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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JAVIER U.,  
  
a Person Coming Under the Juvenile Court Law.

B235123  
(Los Angeles County  
Super. Ct. No. PJ48018)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER U.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles, County,  
Benjamin Campos, Juvenile Court Referee. Affirmed as modified.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

Javier U. appeals from an order of wardship pursuant to Welfare and Institutions Code section 602 following the juvenile court's finding that he committed the offense of a lewd act upon a child, in violation of Penal Code section 288, subdivision (a), a felony. We strike the maximum confinement term and affirm in all other respects.

On May 3, 2011, around 4:00 p.m., appellant, who was 15 years old at the time, went with Kayley B., a 13-year-old girl, to the wash area at Sierra Highway in the Santa Clarita River in Los Angeles County. Appellant repeatedly touched Kayley in her chest area and asked her to have sex with him, but she declined. At one point, appellant sat on the ground, and Kayley sat on his lap with her back to him. When they stood up, appellant pulled down Kayley's shorts, told her to bend over, and penetrated her anus with his penis. Kayley left and told a friend everything that happened. A friend of appellant's joined the conversation, and Kayley told him she had had sex with appellant. About a week later, a school counselor asked Kayley about the incident.

A petition was filed pursuant to Welfare and Institutions Code section 602, alleging in count 1 that appellant committed a lewd act upon a child, in violation of Penal Code section 288, subdivision (a), and, in count 2, sodomy by use of force, in violation of Penal Code section 286, subdivision (c)(2)(A). The juvenile court granted appellant's motion under Welfare and Institutions Code section 701.1 to dismiss count 2 for insufficiency of the evidence.

The juvenile court found the allegations in count 1 to be true and sustained the petition. At the disposition hearing, the court declared the offense to be a felony, declared appellant a ward of the court, and placed appellant home on probation. The court also declared a maximum term of confinement of eight years.

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 30, 2011, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. No response has been received to date.

Welfare and Institutions Code section 726, subdivision (c) provides that “[i]f 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 [Welf. & Inst. Code] 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.” Welfare and Institutions Code section 726, subdivision (c) applies only if a minor is removed from the physical custody of his or her parent or guardian. Where, as here, a minor is placed home on probation and not removed from his parents' custody, the juvenile court lacks the authority to set the maximum period of confinement. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

We have examined the entire record and are satisfied that no other arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

## **DISPOSITION**

The maximum term of confinement is stricken. In all other respects the order of wardship is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.