an intent to permanently deprive [Saengchanh] of the book." Appellant's counsel asked the court to find a lesser charge of theft or attempted theft.

The court ruled on the petition as follows: "The Court's going to . . . find true beyond a reasonable doubt the charge of robbery. I can't think of a case from the totality of all the circumstances that does not describe a robbery other than this case. We have two gentlemen who decided to arm themselves with facsimile weapons and assault a person who was minding his own business. And then when they saw the police, discarded the facsimile weapons and tried to run away. The asportation element is listed under the comment and use notes of CALJIC 9.40. [¶] Court finds that all the elements listed in CALJIC 9.40 were true, but movement of stolen property constitutes asportation and possession by [appellant] under *People v. Price* 25 Cal.App.3d 576 . . . even if it's temporar[]y. So the Court will find true all of those elements."

The court opened the dispositional hearing by noting it had received a report from the probation officer (who recommended that appellant be committed to CYA). The prosecuting attorney supported this recommendation in light of the "many opportunities [appellant] has had at the Ranch and at the Summit Center. CYA is necessary in this case because all other avenues of rehabilitation have been exhausted." Appellant's counsel asked the court to take judicial notice of certain "studies" that were critical of CYA's rehabilitative facilities. The prosecuting attorney opposed the request, and the court

declined to take judicial notice of these materials.[2] Appellant's counsel then argued against a commitment because appellant was "a disturbed individual" and CYA would not be able to address the "multiple specific problems in [appellant's] life," specifically, depression, suicidal tendencies, high blood pressure, and Attention Deficit Hyperactivity Disorder. Counsel submitted that the court should "order him screened for further placement, or you order Probation to locate appropriate locked facility placements for him or consider an alternative sentence of custody time alternative to the Youth Authority." The court heard from appellant's parents, who also argued against a CYA commitment.

The court stated its decision as follows: "The Court has considered the age of the minor, circumstances in gravity of the offense[] committed by the minor, and previous delinquent history. . . . [¶] . . . [¶] This was a vicious assault. And but for the fact that . . . a Richmond police officer . . . wandered upon the scene just by coincidence and saw them in the midst of beating and robbing this young man, I don't know what would have happened to the victim in the case.

"As it relates to less-restrictive means, the Court can consider all local less-restrictive programs and forms of custody, but I personally am . . . fully satisfied that they are inappropriate dispositions at this time, that the minor can better benefit from the various programs provided by the . . . Youth Authority.

"He's been placed at the Boys' Ranch. He failed at the Boys' Ranch . . . . He was kicked out of the Boys' Ranch for failure to adjust. He was accepted into the Summit Center treatment program in January of '03. He was kicked out of there. He spent some

[2] The court did, however, order that the studies would be "received . . . although not judicially noticed," and it advised appellant's counsel "I'll also allow you to argue the documents since I am familiar with them." The documents, dated December of 2003, are respectively entitled "Report of Findings of Mental Heath and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities" by Eric Trupin, Ph.D. and Raymond Patterson, M.D., and "General Corrections Review of the California Youth Authority" by Barry Krisberg, Ph.D. Both of these documents are included in the record on appeal.

time on electronic monitoring for a brief period of time. And the Court agrees on page 13 that has had little effect on his adverse behavior.

"I agree with what's contained on pages 13 and 14 of the dispositional report under the rubric of placement institutional screening. We've basically tried whatever we could in this county to steer this young man in the right way, but he basically is . . . [intent on] . . . involving himself in criminal conduct. And as a result, I believe that the recommendations are appropriate on page 2. I'll make those recommendations the orders and findings of [the] Court.

"The Court does find that the mental and physical condition and qualifications of the ward are such as to render it probable that the minor will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

REVIEW

I

In examining appellant's first contention, our task is confined to deciding whether the record, viewed most favorably to the order, contains evidence from which, together with all legitimate inferences, the juvenile court as the trier of fact could conclude was credible and sufficient to demonstrate the existence of the elements of second degree robbery beyond a reasonable doubt. (E.g., *In re Ricky T*. (2001) 87 Cal.App.4th 1132, 1136; *In re Adrian R*. (2000) 85 Cal.App.4th 448, 452.) As we stated two years ago: "The defining features of robbery are (1) the taking of property, (2) from a person, (3) accomplished by force or fear." (*In re Travis W*. (2003) 107 Cal.App.4th 368, 374.) There must also be an intent to steal (e.g., *People v. Waidla* (2000) 22 Cal.4th 690, 737), but the value of the property taken is immaterial (e.g., *People v. Simmons* (1946) 28 Cal.2d 699, 705).

