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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B285460
(Super. Ct. No. 2017002100)
(Ventura County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

A.C. appeals a juvenile court order committing him to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) for a maximum term of five years (Welf. & Inst. Code, §§ 731, subd. (a)(4); 734)¹ after he admitted three counts of second degree robbery (Pen. Code, §

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

211). Appellant contends that the trial court abused its discretion in imposing the DJJ commitment and that he was denied effective assistance of trial counsel. We affirm.

Factual and Procedural History

In 2017, appellant committed three armed robberies, all in the same shopping center over a span of eight days. On the evening of January 3, 2017, appellant and a male entered a liquor store wearing hooded sweatshirts. Appellant pointed a replica handgun at the store clerk, demanded “all your money,” and vaulted the counter. Appellant took \$600 and grabbed 10 cigars, three bottles of tequila, and two bottles of vodka. His cohort took two 12-packs of beer.

On the evening of January 11, 2017, appellant and an accomplice robbed a donut shop. Appellant jumped the counter, pointed a handgun at Ana Medina, and said “I don’t have much time. I need the money.” Appellant took \$200 to \$300.

Three minutes later, appellant ran into a J.J. Fashion Outlet, pointed a handgun at Paul Jeong’s chest and said, “Give me all the money.” Appellant took \$650, 10 baseball caps, two hooded sweatshirts, and other merchandise. A female employee tried to hide. Appellant told his cohort to find her and make sure she did not call the police. As appellant left the store, he warned Jeong, “Don’t look at me or I’ll shoot you.”

After the 911 call was made, officers learned that two males assaulted a woman in the same area and tried to take her purse. The woman saw the assailants run from the shopping center with piles of items in their hands. One male jumped a fence and the other male ran towards a Chinese restaurant. A pile of clothing and a replica handgun were left on the ground, in back of an apartment building near the restaurant. The pile of

clothes included sweatshirts and baseball caps taken in the J.J. Fashion Outlet robbery.

DJJ Commitment

Appellant claims that the trial court erred in committing him to DJJ because there is no evidence that a less restrictive placement would be ineffective or that the DJJ commitment would benefit appellant. (§ 734.) Juvenile courts have broad discretion in fashioning disposition orders. (§ 202, subd. (d).) On review, we indulge all reasonable inferences in favor of the judgment where it is supported by substantial evidence. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) In making its commitment decision, the trial court considers public safety as well as the best interests of the minor. (§ 202, subds. (b) & (d); *In re Eddie M.* (2003) 31 Cal.4th 480, 507.) “Section 202 . . . shifted its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express ‘protection and safety of the public’ [citations], where care, treatment, and guidance shall conform to the interests of public safety and protection. [Citation.]” (*In re Michael D.*, *supra*, at p. 1396.) A DJJ commitment is proper where it would be of probable benefit to the minor and less restrictive alternatives would be ineffective or inappropriate. (§ 734.) “[T]here is no absolute rule that a [DJJ] commitment should never be ordered unless less restrictive placements have been attempted. [Citations.]” (*In re Ricky H.* (1981) 30 Cal.3d 176, 183.)

The trial court found that a commitment to DJJ was a close question but decided not to gamble on public safety given appellant’s use of a replica handgun and the serious nature of the

robberies.² The donut store clerk was so frightened that she quit her job. The J.J. Fashions clerk believed he would have been killed had appellant pulled the trigger.

During the six months that appellant was in juvenile hall, appellant engaged in “mixed behavior.” The probation officer recommended 410 days juvenile hall but reported that appellant’s sister was concerned about appellant’s safety should he return home. Rather than return to his parents, appellant wanted to live at his sister’s house. The trial court found that the risk of harm to the public was too great to have appellant handled locally. “So I’m hopeful the treatment you get at DJJ will be of benefit to you and that you’ll use your family support to your benefit as well.”

Appellant argues that he has a limited prior record, that he has never been on supervised formal probation, and that he was on the honor roll and making progress towards high school graduation. But that is not the total picture. During the 172 days that appellant was in juvenile hall, he was written up for two graffiti incidents, was involved in a fight, and agreed to “jump” a new ward. Appellant also had a substance abuse problem and used marijuana, Xanax, methamphetamine and cocaine. He told his sister that he used drugs for fun and did not need help. In the words of the prosecution, appellant “was out of control and basically endangering public safety in a manner that

² The probation report stated that appellant was the principal in “three very vicious robberies,” took no responsibility for his actions, and blamed it on memory loss due to Xanax and alcohol consumption. Appellant said that he took the money to buy clothes, drugs, and help his parents. Appellant’s sister reported that she and her parents have always given appellant whatever he needs.

is highly serious, in a seriousness that we don't see in the juvenile justice system all that much.”

