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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.C., a Person Coming Under the Juvenile Court Law.	B238068 (Los Angeles County Super. Ct. No. YJ31911)
THE PEOPLE, Plaintiff and Respondent, v. R.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Stephanie M. Davis, Juvenile Court Referee. Vacated and remanded.

Bruce G. Finebaum, 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, Assistant Attorney General, Scott A. Taryle and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

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R.C. (appellant), born in 1993, appeals a juvenile court dispositional order continuing him as a ward of the court and committing him to the Department of Juvenile Justice (DJJ).[1] Section 733, subdivision (c) of the Welfare and Institutions Code[2] precludes the court from committing a minor to DJJ unless, among other things, "the most recent offense alleged in any petition and admitted or found to be true by the court" is a DJJ-eligible offense. Appellant contends that section 733, subdivision (c) bars the court from committing him to DJJ because his most recent offense was not a DJJ-eligible offense. Appellant contends the most recent DJJ-eligible offense date is controlling. The People assert the most recent filed and adjudicated petition date controls.

We find no ambiguity in the statutory language. We interpret the statute's reference to "the most recent offense alleged in any petition" to mean the offense that occurred last in chronological order. We vacate the juvenile court's order committing appellant to DJJ and remand the matter for proper disposition.

FACTUAL AND PROCEDURAL BACKGROUND

In light of the sole issue raised on appeal, our recitation of the facts that comprise the underlying offenses will be in somewhat summary form.

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[1] As of July 1, 2005, the correctional agency formerly known as the Department of the Youth Authority (or California Youth Authority) became known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF). The DJF is part of the DJJ. (Gov. Code, §§ 12838, subd. (a), 12838.3, 12838.5; Pen. Code, § 6001; Welf. & Inst. Code, § 1710, subd. (a).) Statutes that formerly referred to the Department of the Youth Authority, such as Welfare and Institutions Code section 733, now refer to the DJF. However, the parties to this appeal, the trial court, other cases, and certain of the California Rules of Court, refer to the DJF as the DJJ. (See, e.g., *In re D.J*. (2010) 185 Cal.App.4th 278; Cal. Rules of Court, rule 5.805.) In this opinion, we likewise refer to the DJF as the DJJ.

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

On September 9, 2010, appellant was a resident of the group home at the El Nido campus of Hathaway-Sycamores.[3] An altercation developed in the lunchroom between appellant and Gary C., another resident of the group home. Gary C. received medical treatment for a black eye and facial swelling.

On December 23, 2010, appellant was involved in an incident with probation officers Angela Smith and Adrian Butler.

On December 29, 2010, a petition under section 602 was filed against appellant, who was then 17 years old, alleging one felony count of resisting an executive officer (Pen. Code, § 69), and one misdemeanor count of assault on a peace officer (Pen. Code, § 240) (Petition 1). The allegations concerned the incident that occurred on December 23, 2010, involving Smith and Butler.

On February 2, 2011, appellant admitted the felony and the misdemeanor was dismissed.

On May 23, 2011, appellant kicked and struck a deputy probation officer for Los Angeles County as appellant was being escorted back to his room at the Dorothy Kirby Center.

On September 9, 2011, the district attorney filed a notice of violation of probation pursuant to section 777. The allegation concerned the incident on May 23, 2011, at the Dorothy Kirby Center.

On September 26, 2011, another petition pursuant to section 602 was filed against appellant alleging assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) (Petition 2). The allegation concerned the incident involving Gary C. at the El Nido group home on September 9, 2010.

On October 18, 2011, the juvenile court found true the allegation in Petition 2. Disposition was continued pending adjudication on the September 9, 2011, probation violation notice.

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[3] Hathaway-Sycamores is a private children's mental health and welfare agency in Los Angeles County.

On November 16, 2011, the juvenile court found appellant was in violation of probation based on the allegation filed in the September 9, 2011 notice.

