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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B290204

(Los Angeles County  
Super. Ct. No. FJ54843)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Benjamin R. Campos, Judge. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Zee Rodriguez and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

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J.C., a minor, challenges a dispositional order committing him to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF). He argues the juvenile court abused its discretion in the commitment, on the ground there was no substantial evidence that a less restrictive placement would be inappropriate or ineffective. He also argues he is entitled to one more day of predisposition custody credit. We reject the first contention but agree that the court miscalculated J.C.'s predisposition custody credit. We therefore affirm the judgment with directions to modify the commitment.

### **BACKGROUND**

At the time of the disposition hearing J.C. was 17 years old, with no prior involvement in the juvenile justice system. He had lived with his mother (mother) in Mexico until he was four, but around 2004 she moved to the United States without him to escape spousal abuse. In 2006, mother gave birth to a daughter, J.M. By 2016, mother had saved enough money to bring J.C. and his older brother illegally to the United States to live with her and J.M.

Soon after moving in with mother J.C. began using alcohol and marijuana regularly. Mother did not require that he attend school, but he sometimes assisted her in her work as a night housekeeper. At other times he looked after J.M., now 10 years old, while mother worked.

J.C. sexually abused J.M. approximately 20 times between June 2016 and April 2017, telling her this activity was payment for what she "owed" him. He would force her to stroke his erect

penis until he ejaculated, and force his penis into her mouth. During one encounter, J.C. forced his penis into J.M.'s vagina. As a result of the abuse J.M. suffered from post-traumatic stress disorder, experienced trouble sleeping, and had frequent nightmares.

The Los Angeles County District Attorney filed a two-count petition alleging J.C. was a minor who came within the provisions of Welfare and Institutions Code section 602<sup>1</sup> because he had committed continuous sexual abuse and attempted forcible rape of a child under 14 years. (Pen. Code, §§ 288.5, subd. (a), 664/261, subd. (a)(2).) J.C. admitted both counts.

In preparation for a contested disposition hearing, the Los Angeles County Probation Department filed a report recommending that J.C. be committed to the DJF, a part of the Division of Juvenile Justice (DJJ), which in turn is part of the Department of Corrections and Rehabilitation. (§ 1710, subd. (a); Pen. Code, § 6001; Gov. Code, §§ 12838, subd. (a), 12838.3, 12838.5, 12838.13.) The report noted that mother would not permit J.C. to return to her home, and stated that “[s]afely rehabilitating [J.C.] and yet allowing him to remain in the community does not appear to be a viable option.” J.C.’s propensity for “predator like criminal conduct” indicated he needed long-term therapy and correctional intervention. The report stated that commitment to the DJF would provide J.C. with “a well-secured and tightly structured facility where he would be able to obtain long-term rehabilitative counseling with an emphasis on youthful sexual offender issues.” A later probation report showed that during the approximately one year

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<sup>1</sup> Undesignated statutory references will be to the Welfare and Institutions Code.

he had been detained at Central Juvenile Hall, J.C. had made significant progress at school, was well-liked by his teachers, complied with institutional rules, and had no disciplinary issues.

In their sentencing memorandum the People offered transcripts from a forensic interview of J.M. and detailed information concerning treatment programs available at DJF, including the placement process, staffing, and therapies. The report noted that the DJF “presently maintains two programs in Northern California which provide highly specialized and comprehensive treatment programs specifically designed for youthful sex offenders who have also exhibited aggressive behavior.

J.C.’s sentencing brief urged that he be put in the custody of the probation department for “suitable placement”; i.e., in a juvenile facility such as the Rancho San Antonio Boys Home, Trinity Youth Services, or Optimist Youth Homes & Family Services, rather than the DJF, all of which provide treatment, education and support services for juvenile offenders who cannot immediately be reunited with their families. J.C. included supporting documentation showing he had done well at Central Juvenile Hall but suffered from mental disorders.

At the disposition hearing J.C.’s counsel argued for suitable placement.

J.M. made a statement at the hearing, and the prosecutor played video excerpts from her forensic interview, wherein she described in moving detail how J.C. had molested her.

The prosecutor also presented the testimony of Deputy Probation Officer Steven Chavira, who stated that J.C.’s acts had not been merely impulsive but involved “a lot of formulated research.” Chavira opined that the placement facilities urged by

J.C. would be inappropriate because they were “open facilities,” meaning youths there could “get up and walk out.” “Home on probation” would also be inappropriate because J.C.’s home with mother, even if available, would not provide the structure and supervision he needed. Nor would camp placement be appropriate because it would not meet J.C.’s rehabilitative needs.

