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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.P., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B281478
(Super. Ct. No. YJ38670)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

B.P.,

Defendant and Appellant.

B.P. admitted allegations in a petition filed under Welfare and Institutions Code section 602 that he committed one count of forcible rape of a child under 14 (Pen. Code, § 261, subd. (a)(2)), two counts of forcible oral copulation on a victim under 14 years of age (Pen. Code, § 288a, subd. (c)(2)(B)), and three counts of forcible lewd act on a child (Pen. Code, § 288, subd. (b)(1)). The juvenile court sustained the petition and adjudged B.P. a ward of the court. It declared the offenses to be felonies and ordered B.P.

committed to the custody of the Division of Juvenile Justice (DJJ) for a maximum period of 27 years 8 months. The court also imposed probation conditions.

B.P. contends the juvenile court abused its discretion when it committed him to DJJ custody. He also contends, and the Attorney General concedes, the dispositional order includes three improperly imposed probation conditions. We modify the dispositional order, and affirm.

FACTUAL AND PROCEDURAL HISTORY

B.P., then age 16, forced a six-year-old girl to orally copulate his penis at an afterschool martial arts camp. B.P. then removed the victim's pants and underwear, orally copulated her vagina, and inserted his penis into it. When a witness walked past, B.P. jumped up and pulled up his shorts. The victim pulled up her underwear and pants, walked over to the witness, and said "he had S-E-X with me."

After admitting the allegations in the petition, B.P. told a psychological evaluator the incident was "exaggerated," that it was "a mistake that just happened." He said "it wasn't . . . violent" and that his victim "didn't stop [him]."

The evaluator determined B.P. "present[ed] with extreme denial and limited insight into his behavior." It was unclear if he had a sexual affinity toward children. The evaluator recommended one year of treatment in an outpatient sex offender program. She also recommended placing B.P. on probation.

B.P. told a second evaluator he did not insert his penis into the victim's vagina. But he admitted that she orally copulated his penis and that he orally copulated her vagina. He claimed "it wasn't . . . in an aggressive [or] abusive manner." "[I]t

was more like a mistake that happened[,] but during the mistake you realize ‘this should not be happening, I shouldn’t be doing this.’” B.P. called the incident a “big mistake.”

The evaluator found B.P. to be “defensive and guarded,” but determined that he posed a low to moderate risk of recidivism. He recommended B.P. participate in aggressive sex-related counseling on an outpatient basis. He also recommended restricting B.P.’s access to underage females. He urged the juvenile court to consider placing B.P. on probation.

The probation officer also recommended placing B.P. on probation, including conditions that he complete a sex offenders’ program and enroll in a mentoring program.

Prior to sentencing, the juvenile court received and considered a risk assessment that placed B.P. at a moderate risk of reoffending. The court also considered the evaluators’ and probation reports. It was concerned with B.P.’s lack of understanding of the wrongfulness of his actions and his minimalization of the incident.

Though the juvenile court was “reluctant” to order B.P. committed to DJJ custody, it thought the services available there were “the most appropriate” based on the risk assessment and evaluators’ reports. It considered a group home, but did not feel comfortable with a placement where B.P. would have contact with young females. The court concluded that B.P.’s “mental and physical condition and qualifications render[ed] it probable that he [would] benefit from the reformatory disciplinary treatment provided by [DJJ].” It ordered B.P. to have no contact with his victim and to refrain from any contact with minors under 18 years of age without adult supervision.

DISCUSSION

Commitment to DJJ custody

B.P. contends the juvenile court abused its discretion when it ordered him committed to DJJ custody. We disagree.

“Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall . . . receive . . . guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.” (Welf. & Inst. Code, § 202, subd. (b).) “Guidance” may involve punishment, including a commitment to DJJ custody. (*Id.*, subds. (b) & (e)(5).) “[Circumstances] in a particular case may well suggest the desirability of a [DJJ] commitment despite the availability of . . . alternative dispositions [Citations.]’ [Citations.]” (*In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151.) “[A] commitment to [DJJ] may [thus] be made in the first instance, without previous resort to less restrictive placements. [Citation.]” (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.)