Abandoning the asportation argument he made at the jurisdictional hearing, appellant now argues only that sufficient evidence of his larcenous intent is lacking because what he wanted to steal was the victim's wallet, but the only thing taken was the book. The Attorney General demonstrates the weakness of appellant's logic: "The fact that it was a book, and not the victim's wallet, that appellant removed from the victim's

pocket, is of no relevance to the issue here. The law of robbery only requires a showing of intent to steal *something* at the time of the application of force or fear. (*People v. Hillhouse* [(2002)] 27 Cal.4th [469,] 504.) The law does not require that the property stolen be the very property that the robber *hoped* to find. Certainly, if appellant had removed a wad of currency, or a cell phone, instead of a wallet, he could not be heard to complain that there was no robbery." As the Court of Appeal held in one of the authorities cited by appellant: "We see no rationale for limiting the scope of the robbery only to the specific items on which the defendant has focused at the time he initially applies the force." (*People v. Brito* (1991) 232 Cal.App.3d 316, 326.) Although the paperback may not have had much intrinsic value, the inescapable fact is that appellant did take it from the victim's person using force or fear. It was robbery even though appellant never gained possession of the particular item he may have sought. (See *State v. Straughter* (Kan. 1997) 932 P.2d 387, 396 [conviction affirmed where robbers wanted guns but took VCR instead]; *Taylor v. State* (Tex. Crim.App. 1993) 859 S.W.2d 466, 467-468 [conviction affirmed where robbers failed to obtain victim's wallet, and took other items instead]; cf. *State v. Burns* (Ore. App. 1972) 495 P.2d 1240, 1241 [burglary conviction satisfied "by proof that the defendant intended to steal anything and/or everything of value discovered . . . . The state is not required to go to the extreme of proving the defendant had the intent to steal any one specific item."].)

II

Realizing that he must overcome the most stringent standard for reversal of a trial court's decision, appellant contends the juvenile court abused its discretion by committing him to CYA. Much of appellant's argument is devoted to discrediting the probation officer's conclusions—which were used by the prosecuting attorney and adopted by the court—as to why appellant's previous two institutional placements proved unsuccessful. Appellant maintains that "[t]his information . . . was erroneous," leading the court to "erroneously conclude[]" the prior placements were ineffective.

Appellant concedes his "trial counsel did not express disagreement with the minor's history and troubles as outlined in the probation department's social study and

case assessment." Appellant's trial counsel did not object when the prosecuting attorney and the court used the report. Because the accuracy of the probation officer's report was not put at issue by appellant at the dispositional hearing, any defects in the report cannot be raised on this appeal. (E.g., *In re Travis W.*, *supra*, 107 Cal.App.4th 368, 379.)

Next, using the reports critical of CYA, appellant argues that commitment will not benefit him, and will in fact likely aggravate his emotional difficulties. Appellant faults the probation officer's report for "not present[ing] any evidence that CYA is capable of dealing with the minor's mental health problems and attention deficit." Again, this point is waived for purposes of this appeal because it was not raised before the juvenile court. (*In re Travis W.*, *supra*, 107 Cal.App.4th 368, 379.) In any event, as the court noted at the hearing: "And so it's also clear [from] the record, the Court has some personal knowledge of the current situation at the California Youth Authority since Judge Haight and I just visited the three facilities in question . . . last Friday on an all-day visit. So I have reviewed those." The court's personal knowledge constitutes substantial evidence in support of its findings that existing local facilities were "inappropriate dispositions at this time" and "the minor can better benefit from the various programs provided by the . . . Youth Authority." So does the probation officer's report. (E.g., *In re Karen A.* (2004) 115 Cal.App.4th 504, 508, fn. 3.)

Appellant's last argument on this point is that the commitment was unwarranted because he "is not the kind of sophisticated criminal who needs to be placed at CYA for purposes of punishment or public protection." Nothing in the statutes governing commitments to CYA requires a minor to be a "sophisticated criminal." (See Welf. & Inst. Code, §§ 726, 731;[3] see also Cal. Rules of Court, rule 1494.5.)

The juvenile court made its decision in light of the fact that appellant had committed a "vicious assault," that no less restrictive placements were available, and that appellant could benefit from the commitment. That decision did not exceed the bounds

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[3] Subsequent statutory references are to this Code.

of reason and thus does not qualify as abuse. (*In re Travis W.*, *supra*, 107 Cal.App.4th 368, 379-380.)