Chavira explained that placement in a DJF facility would be the best option for J.C. because it had significantly longer and more intensive sexual behavior treatment programs and would last several years, whereas the suitable placement urged by J.C. would last only for a year to a year and a half.

Chavira recommended that J.C. be placed with the DJF in the Chaderjian Youth Correctional Facility or the O.H. Close Youth Correctional Facility, both of which would offer him a psychologist, a parole agent, and a youth counselor, “essentially a life coach.” He would be given vocational opportunities and taught living skills. Chavira opined that these facilities were “quite superior” to Los Angeles County probation programs because they “have more funds [and] more highly skilled and highly trained personnel,” and would provide J.C. with guidance, structure, clinical services to treat his post-traumatic syndrome, and training in social skills development.

The juvenile court found that J.C.’s “mental and physical qualifications” were such as to “render it probable that he will be benefitted by the reformatory, educational, discipline, and other treatment programs provided by the [DJF].” The court found J.C. needed “a whole array of services” in a structured, multifaceted program to help deal with “obvious trauma, both inflicted and suffered,” and provide group and individual counseling and

educational opportunities. The court thus committed J.C. to the DJF for a maximum confinement of 22 years and 6 months.

J.C. appealed.

## **DISCUSSION**

### **A. Substantial Evidence Supported the Commitment Order**

J.C. contends the finding of probable benefit from a DJF commitment is unsupported by substantial evidence. We disagree.

“Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct 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.” (§ 202, subd. (b).) “[P]unishment’ means the imposition of sanctions.” (§ 202, subd. (e).) Permissible sanctions may include commitment “to a local detention or treatment facility, such as a juvenile hall, camp, or ranch,” or commitment “Division of Juvenile Facilities, Department of Corrections and Rehabilitation.” (*Ibid.*)

The purpose of juvenile delinquency laws is “to provide for the protection and safety of the public and each minor” and to serve the best interests of the minor by providing the care, treatment, and guidance necessary for rehabilitation and reintegration into the community. (§ 202, subd. (a); *In re Charles G.* (2004) 115 Cal.App.4th 608, 614.)

The statutory scheme “ ‘ ‘contemplates a progressively more restrictive and punitive series of dispositions starting with

home placement under supervision, and progressing to foster home placement, placement in a local treatment facility, and finally placement at the [DJF].” ’ ’ ( *In re Carlos J.* (2018) 22 Cal.App.5th 1, 5-6 (*Carlos J.*.)

A minor may not be committed to the DJF unless the juvenile court finds 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.” (§ 734; see Cal. Rules of Court, rules 5.790(h) [choice of placement must take into account whether “the setting is the environment best suited to meet the child’s special needs and best interest”] and 5.651(b)(2)(D) [placement must address the “youth’s educational, physical, mental health, and developmental-services needs”].) To support such a placement there must be substantial evidence that less restrictive alternatives would be ineffective or inappropriate. (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 6.) “ ‘ “Although the [DJF] is normally a placement of last resort, there is no absolute rule that a [DJF] commitment cannot be ordered unless less restrictive placements have been attempted.” ’ ’ ” (*Ibid*; see also *In re. A.R.* (2018) 24 Cal.App.5th 1076, 1080-1081.)

A juvenile court’s order committing a minor to DJF is reviewed for abuse of discretion. (*In re Jose T.* (2010) 191 Cal.App.4th 1142, 1147.) A DJF placement constitutes an abuse of discretion where no substantial evidence indicates the placement would probably benefit the minor in the least restrictive manner available. (*In re A.R.*, *supra*, 24 Cal.App.5th at p. 1080.)

“When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must

determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) “While substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394, abrogated on another ground by *In re R.T.* (2017) 3 Cal.5th 622.)

Here, J.C. was beyond parental control, and his offenses against his 10-year-old sister were depraved, violent, and shockingly callous, reflecting poor social and moral judgment. He clearly requires firm guidance and appropriate treatment.

Probation Officer Chavira testified that a DJF placement could provide J.C. with the clinical services, counseling, sexual behavior treatment programs and rehabilitation needed to address the trauma he had suffered as a result of his upbringing and help him to rehabilitate and reintegrate into his community. A DJF placement would be more suitable than other placements because it would last longer and provide more structure, which J.C. obviously needs.

