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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re ROBERT G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT G.

Defendant and Appellant.

A104463

(Alameda County
Super. Ct. No. J147783)

I.

INTRODUCTION

Appellant Robert G., a minor, appeals from an order of the Alameda County Juvenile Court committing him to the California Youth Authority (CYA) for a maximum confinement period of 23 years 4 months. Appellant's confinement term was based on a finding that he committed one count of robbery and one count of carjacking, with a firearm use enhancement as to both counts. Appellant contends that the juvenile court abused its discretion when it committed him to CYA because 1) it did not consider less restrictive alternative placements, and 2) there is insufficient evidence to show appellant will benefit from the commitment, given that he is a first-time offender with special needs. Appellant further contends that the juvenile court erred in finding his maximum period of confinement to be 23 years 4 months because it should have stayed the time

imposed for the robbery charge. As to the placement choice, we affirm the juvenile court's order and find that the juvenile court did not abuse its discretion. As to the second contention, we modify the dispositional order by ordering the additional 4 year 8 month-term for robbery stayed, for a total maximum period of confinement to be 19 years.

II.

PROCEDURAL BACKGROUND

On April 24, 2003¹, the Contra Costa County District Attorney filed a three-count petition under Welfare and Institutions Code section 602², alleging that 15-year-old appellant committed carjacking (Pen. Code, § 215, subd. (a) (count 1)), robbery (Pen. Code, §§ 211, 212.5 subd. (c) (count 2)), and attempted kidnapping (Pen. Code, §§ 207, subd. (a), 664) (count 3)). The petition also alleged that appellant personally used a firearm in the commission of all three offenses. (Pen. Code, § 12022.53, subd. (b).) After a series of jurisdictional hearings in Contra Costa County, the court sustained counts 1 and 2 and found the firearm use enhancements true as to both counts, but found reasonable doubt as to count 3 and dismissed that charge.

At the September 25 dispositional hearing, the Contra Costa County Probation Department recommended that the court transfer the case to Alameda County for disposition because appellant was a longtime dependent in Alameda County. The defense concurred in that recommendation. Over the prosecution's objection, the court transferred the case to Alameda County for disposition.

On October 27, the Alameda County juvenile court held a dispositional hearing where it adjudged appellant a ward of the court and committed him to CYA for a maximum period of 23 years 4 months, with credit for 189 days served, noting that his maximum confinement is to age 25. The juvenile court committed appellant to CYA despite appellant's arguments during the hearing in favor of camp placement.

¹ All of the events in this case occurred in 2003.

² All subsequent undesignated statutory references in this opinion are to the Welfare and Institutions Code.

Appellant timely filed a notice of appeal on October 28.

III.

FACTUAL BACKGROUND

On April 21, at around 12:30 p.m., Marlin Davis parked his light blue 1987 Dodge Aries on the street near a bus stop and crossed the street to John's Market on 19th Street and Broadway Avenue in San Pablo. As he crossed the street, he noticed two young Black males standing together at the bus stop near his vehicle. Davis entered the store, completed his purchase, and returned to his vehicle. As Davis neared the driver's side of his vehicle, one of the youths, identified as appellant, approached Davis displaying what appeared to be a black revolver in his sweatshirt pocket.

With his left hand, appellant pulled the revolver out of his sweatshirt pocket. He threatened to use the revolver, proceeding to say something similar to "This is a robbery," and "Give me your money and don't play, because I will pop you." The youth also demanded Davis's car keys. Davis complied, and handed over both his keys and approximately \$18 in cash.

The second youth stayed a short distance behind Davis and appellant. The second youth did not directly address Davis, but instructed and encouraged appellant to "take the keys" from him. Appellant then demanded Davis to get into the car; however, Davis refused and ran across the street and back into the store. Davis saw the two youths enter the car and watched appellant drive away. The entirety of the events occurred in about three minutes.

