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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.M., a Person Coming Under the
Juvenile Court Law.

B241713
(Los Angeles County
Super. Ct. No. TJ18757)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Fumiko Wasserman, Judge; Wayne C. Denton, Commissioner; and Catherine Pratt, Commissioner. Affirmed as modified and remanded with directions.

Gerald Peters, 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, Steven D. Matthews, Supervising Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant D.M. appeals from an order sustaining a petition under Welfare and Institutions Code section 602. We order the adjudication order modified to reflect that D.M.'s maximum period of physical confinement is eight years, we remand the matter for the juvenile court to determine the proper amount of predisposition custody credit to which D.M. is entitled, and we otherwise affirm the adjudication and disposition orders.

PROCEDURAL BACKGROUND

The District Attorney of Los Angeles County filed three petitions alleging that D.M. came within the provisions of Welfare and Institutions Code section 602 because he committed criminal offenses. The first petition, filed on February 22, 2012, alleged that D.M. committed an attempted first degree burglary on February 20, 2012. (Pen. Code, §§ 664/459¹.) The second petition, filed on March 13, 2012, alleged that D.M. committed a first degree residential burglary on January 10, 2012. (§ 459.) The third petition, filed on April 20, 2012, alleged that D.M. committed a first degree residential burglary on April 16, 2012. (§ 459.)

On April 24, 2012, the juvenile court found true the allegations in the February 22, 2012, petition and sustained the petition. On May 9, 2012, D.M. admitted and the juvenile court found true the allegations in the April 20, 2012, petition. The juvenile court sustained the petition. On May 14, 2012, D.M. admitted and the juvenile court found true the allegations in the March 13, 2012, petition. The juvenile court sustained the petition.² The juvenile court placed D.M. in the camp community placement program for the mid-term of six months. It set D.M.'s maximum period of physical confinement at seven years and eight months. The juvenile court did not award D.M. any days of

¹ All statutory citations are to the Penal Code unless otherwise noted.

² The record on appeal does not contain a reporter's transcript of D.M.'s admission concerning the March 13, 2012, petition.

predisposition custody credit. D.M. appeals only from the adjudication order concerning the February 22, 2012, petition and the resulting disposition.

We appointed counsel to represent D.M. in this appeal. After examining the record, counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting this court to conduct an independent review of the record to determine if there are any arguable issues. On September 27, 2012, we gave notice to D.M. that counsel had failed to find any arguable issues and that D.M. had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. D.M. did not submit a brief or letter.

After independently reviewing the record, we asked the parties to submit letter briefs addressing whether the juvenile court erred in calculating D.M.'s maximum period of physical confinement and in failing to award D.M. any predisposition custody credit. We hold that the juvenile court erred as to both matters.

FACTUAL BACKGROUND

February 22, 2012, Petition

About 9:50 a.m., on February 20, 2012, Jennifer Rojas heard loud knocking on her door at 8814 Prince Avenue. Rojas did not answer the door because she was suspicious about who was knocking on her door at that hour. She looked out of a window and saw an African-American male leaving through the gate. The male was wearing a blue striped cardigan, a blue hat, and blue jeans.

A couple of minutes later, the male returned with about four other males. The male in the cardigan again knocked on the door. Rojas heard someone try to open the door. The group left, and the police arrived. At some point, the police took Rojas to a location where she identified the male who knocked on her door and another person.

Responding to a burglary call, Deputy Sheriffs Jordan and Mejia set up a containment near Rojas's residence and saw D.M. When D.M. saw the deputies, he ran west, hopped a fence, and ran out of view. D.M. was wearing a blue shirt, blue hat, and blue jeans. D.M. was detained about five to 10 minutes later.

Detective Joaquin Ricon advised D.M. of his *Miranda*³ rights, and then interviewed D.M. D.M. told the detective that he went to 8814 Prince Avenue to visit his friend Michelle. D.M. said that he did not know Michelle's last name or telephone number and had not previously visited her.