The probation report similarly stated that permitting J.C. to remain in the community would not be a viable option because his propensity for violence and “predator-like criminal conduct”



indicated he needed specialized, long-term therapy in “a well-secured and tightly structured facility where he would be able to obtain long-term rehabilitative counseling with an emphasis on youthful sexual offender issues.” (See, e.g., *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1397 [commitment beneficial to juvenile who helped commit rape].)

From these facts the juvenile court could reasonably infer J.C.’s best interests required an environment providing firm, strict discipline and extensive counseling and therapy, without which he would be unable to realign his social and moral structure and would pose a demonstrated threat to public safety. Thus substantial evidence supported the court’s exercise of discretion.

J.C. argues that DJF is limited to the most serious youth offenders. He argues that although his offense was serious, his culpability is mitigated by his “horrible start in life,” his mother’s neglect once he reached the United States, and his diagnosed Post-Traumatic Stress Disorder and Major Depressive Disorder. His psychological exams revealed he suffers from neither psychopathology nor sociopathy and is capable of feeling empathy and learning from his mistakes, and while he was in juvenile hall he did well in school and had no negative reports about his behavior. J.C. argues less restrictive placements were available, for example the very juvenile hall wherein he enjoyed much success. The court could have tried any of those placements, he argues, and if they did not succeed it could then commit him to DJF.

J.C. misapprehends the limited power of an appellate court reviewing a juvenile court’s order for abuse of discretion. Our power begins and ends with a determination as to whether

substantial evidence supports the court's findings, whether or not the evidence is contradicted by other evidence or the court could have made different findings. We do not reweigh the evidence, but view it in the light most favorable to the prevailing party, resolving all conflicts in favor of the judgment.

Here, the juvenile court thoroughly considered the nature of J.C.'s offenses, the potential for his rehabilitation, and the alternatives to DJF placement, and found that such a placement would benefit J.C. in the least restrictive manner possible. Because substantial evidence supports the court's finding, there was no abuse of discretion.

**B. J.C. Is Entitled to an Additional Day of Custody Credit**

J.C. was arrested at 7:55 p.m. on May 14, 2017, and committed to DJF 355 days later, on May 3, 2018. The record does not reflect when he was actually booked into a detention facility. The juvenile court awarded him only 354 days of predisposition custody credit. J.C. contends he is entitled to one more day. We agree.

When a juvenile has been in custody, including any time spent in a jail, camp, hospital, juvenile detention facility, or similar residential institution, all days of custody shall be credited upon his or her term of commitment. (Pen. Code, § 2900.5, subd. (a); *In re Antwon R.* (2001) 87 Cal.App.4th 348, 353 [juvenile court must calculate minor's precommitment custody credit].)

Respondent argues that because the record is silent as to the date of his booking into a detention facility, J.C. has not affirmatively established he was in "custody" on the same day as his arrest, and has therefore not shown he is entitled to 355 as

opposed to 354 days of precommitment custody credit. (See *People v. Ravaux* (2006) 142 Cal.App.4th 914, 919-920 [where record showed defendant was arrested at 9:30 p.m. but not booked into jail until 12:30 a.m. the next day, custody credit begins to run as of the day of booking]; *People v. Macklem* (2007) 149 Cal.App.4th 674, 702 [same; record showed defendant was arrested at 10:30 p.m. but not booked until 1:00 a.m. the next day].)

“Whether a defendant is in ‘custody’ for the purposes of section 2900.5 while detained by the police prior to being booked into jail is a matter of statutory interpretation, a question of law we review de novo.” (*People v. Ravaux, supra*, 142 Cal.App.4th at p. 919.) A juvenile is not in custody within the meaning of Penal Code section 2900.5 prior to being processed into a jail or similar custodial situation. (*Ravaux*, at p. 919.)

However, absent affirmative evidence to the contrary, we will presume a juvenile is booked into a detention facility within a reasonable time of his arrest. We reject respondent’s argument that J.C. is obligated on a silent record to affirmatively demonstrate the booking date. Here, it is reasonable to presume J.C. was booked within four hours of his arrest, i.e., on the same calendar day. The court’s implicit finding that he was booked on the next day, and thus its award of 354 rather than 355 days, is supported by no evidence. Therefore, we will direct the court to amend the abstract of judgment so as to award J.C. one more day.

### **DISPOSITION**

The judgment is affirmed. The juvenile court is directed to amend the abstract of judgment to add one day to J.C.'s custody credits, and forward the amended abstract of judgment to the DJJ and/or DJF.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.