Appellant argues that a juvenile hall placement would be beneficial because he received counseling, was prescribed medication, and his mother and sister visited regularly. Appellant, however, views the record through rose-colored glasses. He committed three armed robberies and tried to take a purse from a woman by force, all in a matter of eight days. He also has a learning disability and needed specialized instruction. Before his arrest, appellant had unexcused or unverified school absences, vandalized school furniture, showed up at school under the influence of drugs and carrying drug paraphernalia, was cited for defiance and disruptive behavior, and suspended from school twice. Even in the supervised setting of juvenile hall where appellant was on his best behavior, he vandalized property, fought a ward, and agreed to jump another individual. The trial court reasonably concluded that appellant would benefit by the structured institutional environment and special programs available only at DJJ. (*In re Greg F.* (2012) 55 Cal.4th 393, 417; *In re Jonathan T.* (2008) 166 Cal.App.4th 474, 485 [upholding DJJ commitment despite its “allegedly subpar programs” where minor required a secure setting for his rehabilitative care].) There is no requirement that a juvenile court proceed progressively from the least restrictive to the most restrictive placement. (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 507.) Public safety was and is a paramount concern.³ (See, e.g., *In re Luisa Z.* (2000) 78 Cal.App.4th 978, 987-988.)

³ Appellant, in a supplemental letter brief, cites *In re Carlos J.* (2018) 22 Cal.App.5th 1, 10 for the principle that there must be some specific evidence in the record that the programs at DJJ

Here, the trial court considered appellant's "mixed behavior" in juvenile hall, the violent nature of the offenses, appellant's special education needs, and an unaddressed substance abuse problem. "There is no requirement that the [trial] court find exactly how a minor [would] benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed, and the court did so in this case." (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 486.)

Ineffective Assistance of Counsel

Appellant argues that he was denied effective assistance of counsel because counsel did not file a statement in mitigation or present evidence on the statutory factors limiting a DJJ commitment. (§ 734.) To prevail on the claim, appellant must show deficient performance and resulting prejudice which is lacking here. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *People v. Fairbank* (1997) 16 Cal.4th 1223, 1241.)

Before the disposition hearing, the trial court indicated that it was inclined to order a DJJ commitment but had not yet made a final decision. Trial counsel was invited to file a

commitment would probably benefit appellant. That is spelled out in the probation report which states that appellant, if committed to DJJ, would be assessed for appropriate services and programming. He would receive a battery of psychological tests to measure risk levels, a psychological assessment, and a medical and academic evaluation. Appellant's treatment plan at DJJ would include appropriate mental health treatment, substance abuse treatment, a gang intervention program, education services, aggression interruption training, prosocial training, and a re-entry program prior to appellant's release.

statement in mitigation. Rather than file a written statement, counsel argued that appellant did not use a real weapon, that substance abuse was the reason for the robberies, that appellant was remorseful and willing to write an apology to the victims, and that appellant was on the honor roll in juvenile hall. Counsel provided letters from appellant and family members and argued “this is one of the first times that I’ve seen a case this serious where Probation recommended actually keeping the minor . . . on a local probation. I don’t know how else to say it, because [appellant] is 18 now.”

Appellant faults counsel for not restating the mitigating factors in a written statement of mitigation but “[c]ompetent counsel is not required . . . to leave an exhaustive paper trail for the sake of the record.” (*People v. Freeman* (1994) 8 Cal.4th 450, 509.) The trial court was well-versed on the case and the placement alternatives. Appellant argues that counsel could have argued that the Legislature has narrowed the class of juveniles eligible for DJJ and that DJJ has been subject to a consent decree to improve its facilities. Instead, trial counsel focused on appellant’s progress in juvenile hall and the strong support of his family. On appeal, we do not second-guess trial counsel’s reasonable tactical decisions. (*People v. Bemore* (2000) 22 Cal.4th 809, 851.) Appellant makes no showing that but for trial counsel’s alleged errors there is a reasonable probability that the trial court would have ordered a less restrictive placement. Appellant “must prove prejudice that is a “demonstrable reality,” not simply speculation.’ [Citations.]” (*People v. Fairbank, supra*, 16 Cal.4th at p. 1241.)

Disposition

The judgment (order committing appellant to DJJ) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Kevin J. McGee, Judge

Superior Court County of Ventura

Laini Millar Melnick, under appointment by the Court of
Appeal for Defendant and Appellant.

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