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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B233663
(Los Angeles County
Super. Ct. No. FJ42733)

THE PEOPLE,
Plaintiff and Respondent,

v.

G.R.,
Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Robert J. Totten, Juvenile Court Referee. Affirmed and remanded with directions.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels and William H. Shin, Deputies Attorney General, for Plaintiff and Respondent.

Appellant G.R. appeals from the juvenile court's order of wardship based on a sustained Welfare and Institutions Code¹ section 602 petition with true findings as to one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)) and one count of criminal threats (Pen. Code, § 422). On appeal, G.R. argues that his trial attorney provided ineffective assistance of counsel and the juvenile court committed judicial misconduct by engaging in ex parte in camera communications outside G.R.'s presence about his counsel's potential conflict of interest. G.R. also asserts that the juvenile court erred in failing to calculate his predisposition custody credit in setting the maximum term of confinement. We affirm the order sustaining the section 602 petition and declaring G.R. a continuing ward of the juvenile court, and remand the matter to the juvenile court for calculation of G.R.'s predisposition custody credit.

FACTUAL AND PROCEDURAL BACKGROUND

The People's Case

On February 3, 2011, at approximately 4:30 p.m., M.E. and his girlfriend, I.T., went to a Little Caesar's Pizza store in Los Angeles. When M.E. and I.T. walked out of the store after placing their order, I.T. told M.E. that there was someone behind running toward him. M.E. turned around and saw G.R. coming toward him with a screwdriver in his hand. Modesto did not recognize G.R. at that time, but later realized that he knew G.R. because they had committed a school burglary together in 2007 and had been in the same juvenile camp. G.R. hit M.E. once in the face with a closed fist and then swung the screwdriver at M.E. with his other hand. The screwdriver struck M.E. on the back of his neck, causing a puncture mark and bleeding.

M.E. and I.T. went back inside the Little Caesar's Pizza store to get away. G.R. followed them into the store and angrily yelled at M.E., "Come outside. Come outside. I'm going to kill you." Rudis Iraheta was inside the pizza store with his infant daughter

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

when M.E. and I.T. walked in followed by G.R. After hearing G.R. threaten M.E., Iraheta told G.R. to go outside because Iraheta did not want anything to happen in front of his daughter. G.R. agreed and walked out of the store.

G.R. was standing near the front of the store when the police arrived. During a search of his person, officers recovered a screwdriver from G.R.'s front pocket. While he was being detained in a patrol car, G.R. told the police that he had been involved in a prior altercation with M.E. He also said that he first saw M.E. that day while walking on the street and that he became angry when M.E. began pointing at him. G.R. further said that he confronted M.E. and started fighting with him, and during the fight, he instinctively pulled out a screwdriver and stabbed M.E. with it. G.R. told the police that he knew they were coming for him after he committed the crime and that he did not care.

At trial, both M.E. and I.T. testified that no one else was with them when the assault by G.R. occurred. M.E. also testified that, prior to the assault, the last time he had any contact with G.R. was when they were both in juvenile camp. According to M.E., there was no "bad blood" between them and he did not know why G.R. attacked him that day.

The Defense Case

G.R. testified on his own behalf. G.R. knew M.E. because they previously committed a school burglary together. Approximately five days before the incident at the pizza store, G.R. saw M.E. and his girlfriend walking on the street. G.R. started talking to M.E. and M.E. invited him to a party. G.R. was about to get on his bicycle when M.E. suddenly hit G.R. in the head with a hammer and then stole his bicycle. G.R. received 12 staples in the back of his head as a result of the attack.

On the day of the incident at the pizza store, G.R. was riding his skateboard on the street when a stranger socked him in the chest, causing G.R. to fall. G.R. chased his attacker to the Little Caesar's Pizza store where he saw the attacker talking to M.E. When G.R. confronted M.E. and his friend, they began punching him. G.R. was on the ground when he pulled out his screwdriver and swung it around in self-defense. M.E.'s friend walked away from the fight while M.E. went into the pizza store. G.R. followed

M.E. into the store and challenged him to fight one on one. A man in the store held G.R.'s hand and told him not to fight in front of his baby. G.R. told M.E. that he was lucky that the man with the baby was there and walked out of the store. G.R. waited for M.E. to come outside to fight, but M.E. never did. When G.R. began walking away, the police arrived and arrested him.

