Filed 1/3/18 In re L.R. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re L.R., a Person Coming Under the Juvenile Court Law.	2d Crim. No. B279552 (Super. Ct. No. MJ23394) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. L.R., Defendant and Appellant.	

L.R. appeals a juvenile court order specifying a maximum term of physical confinement following sustained petitions (Welf. & Inst. Code, § 602[1]), with findings that he committed second degree burglary (Pen. Code, § 460, subd. (b)), harbored a felon (*id.*, § 32), committed battery (*id.*, § 243, subd. (a)), and

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

vandalism (*id.*, § 594, subd. (a)). We conclude that the court did not err by specifying a maximum period of physical confinement. (§ 726, subd. (d)(1).) We affirm.

FACTS

On April 11, 2014, the Kern County District Attorney filed a section 602 petition alleging L.R. committed burglary (Pen. Code, § 460, subd. (b)), harbored a felon (*id.*, § 32), and committed misdemeanor battery (*id.*, § 243, subd. (a)). L.R. denied the allegations. He was detained at juvenile hall.

Because of his young age, the juvenile court "deferred entry of judgment" (§ 793, subd. (a)), released L.R. to his mother's custody and imposed a "home supervision program."

L.R. violated the terms of his home supervision. He was detained at juvenile hall. The juvenile court set aside the deferred entry of judgment order. It found the allegations of the section 602 petition were true. Because L.R.'s mother resided in Los Angeles County, the court ordered the minor transported to that county where he would be placed "home on probation" with his mother. (Capitalization omitted.)

In May 2016, L.R.'s mother reported that L.R. left her home without her permission. The probation officer requested a "bench warrant" (§ 777), alleging L.R. had violated the juvenile court's orders by not attending school and running away. At a September 6, 2016, hearing, the court ordered L.R. to be detained in juvenile hall. It found that "[c]ontinuance in the home is contrary to the minor's welfare."

On September 20, 2016, the Los Angeles County District Attorney filed a section 602 petition alleging L.R. committed second degree commercial burglary (Pen. Code, § 460, subd. (b)) and vandalism (*id.*, § 594, subd. (a)). At the section 602 petition hearing, Deputy Sheriff Joseph Mesa testified that he

investigated a burglary at a "nails salon." The store surveillance video showed two people entering the store by breaking a glass window. Deputy Probation Officer Rene Molina testified he saw the video and recognized L.R. as one of the burglars.

The juvenile court found the allegations of the section 602 petition were true. It ruled that L.R.'s "[w]elfare . . . requires that custody be taken from [his] parents." It ordered L.R. to be "placed in the care, custody and control of the Probation Officer" for "suitable placement with" L.R.'s cousin. It ruled the maximum period of physical confinement was four years, with "54 days' predisposition credit."

DISCUSSION

The Maximum Period of Physical Confinement

L.R. contends the juvenile court erred by specifying a maximum period of physical confinement. We disagree.

Section 726, subdivision (d)(1) 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 . . . ." (Italics added.)

Here the juvenile court ruled that L.R.'s "welfare" required that "custody be taken from" his parents. It complied with section 726, subdivision (d)(1) by imposing a maximum period of physical confinement. *(In re Julian R.* (2009) 47 Cal.4th 487, 498; *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1744 [the order removing the minor from the parent's custody requires the court to specify the maximum period of physical confinement].) This statute is unambiguous and mandatory. It imposes two duties on

the court: 1) to specify this period, and 2) to make sure the period specified is consistent with the circumstances of the minor's case. (*Julian R.*, at p. 498.)

L.R. notes that he was not placed in a confined facility. He was placed with his adult cousin in an "open" or "unsecured" placement. He contends "[c]ourts have repeatedly confirmed that minors are not due custody credits for their time spent in open or unsecured placements."

But custody credits and the nature of the nonparental placement are not relevant to the court's duty to set the maximum term of physical confinement. That duty is triggered solely by the order removing the minor from the parents' custody. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

L.R. claims that in *In re Matthew A.*, *supra*, 165 Cal.App.4th 537; *In re Ali A.* (2006) 139 Cal.App.4th 569; and *In re Danny H.* (2002) 104 Cal.App.4th 92, the courts held that setting a maximum term of physical confinement was not required. But in each of those cases, the minor was not removed from the parent's custody. In *Matthew A.*, the court said, "Appellant was not removed from his mother's physical custody. That means that the necessary predicate for specifying a term of imprisonment does not exist." (*Id.* at p. 541.)

We have reviewed L.R.'s remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J. TANGEMAN, J.

Michael L. Miller, Judge

Superior Court County of Los Angeles

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

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