Davis told the police that he got a good look at the suspects and believed that he could identify them both. He described appellant as being approximately 17-19 years old, 5'8" tall, about 150 pounds, left-handed, and having a medium to dark complexion. Furthermore, Davis described appellant as wearing a gray hooded, zipperless sweatshirt with a continuous pocket across the front. Appellant wore his sweatshirt hood in a manner that covered the back, top, and sides of his head. Davis also noted that appellant had acne and might have had gold teeth. Appellant did not have gold teeth or acne.

Nevertheless, Davis subsequently identified him both from a six-person pretrial photographic lineup and in court as the person who was holding the gun.

On April 22, the day after the events near John's Market, California Highway Patrol Officer Brent Bartusch saw Davis's blue Dodge Aries heading eastbound on San Pablo Dam Road without license plates. Officer Bartusch stopped the vehicle, identified appellant as the driver, and observed three other adult passengers in the vehicle. Appellant had no driver's license and told Officer Bartusch that he had just purchased the car from "some guy." After running a registration check on the vehicle, Officer Bartusch was informed by CHP dispatch that the vehicle was reported as stolen, and accordingly, all four of the occupants were detained.

Officer Bartusch ordered the four occupants out of the car at gunpoint, during which time none of the occupants made an attempt to flee or resist arrest. No weapons or contraband were found in the car or on the driver. However, officers found a large gray hooded, zippered sweatshirt, which was later determined to belong to Davis.

After his arrest, appellant was interviewed and videotaped at the San Pablo Police Department. Appellant admitted that he took part in the events that occurred near John's Market, but claimed that 23-year-old "Deandre Dodson" was the individual who wielded the handgun and to whom the victim gave his car keys and money. However, appellant admitted that he told Davis to hand over the car keys. Officers were unable to find any records of "Deandre Dodson" when attempting to ascertain whether "Deandre Dodson" was a real person.

In connection with the jurisdictional hearings held in Contra Costa County, the Contra Costa County Probation Department prepared a report setting forth detailed facts and assessments of appellant's schooling and home life. After being advised by a representative from the Orin Allen Youth Rehabilitation Facility that appellant was rejected from placement there, the probation department recommended that appellant be committed to CYA. When appellant's case was transferred to Alameda County for disposition, the Alameda County Probation Department prepared an independent probation report, similarly including relevant facts concerning appellant's educational

and social life. The Alameda County Probation Department also recommended that appellant be committed to CYA after learning from the director of Camp Wilmont Sweeny that he was not eligible for camp.

Both probation reports highlight appellant's educational record. Appellant's educational history is a tumultuous one, primarily marked by poor school attendance and grades. Appellant was suspended twice in middle school, once for participating in a fight during physical education, and once for "talking." Towards the latter part of his middle-school education (namely, grades 7 and 8), most of his grades were failing because of his poor attendance and lack of effort with school work. Appellant made no attempt to improve or rectify his academic performance, and he declined to take advantage of summer school or after-school tutoring programs. Appellant only attended a total of six days of high school.

Appellant reportedly hid his truancy from his guardian, his maternal grandmother. Appellant would dress, take lunch money from his grandmother, and leave for school everyday, but unbeknownst to his grandmother, he would meet his friends or "hang out" at the mall instead of attending school. Appellant's grandmother never received a report card documenting appellant's attendance or grades.

After being referred for counseling by his child welfare worker, appellant only attended five sessions before he stopped attending entirely. The Alameda County probation report described the lack of limits on appellant's daily behavior, noting that "in his grandmother's home, he came and went as he pleased, unencumbered by restriction, structure, or obligation." The Alameda County probation report went on to conclude that appellant's grandmother was unable to meet the challenges of rearing appellant through his adolescence.

Appellant had been formally arrested in connection with four separate criminal investigations, but the cases were eventually closed for lack of evidence. Appellant had never been in juvenile hall and this was his first charged offense.

An Individual Education Program (IEP) was developed for appellant after psycho-educational testing revealed that he qualified for special education. However, appellant

was not diagnosed with any learning disabilities, and the Contra Costa County Probation Department determined that he was “not . . . a special needs student.” Furthermore, although the Alameda County probation report labeled appellant as having “exceptional needs,” this report determined that appellant’s mental and physical condition made it probable that he would benefit from the reformatory educational discipline and treatment provided by CYA.