March 13, 2012, Petition⁴

On January 10, 2012, an officer was dispatched to 1925 E. 52nd Street regarding a possible burglary. Upon arrival, the officer contacted D.M. in the garage at the location and discovered a flat screen television and several other items in the garage. Further investigation revealed that D.M. had permission to be in the garage.

The officer then responded to a burglary call next door at 1935 E. 52nd Street. A flat screen television was taken in that burglary. The officer remembered the flat screen television from the earlier call and again contacted D.M. The garage's owner gave the officer permission to search the garage, and the officer found items that the burglary victim identified as having been taking from her home. D.M. was advised of his *Miranda* rights and admitted committing the burglary at 1935 E. 52nd Street.

April 20, 2012, Petition⁵

On April 16, 2012, a residence in Lakewood was burglarized. The victim's jewelry and clothes were stolen. D.M.'s fingerprints were found on a broken piece of glass that remained attached to the window which was the point of entry for the burglar. On April 19, 2012, D.M. was contacted at school and admitted that he committed the burglary.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

⁴ The facts concerning D.M.'s January 10, 2012, offense were taken from his probation report.

⁵ The facts concerning D.M.'s April 16, 2012, offense were taken from his detention and probation reports.

DISCUSSION

I. Maximum Period Of Physical Confinement

The juvenile court set D.M.'s maximum period of physical confinement at seven years and eight months. We asked the parties to submit letter briefs addressing whether the juvenile court erred in calculating that maximum period of physical confinement. The parties agree that the juvenile court erred in calculating D.M.'s maximum period of physical confinement and that the period should be eight years.

Welfare and Institutions Code section 726, subdivision (c) provides, in relevant part, "If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

"As used in this section and in Section 731, 'maximum term of imprisonment' means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

"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 subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code."

Section 461, subdivision (a) provides that first degree burglary is punishable by imprisonment in state prison for two, four, or six years. Section 664, subdivision (a) provides that a person convicted of an attempt to commit a crime punishable by

imprisonment in state prison shall be punished by imprisonment “for one-half the term of imprisonment prescribed upon a conviction of the offense attempted.” Pursuant to section 1170.1, subdivision (a), a “subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed”

In calculating D.M.’s maximum period of physical confinement, the juvenile court should have used the upper term of six years for one of D.M.’s first degree burglaries, a consecutive term consisting of one-third of the middle term of four years (16 months) for D.M.’s second first degree burglary, and a consecutive term consisting of one-half of one-third of the middle term of four years for D.M.’s attempted first degree burglary (eight months) for a total maximum period of physical confinement of eight years. (§§ 461; 664; 1170.1, subd. (a).) We order the adjudication and disposition orders modified accordingly.

II. Predisposition Custody Credit

A defendant is entitled to credit for all days in custody commencing with the day of arrest (*People v. Taylor* (2004) 119 Cal.App.4th 628, 645) and including partial days and the day of sentencing (*People v. Browning* (1991) 233 Cal.App.3d 1410, 1412; *People v. Fugate* (1990) 219 Cal.App.3d 1408, 1414). “A juvenile is entitled to credit against his maximum period of physical confinement for any time he spends in actual custody prior to disposition. [Citation.]” (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1231-1232.) “[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. [Citation.]’ [Citation.]” (*Id.* at p. 1232.)

We asked the parties to submit letter briefs addressing whether the juvenile court erred in failing to award D.M. any predisposition custody credit. The parties agree, as do we, that D.M. is entitled to predisposition custody credit. Accordingly, we remand the

matter to the juvenile court for a determination of the proper amount of predisposition custody credit to which D.M. is entitled.

We have otherwise examined the entire record and are satisfied that D.M.'s attorney has fully complied with his responsibilities and that no other arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The adjudication and disposition orders are ordered modified to reflect that D.M.'s maximum period of physical confinement is eight years, the matter is remanded to the juvenile court for a determination of the proper amount of predisposition custody credit to which D.M. is entitled, and the adjudication and disposition orders are otherwise affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.