Blanca Ramirez testified on G.R.'s behalf. Ramirez was walking to the Little Caesar's Pizza store when she saw a group of two boys and one girl in front of her. G.R. approached the group on his skateboard and asked them why they were trying to kill him as he touched his head. One of the boys knocked G.R. to the ground while the other boy ran away with his skateboard. The girl and the boy who hit G.R. then went into the parking lot of the pizza store. G.R. got up and also walked to the parking lot where he stayed standing. Ramirez left the scene, but later returned and saw that the police were there. She did not talk to the police at that time because no one asked her any questions.

At some point, Ramirez told a girl whose name she did not know about what she had observed outside the pizza store. Two days after the incident at the store, G.R.'s mother contacted Ramirez by telephone. Ramirez testified that she did not know G.R. or his family, and had never spoken to them before G.R.'s mother called her about the incident. Ramirez also testified that G.R.'s family did not tell her what to say in court.

The Juvenile Court's Findings and Orders

At the conclusion of the adjudication hearing, the juvenile court sustained the section 602 petition, in part, based on true findings that G.R. committed one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)) (count 1), and one count of criminal threats (Pen. Code, § 422) (count 3) against M.E.² Proceeding to disposition, the juvenile court declared G.R. a continuing ward of the court pursuant to section 602. The

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The court dismissed the remaining count of criminal threats against Rudis Iraheta (Pen. Code, § 422) (count 2), the gang enhancements alleged as to all counts (Pen. Code, § 186.22, subd. (b)(1)(C)), and the great bodily injury enhancement alleged as to the assault with a deadly weapon count (Pen. Code, § 12022.7, subd. (a)).

court ordered that G.R. be placed in a long-term camp community placement program and set the aggregate maximum period of confinement at nine years. G.R. thereafter filed a timely notice of appeal.

DISCUSSION

I. Ex Parte Communications Between Juvenile Court and Defense Counsel

G.R. contends that the order sustaining the section 602 petition must be reversed because the juvenile court and defense counsel engaged in improper ex parte communications outside G.R.'s presence during which his counsel disparaged the credibility of a newly discovered and critical defense witness. G.R. specifically argues that such ex parte communications created an actual conflict of interest between G.R. and his trial attorney which violated his constitutional right to effective assistance of counsel. G.R. also asserts that the ex parte communications constituted judicial misconduct by the juvenile court which violated his constitutional right to due process. For the reasons set forth below, we conclude that G.R. has failed to demonstrate either ineffective assistance of counsel or judicial misconduct based on the ex parte communications between his counsel and the juvenile court.

A. Relevant Proceedings

On May 3, 2011, shortly before the start of G.R.'s adjudication hearing, defense counsel attended in an in camera hearing with the juvenile court outside the presence of G.R. and the prosecutor. Counsel began by stating that the hearing "just [had] to do with [his] representation." He then described to the court his recent difficulties communicating with G.R.'s parents.

Specifically, counsel stated that, after taking over the case from a court-appointed attorney, he attempted to dispose of the matter through settlement, but G.R.'s parents insisted on proceeding to trial. A month before the adjudication hearing, G.R.'s father informed counsel that he was planning on hiring a private investigator. In response, counsel said, "Great, if you have any witnesses, let me know, and I'll bring them to court,

and they can testify at the trial.” On the day before the adjudication hearing, counsel contacted G.R.’s father who confirmed that there were no witnesses.

Counsel further stated that, on the morning of the adjudication hearing, he met with G.R.’s father at the courthouse and was again told that there were no witnesses. However, a few minutes before the hearing was scheduled to start, G.R.’s mother informed counsel that there was a witness and the case needed to be continued because she was unavailable to testify that day. G.R.’s mother described the witness as “some lady from the neighborhood who saw this thing,” and who was unavailable that day because she had to take her children to school. Counsel advised G.R.’s parents that he would ask for a continuance, but he did not think one would be granted because they had waited until the last minute to disclose any witnesses. G.R.’s mother began blaming counsel for the late disclosure, telling him “Well, it’s all your fault. I don’t know why we hired you.” As counsel explained to the court, he took the mother’s statement to mean, “We hired a lawyer, and since we paid you money, you can fix this.”