In determining the appropriate placement for appellant, the probation departments of both Alameda and Contra Costa counties investigated alternative placements other than CYA. However, both probation departments encountered difficulty in finding an appropriate placement for him anywhere but CYA. As noted above, appellant was screened by both the Orin Allen Youth Rehabilitation Facility and Camp Wilmont Sweeney, but found unsuitable because of the danger he presented to the safety of those communities due to the nature of his two felony charges and his use of a firearm. In the Alameda County probation report, an investigation unit supervisor and a placement unit supervisor expressed that no group home provided for minors with offenses such as appellant’s.

After being screened by CYA, its representatives determined that appellant would be placed in an appropriate program where he would be given an opportunity to work on his high school education and undergo individual training and counseling directed toward victim awareness and impulse control. Based on their consideration of alternative placements and their own assessment of the facts, the probation departments of both Alameda and Contra Costa counties recommended that appellant be committed to CYA.

At the dispositional hearing, the juvenile court committed appellant to CYA, reasoning that appellant’s “guardian has neglected or failed to provide for the proper maintenance, care, education, and training of the minor[,]” and remaining in his grandmother’s home was “contrary to his welfare.” The court further stated that “[r]easonable efforts were made to prevent or eliminate the need for a removal.” Finally, the court weighed appellant’s needs and the programs offered by CYA in determining that appellant’s “mental and physical condition and qualifications are such that would

render it probable he'd benefit from the reformatory educational discipline or other programs provided by the California Youth Authority.”

IV.

DISCUSSION

The juvenile court has broad discretion in determining the appropriate rehabilitative and punitive measures for offenders. (§ 202; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) As a result, the decision to commit a minor to CYA may only be reversed on appeal by a showing that the juvenile court abused its discretion. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) An appellate court must indulge in all reasonable inferences in favor of the disposition and must affirm findings that are supported by substantial evidence. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) Substantial evidence is evidence that is “reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.]” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 942.)

Generally, substantial evidence exists where a dispositional order is based on consideration of the extent of the minor’s need for a controlled environment, the minor’s prior record of delinquency, the circumstances and gravity of the minor’s criminal conduct, the threat the minor poses to the community, the efficacy of prior dispositions in rehabilitating the minor, the minor’s compliance with prior court orders, and the minor’s age. (§ 725.5.; see e.g., *In re Mikeal D.* (1983) 141 Cal.App.3d 710, 718-720; *In re Anthony M.* (1981) 116 Cal.App.3d 491, 503-505.)

In determining whether substantial evidence supports a CYA commitment, we examine the record presented at the dispositional hearing in light of the purposes of juvenile law. (§ 202; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) Before 1984, California courts maintained that the purposes of juvenile law were for rehabilitation and treatment, not punishment. (See, e.g., *In re Aline D.* (1975) 14 Cal.3d 557, 567.) However, in 1984, the Legislature amended section 202 to recognize punishment as a rehabilitative tool and to emphasize the safety and protection of the public. (Stats. 1984,

ch. 756, §§ 1, 2, pp. 2726-2727; see also *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) As amended, section 202 requires that courts commit delinquent minors “in conformity with the interests of public safety and protection, [to] 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.” (§ 202, subd. (b); see Stats. 1984 ch. 756, §§ 1, 2, pp. 2726-2727; § 202, subd. (e)(5); *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 57; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.)

Rehabilitation continues to be a critical objective of juvenile court law and must be considered in addition to the greater emphasis on punishment and societal protection in section 202. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) To commit a minor to CYA, the juvenile court must be “fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [CYA].” (§ 734.) Accordingly, the rehabilitative purposes of a CYA commitment are satisfied when there is 1) evidence in the record demonstrating probable benefit to the minor, and 2) evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate. (*In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.)