We review the juvenile court’s commitment order for abuse of discretion. (*In re Khalid B.* (2015) 233 Cal.App.4th 1285, 1288.) We indulge all reasonable inferences in support of the order, and will not disturb it if supported by substantial evidence. (*Ibid.*) To determine whether substantial evidence supports the commitment order, we examine the record in light of the purposes of the Juvenile Court Law, which include punishment as a rehabilitative tool and the protection of public safety. (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.) The court does not abuse its discretion by ordering a DJJ commitment “before other options have been tried” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507), so long as “the evidence demonstrates a

probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate” (*In re Edward C.* (2014) 223 Cal.App.4th 813, 829).

The juvenile court did not abuse its discretion when it ordered B.P. committed to DJJ custody. Based on the severity of his offenses (see Welf. & Inst. Code, § 725.5), guidance in the form of a DJJ commitment will result in a probable benefit to B.P. and the protection of public safety. (See, e.g., *In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486 [probable benefit of treatment in DJJ commitment]; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1397 [commitment beneficial to juvenile who committed rape]; *In re Samuel B.* (1986) 184 Cal.App.3d 1100, 1104-1105 [same], disapproved on another ground by *People v. Hernandez* (1988) 46 Cal.3d 194, 206, fn. 14; *In re Jesse McM.* (1980) 105 Cal.App.3d 187, 192-193 [commitment beneficial to juvenile who committed lewd acts on a child].) As the evaluators indicated and the court found, a less restrictive alternative like a group home would be inappropriate because of B.P.’s lack of insight into his crimes and the presence of young women in that setting. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473 [minor’s refusal to take responsibility for his actions rendered less restrictive setting inappropriate]; *In re Samuel B.*, at pp. 1104-1105 [same].)

That neither the evaluators nor the probation officer recommended DJJ commitment does not change our conclusion. The purpose of their reports is to help the juvenile court determine an appropriate disposition. (*People v. Municipal Court (Lopez)* (1981) 116 Cal.App.3d 456, 459.) “The court has the unquestioned discretion to reject [them] in part or in toto. [Citation.]” (*Ibid.*)

This case is unlike *In re Calvin S.* (2016) 5 Cal.App.5th 522, on which B.P. relies. In *Calvin S.*, the juvenile court sentenced the minor to DJJ confinement because, in its view, juvenile hall was “‘not a treatment center,’ but ‘a detention center.’” (*Id.* at p. 529.) The court’s statement by itself was not substantial evidence that a less restrictive placement was inappropriate. (*Ibid.*) And to the extent the court meant the minor would not have access to educational and rehabilitative services in juvenile hall, the record did not support its finding; the minor was already receiving those services. (*Ibid.*) The court thus abused its discretion by ordering the minor committed to DJJ custody without evidence to support its order. (*Id.* at p. 532.)

In contrast to the situation in *Calvin S.*, the juvenile court here did not order DJJ commitment because of some misperception about what services B.P. was receiving. It did so because: (1) based on the circumstances of B.P.’s offenses, the commitment would result in probable benefits to B.P. and public safety, and (2) based on the evaluators’ reports, a group home was inappropriate due to B.P.’s lack of insight and likely contact with young women. (See *In re Edward C.*, *supra*, 223 Cal.App.4th at p. 829.) Because substantial evidence supports the court’s commitment order, there was no abuse of discretion. (*In re Khalid B.*, *supra*, 233 Cal.App.4th at p. 1288.)

Probation conditions

B.P. contends, and the Attorney General concedes, the dispositional order includes three probation conditions that were improperly imposed: that B.P. not commit crimes and follow the court’s orders (condition 1), that he refrain from contacting the victim in this case (condition 15A), and that he have no contact with minors without adult supervision (condition

16). We agree, because “the juvenile court loses the authority to impose conditions of probation once it commits a ward to [DJJ]. [Citations.]” (*In re Edward C.*, *supra*, 223 Cal.App.4th at p. 829; see *In re Allen N.* (2000) 84 Cal.App.4th 513, 516.)

DISPOSITION

Probation conditions 1, 15A, and 16 are stricken from the February 28, 2017, dispositional order. The clerk of the juvenile court shall prepare and forward a copy of the modified dispositional order to the Division of Juvenile Justice at the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

David S. Wesley, Judge

Superior Court County of Los Angeles

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Appeal, for Defendant and Appellant.

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