Counsel continued discuss his concerns about G.R.’s parents with the court as follows: “I have been practicing law for 37 years. I don’t fix things. I do the best I can. But I don’t bribe people, and I don’t do anything improper. . . . And I’m not going to start nonsense now. And this got me very angry because it seems manipulative to me; that everything was ready to go, until the witness walked through the door. When they spotted the witness, all of a sudden, there’s our own witness, and they got on the phone and spoke to somebody. I believe this woman does exist, but I know nothing about her. I have been told they were going to hire a private investigator months ago, and I haven’t heard a word about anything until 15 minutes ago.” In response, the court stated, “Okay. You made your record now.”

At counsel’s request, the court ordered that the transcript of the in camera hearing be sealed. In open court, the court noted that defense counsel had informed it of a newly discovered witness who was unavailable to testify that day. At that time, G.R.’s mother indicated that there were two witnesses – Blanca Ramirez and her son, Billy Ramirez. The court ordered G.R.’s parents to provide the names, birthdates, and telephone numbers

of the witnesses to defense counsel by the following morning for disclosure to the prosecution. The court decided that the adjudication hearing would commence as scheduled that morning, and that the defense would be allowed to call its witnesses the following day.

On May 4, 2011, prior to the start of testimony, the juvenile court and defense counsel had a second in camera hearing outside the presence of G.R. and the prosecutor. Counsel explained to the court that he had received an email from G.R.'s father earlier that morning expressing dissatisfaction with counsel's representation. G.R.'s father stated in the email that he did not believe counsel was "doing a hundred percent representation or at least a good representation" of his son. He also accused counsel of simply trying to settle the case and asserted that he "need[ed] the charges against [his] son to be dismissed since there [was] not enough evidence to convict him."

Counsel further informed the court that he had met in person with G.R.'s parents and the defense witness that morning. At that time, G.R.'s father again accused counsel of "not working for [his] son" and warned him, "Well I paid you money. . . . These charges better be dismissed." When G.R.'s father suggested that counsel should quit, counsel responded that he was not going to quit and he was going to do his best to represent G.R. G.R.'s parents continued yelling at counsel until he walked away.

During the second in camera hearing, counsel and the court continued to discuss the matter of G.R.'s representation as follows:

"[Counsel]: I believe I can represent the minor this morning in a competent manner, but we are reaching the point where if this keeps on I will have to declare a conflict. But I believe at this point I can still do my job.

"The Court: What do you mean, have a *Marsden*?

"[Counsel]: Well, it's not the client who is firing me.

"The Court: But just because you have somebody else who is poking at you doesn't raise a conflict in my mind.

"[Counsel]: It does in the sense that it can interfere with my concentration and ability to represent him.

“The Court: It makes you uncomfortable, that I understand. I understand that. All right. You have made your record. This record is to be sealed not to be opened without prior court order.”

The adjudication hearing then resumed and Blanca Ramirez testified on G.R.’s behalf. During the closing arguments of counsel, the juvenile court noted: “I have to say that after listening to the evidence indicated I don’t have any confidence in the witness that was presented today. I think that the bulk of what she testified to was made up watching her body language, watching how she presented. I have no confidence in the testimony that she presented.” In sustaining counts 1 and 3 of the section 602 petition, the court further stated: “. . . [T]he witness that testified, Mrs. Ramirez, I find from listening to her testimony that I do not put any stock in it. I find it was concocted, it was created. I don’t find there was any voracity [sic] with her testimony. I was impressed with the young people who testified and believe beyond a reasonable doubt that count 1 is true.”

B. Ineffective Assistance of Counsel

G.R. first asserts that he received ineffective assistance of counsel in violation of his federal and state constitutional rights because his attorney acted under a conflict of interest when he made disparaging comments about a critical defense witness during an ex parte communication with the juvenile court. This argument is unavailing.