Alternative placement options should be considered before committing a minor to CYA because of the danger of incarcerating unsophisticated adults with sophisticated criminals. (See *In re Anthony M.* (1981) 116 Cal.App.3d 491, 503.) The statutory scheme sets forth a progressive series of dispositional orders: home placement under supervision, foster home placement, placement in a local treatment facility, and, as a last resort, CYA commitment. (*In re Aline D.*, *supra*, 14 Cal.3d at p. 564.)

Despite the progressive nature of placement options for delinquent juveniles, “there is no absolute rule that a Youth Authority commitment should never be ordered unless less restrictive placements have been attempted. [Citations.]” (*In re Ricky H.* (1981) 30 Cal.3d 176, 183; see *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151; *In re*

John H. (1978) 21 Cal.3d 18, 27.) “[L]esser remedies may . . . be rejected if supported by evidence on the record of their inappropriateness necessitating use of the CYA. [Citations.]” (*In re Debra S.* (1982) 135 Cal.App.3d 378, 383.) Accordingly, California courts have upheld CYA commitment for first-time offenders without first attempting a less restrictive placement where the circumstances demonstrate that such alternatives are inappropriate or unavailable. (See, e.g., *In re Ricky H.*, *supra* 30 Cal.3d at p. 183 [minor’s escape from juvenile hall by means of force and violence demonstrated that less restrictive placement would have failed]; *In re John H.*, *supra*, 21 Cal.3d at p. 27 [lengthy history of gang involvement and several prior violence offenses]; *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473 [vicious attack on two victims during robbery; refusal to take responsibility for the crimes]; *In re Willy L.* (1976) 56 Cal.App.3d 256, 265 [serious pattern of delinquent activity including burglary and drug offenses].) If there is evidence in the record showing that the court considered less restrictive placements, the fact the judge does not state on the record his or her consideration of those alternatives and reasons for rejecting them will not result in reversal. (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 184.)

Here, the decision of the juvenile court to commit appellant to CYA fully comports with these legal principles, and we discern no abuse of discretion. Before ordering appellant committed, the juvenile court received two formal, written probation reports exploring the details of the incident and reciting the minor’s social, personal, educational, behavioral, and family history. Both the Alameda and Contra Costa County probation departments independently recommended CYA placement for appellant. Both departments rejected alternative placements after consulting alternative facilities which deemed appellant inappropriate for placement due to the danger he presented to their communities.

Although it was unclear whether the trial court had read the Contra Costa County probation report at the time of his ruling, the court had both reports before it at the dispositional hearing. The judge apparently read and considered the Alameda County probation report in his deliberations concerning the appropriate placement for appellant.

Furthermore, the key conclusions and recommendations were the same in both reports. Additionally, the record discloses that the juvenile court considered other factors in addition to reviewing the probation reports in arriving at its disposition, including the arguments of counsel and prior determinations made by the Contra Costa County juvenile court.

Although appellant is a first-time offender, the brazenness and gravity of the offenses he committed are significant. Robbery and carjacking with a deadly weapon have grave implications for the safety and protection of the public. (See *In re Travis W.* (2003) 107 Cal.App.4th 368, 374 [“[T]he essence of robbery is the fear of the victim yielding to real or threatened coercion [C]arjacking is a direct offshoot of the crime of robbery.”].) Appellant used a handgun to threaten and rob his victim, placing the victim in fear for his life. Because of his use of a weapon in carrying out these violent offenses, the Alameda County Probation Department recommended that appellant be placed in a locked facility, a conclusion fully justified by the facts of the case.

Similar to the conclusions of both probation reports, remarks at the dispositional hearing by the juvenile court make it clear that appellant was committed to CYA because the court believed the programs there would be of probable benefit to him. The Alameda County probation report confirmed that appellant would have an opportunity to work on a high school program and be able to participate in other established social programs through CYA, specialized for delinquent or truant youth such as appellant. The Alameda County Probation Department further believed that appellant could take advantage of programs and opportunities at CYA that he previously “rejected or ignored in the community, such as counseling and his high school education.” Finally, the probation report noted appellant’s current success at CYA, providing further evidence that CYA is an appropriate environment for his needs, stating that “[h]e has already demonstrated that, in a locked setting he is capable of fulfilling his academic requirements and of conducting himself in an appropriate manner.” Contrary to appellant’s claims, there is no evidence documenting that appellant is a special needs student and requires educational accommodations not afforded by CYA.