III

Appellant's final contention is that when the juvenile court made the commitment it "fail[ed] to exercise statutory discretion in setting the minor's maximum term of confinement based on his individual facts and circumstances" in accordance with a 2003 statutory enactment.

The statutory change cited by appellant became operative on January 1, 2004, prior to the dispositional hearing conducted on April 15. It added a sentence to subdivision (b) of section 731. With the added sentence italicized, subdivision (b) currently 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." (Amended by Stats. 2003, ch. 4, § 1, p. 93.)

As appellant sees it, the amendment to subdivision (b) of section 731 authorized a juvenile court to fix the maximum term of a commitment at less than the statutory maximum period of imprisonment for an adult offender. We agree and see no other reasonable purpose for the amendment.

The change to subdivision (b) is not to be considered in isolation. It is to be harmonized with the juvenile court law as a whole, avoiding any construction that renders the new language superfluous or without meaning. (E.g., *Alford v. Superior Court* (2003)

29 Cal.4th 1033, 1040; Renee *J. v. Superior Court* (2001) 26 Cal.4th 735, 744; *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 24.) With these principles in mind, the purpose of the amendment becomes clear.

The amendment begins with the word "also," which indicates that it modifies the prior sentence. If, as the Attorney General believes, the amendment is simply a restatement of the first sentence and "does not authorize juvenile courts to do anything," the amendment would be reduced to a pointless redundancy. The amendment's language that the commitment is to be "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. Reading the two sentences, and subdivision (c) of section 726 together, produces a coherent result. A juvenile court may not fix a commitment term that is greater than the "maximum term of imprisonment which could be imposed upon an adult" convicted of the same offense(s). But the court can now fix a maximum commitment at less than the adult statutory maximum considering the individual circumstances of the matter before it. The amendment does not intrude upon the statutory authority of the CYA to determine the actual period of the minor's confinement as long as that period does not exceed the maximum term pronounced by the court. (See §§ 1176, 1731.5, 1766.)[4] We note that all other courts which have considered the issue in reported decisions have rejected similar arguments by the Attorney General and reached the same result as we do today. (See *In re Carlos E.* (April 1, 2005, F045287) ___ Cal.App.4th ___ [2005 WL 737525]; *In re Sean W.* (March 28, 2005, A107500) ___ Cal.App.4th ___ [2005 WL 704095].)

We have examined the legislative history of the statute. It confirms our reading. The major purpose of the legislation was to move the operations of the Youthful Offender

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[4] The principle that the juvenile court fixes the maximum commitment term but the Youth Authority determines the actual time of confinement, is, and has long been, firmly entrenched. (E.g., *In re Ricky H.* (1981) 30 Cal.3d 176, 191; *In re George M.* (1993) 14 Cal.App.4th 376, 380; *In re Ismael A.* (1989) 207 Cal.App.3d 911, 919; *In re James V.* (1979) 90 Cal.App.3d 300, 306-308; *People v. Getty* (1975) 50 Cal.App.3d 101, 111.)

Parole Board into the CYA, and the mass of analysis and comment is directed to that end. There are only two brief references to the amendment of section 731. The first, from the Senate Committee on Public Safety, stated: "This bill would authorize the [juvenile] court to additionally set maximum terms of physical confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. This new provision 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." (Sen. Com. on Public Safety, Analysis of Sen. Bill 459 (2003-2004 Reg. Session) as amended March 12, 2003, pp. I-J, italics added.) The second, from the Senate Rules Committee states that "This bill would . . . [¶] . . . [¶] [a]uthorize[] the court to set a maximum term of confinement that is *not necessarily the adult term maximum*." (Sen. Rules Com., Analysis of Sen. Bill 459 (2003-2004 Reg. Session) as amended April 3, 2003, p. 3, italics added.) The passages we have italicized support appellant's contention that the amendment was intended to, and did, abrogate the existing rule that a juvenile court had no discretion to fix a CYA confinement term lower than the statutory maximum for an adult.

However, 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 issues, we must remand the matter to allow the juvenile court to consider whether to exercise such discretion if it is so advised. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 942-943.)

The order of commitment is reversed and the cause is remanded for that purpose. The order is affirmed in all other respects.

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Kay, P.J.

We concur:

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Sepulveda, J.

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Rivera, J.