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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

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THE PEOPLE,

Plaintiff and Respondent,

v.

J.H.,

Defendant and Appellant.

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B281794

(Los Angeles County  
Super. Ct. No. MJ23779)

APPEAL from an order of the Superior Court of  
Los Angeles County, Denise McLaughlin-Bennett, Judge.  
Affirmed with directions.

Torres & Torres and Tonja R. 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, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

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Jose H., a 14-year-old minor, appeals from a disposition order entered in a wardship proceeding under Welfare and Institutions Code section 602. Jose's only claim on appeal is that the minute order of the disposition hearing erroneously included a maximum confinement term. The People agree it was error to include a maximum confinement term, and also agree that the erroneous term should be stricken from the minute order. We will strike the term.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On October 5, 2016, a two-count petition was filed pursuant to Welfare and Institutions Code section 602 alleging that Jose (1) made a criminal threat, in violation of Penal Code section 422, subdivision (a) (count 1), and (2) possessed a knife on school grounds, in violation of Penal Code section 626.10, subdivision (b) (count 2).<sup>1</sup>

On December 8, 2016, Jose admitted count 1. The court sustained the petition and declared Jose a ward of the court. Jose was released to his mother and placed on house arrest pursuant to a community detention program (CDP).

On January 17, 2017, Jose was arrested for possession of cocaine. The court held a disposition hearing on January 26, 2017, during which it again placed Jose under house arrest and provided him with a variety of services.

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<sup>1</sup> The probation report indicated that Jose had threatened to stab the victim, showing her a knife and saying, " 'You snitch on me, I'll stab you.' " The victim later saw Jose running toward her with a knife in his hand.

Jose timely appealed from the disposition order.

### **DISCUSSION**

Jose contends that the minute order of the January 26, 2017 disposition hearing contains a maximum term of confinement that should be stricken because it was not part of the trial court's oral pronouncement. The Attorney General agrees, as do we.

The minute order states that Jose “may not be held in physical confinement for a period to exceed 3 years.” However, the reporter's transcript of the disposition hearing indicates that the juvenile court did not impose a maximum term of confinement, and the law is clear that “[w]here there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls.” [Citation.]” (*People v. Costella* (2017) 11 Cal.App.5th 1, 10.) Moreover, it would have been improper for the court to have set a maximum term of confinement because Jose was not removed from his mother's custody. (E.g., *In re A.C.* (2014) 224 Cal.App.4th 590, 592 [“where a juvenile court's order includes a maximum confinement term for a minor who is not removed from parental custody, the remedy is to strike the term.”]; see also *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541–542 [same].) For both of these reasons, we will order the minute order corrected to remove the reference to a maximum term of confinement.

### **DISPOSITION**

The trial court is directed to correct the minute order of the January 26, 2017 disposition hearing to eliminate the reference to a maximum term of confinement. In all other respects, the disposition order is affirmed.

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EDMON, P. J.

We concur:

EGERTON, J.

CURREY, J.\*

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