On December 1, 2011, the juvenile court conducted a disposition hearing on (1) Petition 1; (2) the section 777 probation violation; and (3) Petition 2. The hearing concluded on December 5, 2011. Defense counsel argued that appellant was not eligible for DJJ because his most recent offense—admitted and found true in Petition 1—was not DJJ eligible. The court stated that the relevant date was not when the offense occurred but "when the petition was sustained and when the petition is brought before the court for purposes of disposition." The court noted that Petition 2 contained a section 707, subdivision (b) offense which made appellant eligible for DJJ. Appellant was adjudged a ward of the court and committed to DJJ for a maximum term of confinement of eight years, with credit for 813 days in custody. He filed a timely notice of appeal.

CONTENTION

Appellant argues that the "most recent offense" admitted and found to be true—resisting an executive officer which occurred on December 23, 2010 and was alleged in a December 29, 2010 section 602 petition—was a non-section 707, subdivision (b) offense, and therefore, section 733 precludes his DJJ commitment. The People argue the phrase "most recent offense alleged in any petition" does not refer to the date the offense was committed, but to the date the petition was filed. The People contend R.C.'s most recent petition filed on September 26, 2011 in which he was adjudicated to have committed a section 707 subdivision (b) eligible offense on September 9, 2010, qualifies him for DJJ commitment.

RELEVANT LAW

Section 731 authorizes a juvenile court to commit a juvenile who has been adjudged a ward of the court to the DJJ "if the ward has committed an offense described in subdivision (b) of Section 707" and the ward "is not otherwise ineligible for commitment" to DJJ "under Section 733." (§ 731, subd. (a)(4).)

Section 707, subdivision (b) lists a series of serious offenses for which a minor may be tried as an adult if the minor is 16 years of age or older and not amenable to treatment in the juvenile court.[4]

Section 733 states in pertinent part: "A ward of the juvenile court who meets any condition described below shall not be committed to [DJJ]: [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707 . . . ."[5]

DISCUSSION

"'Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law.'" (*In re J. W.* (2002) 29 Cal.4th 200, 209, quoting *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000, and citing *People v. Gardeley* (1996) 14 Cal.4th 605, 621.) In determining that intent, we first examine the words of the statute, applying '"their usual, ordinary, and common sense meaning based upon the language . . . used and the evident purpose for which the statute was adopted.'" (*People v. Granderson* (1998) 67 Cal.App.4th 703, 707, quoting *In re Rojas* (1979) 23 Cal.3d 152, 155; accord, *People v. Birkett* (1999) 21 Cal.4th 226, 231.) '"If there is no ambiguity in the language of the statute, "then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." [Citation.] "Where the statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.' [Citation.]'" [Citation.]" (*People v. Coronado* (1995) 12 Cal.4th 145, 151.)

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[4] The list includes "[a]ssault by any means of force likely to produce great bodily injury." (§ 707, subd. (b)(14).)

[5] Resisting an executive officer (Pen. Code, § 69) is an offense not described in section 707.

Applying these principles to section 733, subdivision (c), the statute at hand, we find the phrase "the most recent offense alleged in any petition" is that offense which occurred later in time regardless of when the petition was filed and adjudicated. In this case, the non-section 707, subdivision (b) offense is the most recent offense because it occurred on December 23, 2010, while the section 707 subdivision (b) eligible offense occurred on September 9, 2010. Our holding is consistent with the language, the intent of the applicable statute, and with existing case law interpreting section 733, subdivision (c).

The People contend "most recent" modifies the word "petition" rather than the word "offense." Under the People's interpretation, the prosecution would be permitted to reach back into the minor's history to allege any section 707, subdivision (b) offense not barred by the statute of limitations, thereby making the minor eligible for DJJ commitment. The "'usual, ordinary, and common sense meaning'" of the language does not lend itself to such an interpretation. (*People v. Granderson, supra,* 67 Cal.App.4th at p. 707.)

The People direct our attention to the legislative history of the statute which was enacted in order to implement the Budget Act of 2007. Although we find no ambiguity in the statutory language of section 733, subdivision (c), and therefore no reason to consult the legislative history, the legislative history actually supports our conclusion.