Appellant directs our attention to certain inaccuracies contained in the Alameda County probation report that he contends may have tainted the dispositional order. We have examined the report, and to the extent the juvenile court relied upon it, the court relied upon accurate information. The “erroneous” information referred to is relevant only to the question of whether the true findings are sustainable, an issue not contested by appellant on appeal. As to these inaccuracies, by the time the Alameda County report was prepared, appellant had already been adjudged responsible for robbery and carjacking by the Contra Costa County juvenile court. Therefore, any incorrect facts in the Alameda County probation report did not affect either the juvenile court’s jurisdictional findings, or the final disposition of committing him to CYA.

In committing appellant to CYA, rather than focusing on details surrounding appellant’s criminal activity, the juvenile court relied on appellant’s need for educational and social discipline, and how remaining in his home would be contrary to these goals. The record reflects appellant’s systematic pattern of truancy, a complicated web of deception towards his grandmother, poor performance and troubled behavior at school, prior involvement with the police, inadequate parental supervision, and the ineffectiveness of community-based services to correct his behavior. Although appellant’s four prior encounters with police did not result in charges being brought, there was enough cause to justify his arrest, and these recurring circumstances indicate at least that appellant was living a completely unsupervised adolescence. These facts illustrate a problematic pattern of behavior that merits the guidance of an authoritative force.

The court also considered less restrictive alternatives, stating that “[r]easonable efforts were made to prevent or eliminate the need for a removal.” The record also supports the juvenile court’s determination that less restrictive placements were unrealistic based on appellant’s dual rejections from less restrictive placements, the seriousness of his offenses, and the inadequacy of his current home conditions to deter his delinquency. Therefore, the court justifiably determined that CYA was the appropriate placement to deal with appellant’s behavior, and was in his best interests.

On appeal, appellant alleges that CYA cannot effectively meet his unique educational needs given the serious problems that have recently been exposed in the CYA institution. This argument was not made below, and appellant has waived any error in the juvenile court's sentence on this ground by failing to do so. (*People v. Scott* (1994) 9 Cal.4th 331, 356) [“[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal.”].) “It is settled that failure to object and make an offer of proof at the sentencing hearing concerning alleged errors or omissions in the probation report waives the claim on appeal.” (*People v. Welch* (1993) 5 Cal.4th 228, 234-235, but see *In re Tanya B.* (1996) 43 Cal.App.4th 1, 5; see also *In re Josue S.* (1999) 72 Cal.App.4th 168 [waiver rule is applicable to juvenile court dispositions]; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 970-971 [same].)

Moreover, even on appeal, appellant has presented no evidence of the ineffectiveness of CYA programs as they might relate to his circumstances. Given the fact that the record contains substantial evidence that CYA will benefit appellant and is the best placement option, particularly in light of the lack of less restrictive alternatives, we cannot say that the juvenile court abused its discretion in committing appellant to CYA.

Alternatively, appellant contends the juvenile court erred in finding his maximum period of confinement to be 23 years 4 months, because it should have stayed the time attributable to the robbery charge. (Pen. Code, § 654.) The Attorney General concedes this claim, acknowledging that the maximum period of confinement should be modified to stay the 4 year 8 month-term imposed for the robbery charge.

V.

DISPOSITION

The juvenile court is directed to modify its CYA commitment order staying the additional 4 year 8 month-term imposed for the robbery finding, and reflecting a maximum period of confinement of 19 years. In all other respects, the judgment is affirmed.

Ruvolo, J.

We concur:

Kline, P.J.

Haerle, J.

A104463, *In re Robert G.*