“A criminal defendant is guaranteed the right to the assistance of counsel by the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution. This constitutional right includes the correlative right to representation free from any conflict of interest that undermines counsel’s loyalty to his or her client. [Citations.] ‘It has long been held that under both Constitutions, a defendant is deprived of his or her constitutional right to the assistance of counsel in certain circumstances when, despite the physical presence of a defense attorney at trial, that attorney labored under a conflict of interest that compromised his or her loyalty to the defendant.’ [Citation.]” (*People v. Doolin* (2009) 45 Cal.4th 390, 417.) The constitutional right to effective assistance of counsel extends to minors in juvenile

delinquency proceedings. (*In re Gault* (1967) 387 U.S. 1, 36-37; *Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1225; *In re Kevin S.* (2003) 113 Cal.App.4th 97, 108-109.)

““Conflicts of interest may arise in various factual settings. Broadly, they ‘embrace all situations in which an attorney’s loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another client or a third person or by his own interests.’” [Citation.]” (*People v. Roldan* (2005) 35 Cal.4th 646, 673, italics omitted, disapproved on another ground in *People v. Doolin, supra*, 45 Cal.4th at p. 421, fn. 22.) “[C]onflict-of-interest claims are a category of ineffective-assistance-of-counsel claims, which, pursuant to the [United States Supreme] court’s decision in *Strickland v. Washington* (1984) 466 U.S. 668 (*Strickland*), generally require the defendant to demonstrate (1) deficient performance by counsel, and (2) “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” [Citation.]” (*People v. Rundle* (2008) 43 Cal.4th 76, 169, disapproved on another ground in *People v. Doolin, supra*, at p. 421, fn. 22.)

“In the context of a claim of conflict of interest, . . . the deficient-performance prong of the *Strickland* test is satisfied by a showing that defense counsel labored under an actual conflict of interest, that is, ‘a conflict *that affected counsel’s performance* – as opposed to a mere theoretical division of loyalties.’ [Citation.]” (*People v. Rundle, supra*, 43 Cal.4th at p. 169.) “[A] determination of whether counsel’s performance was ‘adversely affected’ . . . ‘requires an inquiry into whether counsel “pulled his punches,” i.e., whether counsel failed to represent defendant as vigorously as he might have, had there been no conflict. [Citation.] In undertaking such an inquiry, we are . . . bound by the record. . . .’ [Citation.]” (*People v. Doolin, supra*, 45 Cal.4th at p. 418.) The prejudice prong of the *Strickland* test in turn requires the defendant to show a “reasonable probability that but for counsel’s deficiencies, the result of the proceeding would have been different.”³ (*Id.* at p. 421.)

³ Although prejudice may be presumed in cases where defense counsel “actively represented conflicting interests” (*People v. Doolin, supra*, 45 Cal.4th at p. 418), our

In this case, G.R. has failed to demonstrate the existence of an actual conflict of interest affecting his constitutional right to effective assistance of counsel. The record reflects that defense counsel requested two ex parte hearings with the juvenile court to express his concerns about the involvement of G.R.'s parents in the case and how it potentially could interfere with his representation of G.R. As counsel described to the court, he was having increasing difficulty communicating with G.R.'s parents, as they angrily had accused counsel of failing to adequately represent their son and demanded that he get the charges against G.R. dismissed because they were paying him. G.R.'s parents also failed to inform counsel of any potential witnesses until minutes before the adjudication hearing was scheduled to commence, and then insisted that he obtain a continuance because the witness, Blanca Ramirez, was unavailable that day.

Contrary to G.R.'s characterization, counsel did not disparage the credibility of the witness during the ex parte hearing, but simply voiced his concern about the last-minute disclosure of the witness by G.R.'s parents. Indeed, counsel made it clear to the court that he had no basis for assessing the witness's credibility at that time since he had not met her and "[knew] nothing about her." While counsel did discuss a potential conflict of interest based on his strained relationship with G.R.'s parents, he also assured the court that he could still "represent the minor this morning in a competent manner" and "do [his] job." The court agreed that counsel's reported concerns about G.R.'s parents did not rise to the level of a conflict of interest with G.R., reasoning that "just because you have somebody else who is poking at you doesn't raise a conflict in my mind."