The purpose of section 733, subdivision (c), is to reduce the number of youth offenders housed in the DJJ. (*In re N.D.* (2008) 167 Cal.App.4th 885, 891–892.) The Legislature chose to do this by targeting currently violent or serious juvenile offenders to be sent to the DJJ. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468 (*V.C.*), disapproved on other grounds in *In re Greg F.* (2012) 55 Cal.4th 393 (*Greg F.*).) The Legislature could have written the statute to apply to *all* violent or serious juvenile offenders but did not, because the statute included a limitation. The Legislature chose to consider only the "most recent offense" to identify *currently* violent or serious juvenile offenders. Alleging any section 707, subdivision (b) eligible offense in the most recent section 602 petition, regardless of when it was committed, would not further the legislative intent of sending currently violent or serious offenders to DJJ.

There is no case law directly on point with this particular factual scenario where in order to secure DJJ commitment, the most recent filed and sustained section 602 petition, alleged an offense that was not the minor's most recent offense. But, we find strong support for our view of the statute in existing case law interpreting other procedural actions involving section 733, subdivision (c).

In *V.C., supra,* 173 Cal.App.4th 1455, the court found it to be an abuse of discretion to permit dismissal of a section 602 petition already adjudicated by plea bargain, to allow the prosecution to instead pursue a probation violation based on the same conduct to secure a DJJ commitment. (*V.C., supra,* at pp. 1459, 1469.) The Third Appellate District succinctly summarized the issue pertinent to our discussion as follows: "The language of section 733(c) allows commitment to DJF only when '*the most recent offense* alleged in any petition and admitted or found to be true by the court' (italics added) is an eligible offense. The statute does not focus on the overall or entire delinquent history of the minor or on whether the minor may be generally considered a serious, violent offender. The language looks to the minor's 'most recent offense.' The Legislature has specifically determined it is the minor's most recent offense that determines the minor's eligibility for DJF commitment." (*Id.* at p. 1468.)

In *Greg F., supra,* 55 Cal.4th 393 the California Supreme Court discussed "the interplay" between section 733, subdivision (c), and section 782. *Greg F.* held dismissal of a petition for the purpose of allowing a DJJ commitment on a minor's previously-sustained section 602 petition is appropriate under section 782 so long as the juvenile court finds that the dismissal is required by the interests of justice and the welfare of the minor. (*Greg F., supra,* at p. 402.) The Court disapproved the V.C. court's holding that section 733, subdivision (c), must always override the juvenile court's ability to dismiss a delinquency petition under section 782. (*Greg F., supra,* at p. 415.) In its analysis of section 733, subdivision (c), the Court mirrored the reasoning of *V.C.* and stated that a DJJ commitment "must be based on a recent violent offense or sex crime adjudicated in a delinquency petition. It cannot be ordered based on a past offense in the ward's juvenile record if the ward's most recent offense does not qualify." (*Greg F., supra,* at p. 404.*)*

The People argue that *Greg F.* "signaled its agreement that it is the timing of the petition that matters, rather than the date of the underlying offense" and that same reasoning is applicable in this case. First, *Greg F.* involved the juvenile court's authority to dismiss a section 602 petition to "'reach back'" to the allegations of an earlier sustained petition. (*Greg F., supra,* 55 Cal.4th at pp. 402–403.) It did not discuss reaching back in the minor's history for an unfiled DJJ-eligible offense to secure commitment to DJJ. Second, the People's assertion is based on dicta in *Greg F.* which discusses the potential for gamesmanship in the context of multicount petitions. (*Greg F., supra,* at p. 412.) The court stated that "focusing on the most recent petition, and not the most recent offense described in a multicount petition, would appear to avoid absurd consequences and remain consistent with the Legislature's intent to reserve DJF commitments for specific recent offenses." (*Ibid.*, fn. 3.)

With respect to the further proceedings that will occur upon remand, we express no opinion as to the applicability of section 782, which describes the juvenile court's discretion to dismiss delinquency petitions "if the court finds that the interests of justice and the welfare of the minor require such dismissal." (§ 782; see *Greg F., supra,* 55 Cal.4th at pp. 400–420.)

DISPOSITION

The December 5, 2011, order committing appellant to DJJ is hereby vacated. We remand the matter for proper disposition.

FERNS, J. *

We concur:

BOREN, P. J.

CHAVEZ, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.