Accordingly, even assuming G.R. should not have been excluded from the ex parte proceedings between his counsel and the court, he cannot show any deficient performance by counsel on the basis of such communications. Immediately following

Supreme Court has held that such presumption of prejudice is limited to conflicts of interest arising from an attorney's concurrent representation of adverse clients. (*Id.* at pp. 428-429.) As the court further has recognized, outside the context of multiple concurrent representation, "*Strickland* provides the appropriate analytic framework for assessing prejudice arising from attorney conflicts of interest." (*Id.* at p. 428.)

the second ex parte hearing, defense counsel called Ramirez to testify on G.R.'s behalf. He then diligently examined her about her observations of the incident at issue and elicited testimony that she had no prior relationship with G.R.'s family or stake in the outcome of the proceedings. He also made timely objections during the prosecution's cross-examination of Ramirez, most of which were sustained by the court. In addition, defense counsel specifically advocated for Ramirez's credibility during closing arguments, asserting that she was "the best of all kinds of witnesses" because she was "independent," "a neutral observer," and had "no bone to pick with either side." There is simply nothing in the record to suggest that counsel's performance at the adjudication hearing was adversely affected by his reported concerns about G.R.'s parents or their late disclosure of Ramirez as a witness.

G.R. also cannot show any prejudice. Following the ex parte proceedings, the juvenile court permitted defense counsel to call Ramirez as a witness at the adjudication hearing and allowed her to testify fully about her recollection of the events in question. In sustaining two of the three counts alleged in the section 602 petition, the court specifically noted on the record that it found Ramirez lacked credibility based on its direct observations of her "body language" and "how she presented" her testimony. In contrast, the court stated that it was "impressed" with the prosecution's percipient witnesses and found them to be credible. In discussing these credibility determinations, the court never indicated that its findings were in any way influenced by the late disclosure of Ramirez by the defense. There is nothing in the record to suggest that the court would have reached a different finding with respect to Ramirez's credibility absent counsel's statements at the ex parte hearings.

Based on this record, G.R. cannot establish deficient performance by defense counsel nor a reasonable probability that but for the ex parte communications between his counsel and the court, the result of his adjudication hearing would have been different. G.R.'s ineffective assistance of counsel claim therefore fails.

C. Judicial Misconduct

G.R. also argues that the juvenile court committed judicial misconduct in violation of his constitutional right to due process when the court engaged in ex parte communications with defense counsel outside G.R.'s presence and then failed to inform G.R. of his counsel's conflict of interest or to recuse itself from adjudicating his case. This claim likewise lacks merit.

A criminal defendant "has a due process right to an impartial trial judge under the state and federal Constitutions. [Citations.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111, disapproved on another ground in *People v. Rundle*, supra, 43 Cal.4th at p. 151.) "[T]he basic requirements of due process and fairness' [also] must be satisfied in juvenile delinquency proceedings." (*In re Kevin S.*, supra, 113 Cal.App.4th at p. 107.) The constitutional right to due process "requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of the case." (*People v. Guerra*, supra, at p. 1111.) "[W]hile a showing of actual bias is not required for judicial disqualification under the due process clause, neither is the mere appearance of bias sufficient. Instead, based on an objective assessment of the circumstances in the particular case, there must exist "the probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable." [Citation.]" (*People v. Freeman* (2010) 47 Cal.4th 993, 996.) "[I]t is the exceptional case presenting extreme facts where a due process violation will be found. [Citation.]" (*Id.* at p. 1006.)

The trial court has both the duty and the discretion to control the conduct of the trial. (*People v. Snow* (2003) 30 Cal.4th 43, 78.) Although ex parte hearings held outside the presence of a party are "generally disfavored," the trial court "retains discretion to conduct in camera, ex parte proceedings to protect an overriding interest that favors confidentiality." (*People v. Carasi* (2008) 44 Cal.4th 1263, 1299.) "Mere expressions of opinion by a trial judge based on actual observation of the witnesses and evidence in the courtroom do not demonstrate a bias. [Citations.]" (*People v. Guerra*, supra, 37 Cal.4th at pp. 1111-1112.) Adverse or erroneous rulings, especially those that are subject to review, are also insufficient to establish a charge of judicial bias. (*Id.* at p. 1112.)

In reviewing a claim of judicial misconduct or bias on appeal, we must assess whether any misconduct or bias that is proven was so prejudicial as to deprive the defendant of a fair trial. (*People v. Guerra, supra*, 37 Cal.4th at p. 1112.) “Indeed, ‘[o]ur role . . . is not to determine whether the trial judge’s conduct left something to be desired Rather, we must determine whether the judge’s behavior was so prejudicial that it denied [the defendant] a fair, as opposed to a perfect, trial.’ [Citation.]” (*People v. Snow, supra*, 30 Cal.4th at p. 78.)

Based on the record before us, we conclude there was no misconduct or bias by the juvenile court in this case. Even assuming G.R. should have been allowed to be present at the ex parte hearings attended by his counsel, the court’s decision to conduct an in camera ex parte proceeding to address counsel’s concerns about a potential conflict of interest did not constitute judicial misconduct. At each ex parte hearing, the extent of the court’s inquiry was limited to determining whether defense counsel could effectively represent G.R. despite counsel’s reported concerns about his client’s parents. As previously discussed, defense counsel assured the court that he could continue to represent G.R. in a competent matter and the court agreed that counsel’s recent difficulties communicating with G.R.’s parents did not rise to the level of a conflict of interest with G.R. The court’s conclusion that there was no actual conflict of interest between G.R. and his attorney was correct for the reasons discussed above. G.R. thus cannot establish that the court committed misconduct in failing to inform him of an alleged conflict of interest that it properly determined did not exist.

G.R. also cannot demonstrate any bias by the juvenile court in adjudicating the section 602 petition. As previously stated, notwithstanding the last-minute disclosure of Ramirez as a defense witness, the court permitted Ramirez to testify on G.R.’s behalf at the adjudication hearing. The court even accommodated Ramirez’s unavailability at the scheduled start of the hearing by allowing her to testify the following day. Although it ultimately decided not to credit Ramirez’s testimony in ruling on the petition, the court expressly stated on the record that its evaluation of Ramirez’s credibility was based on its own observations of her body language and manner of testifying. Hence, even if the

court had informed G.R. of his counsel's statements at the ex parte hearings, any motion to replace counsel based on a conflict of interest or to disqualify the judge based on judicial bias would have been properly denied. G.R.'s claim of judicial misconduct fails on the merits.

II. Failure to Calculate Predisposition Custody Credit

Lastly, G.R. contends, and the Attorney General concedes, that the juvenile court erred in failing to calculate his predisposition custody credit and that the matter must be remanded to the juvenile court for this purpose. We agree.

In a juvenile delinquency proceeding, "a minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing. [Citations.] It is the juvenile court's duty to calculate the number of days earned, and the court may not delegate that duty. [Citations.]" (*In re Emilio C.* (2005) 116 Cal.App.4th 1058, 1067.) "[W]hen a juvenile court elects to aggregate a minor's period of physical confinement on multiple petitions . . ., the court must also aggregate the predisposition custody credits attributable to those multiple petitions." (*Ibid.*; see also § 726, subd. (c) ["If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the 'maximum term of imprisonment' shall be the aggregate term of imprisonment specified in [Pen. Code, § 1170.1, subd. (a)]"].)

Here, the juvenile court imposed a maximum period of confinement of nine years by adding the maximum period of confinement of 7 years and 4 months from a prior section 602 petition filed on February 22, 2010, and the maximum period of confinement of 1 year and 8 months from the instant petition. However, the juvenile court did not calculate G.R.'s predisposition custody credit for the instant case, which should have been aggregated with a credit for time spent in custody pursuant to the sustained February 22, 2010 petition. Because there is insufficient information in the record to calculate the proper amount of G.R.'s predisposition custody credit, we remand the matter to the juvenile court with instructions to do so. (*In re Emilio C.*, *supra*, 116 Cal.App.4th at p. 1068; *In re Antwon R.* (2001) 87 Cal.App.4th 348, 353.)

DISPOSITION

The juvenile court's order sustaining the February 7, 2011 petition and declaring G.R. a continuing ward of the court pursuant to section 602 is affirmed. The matter is remanded with directions that the juvenile court calculate G.R.'s predisposition custody credit, including credit to which G.R. is entitled pursuant to the previously sustained February 22, 2010 petition.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.