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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JULIO N., a Person Coming
Under the Juvenile Court Law.

B269849

(Los Angeles County
Super. Ct. No. KJ38424)

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIO N.,

Defendant and Appellant.

APPEAL from a judgment (order continuing wardship) of
the Superior Court of Los Angeles County, Geanene M. Yriarte,
Judge. Affirmed.

Torres & Torres and Steven A. Torres, under appointment
by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Julio N., a minor, appeals from a judgment (order continuing wardship) (Welf. & Inst. Code, §§ 602, 725, subd. (b)) entered after the juvenile court found true allegations in a Welfare and Institutions Code section 777, subdivision (a) notice that appellant violated conditions of probation granted upon his negotiated admission to committing assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

1. The Kidnapping and Felonious Assault.

The record reflects as follows. On November 22, 2013, appellant (15 years old) and two confederates called for a cab. The cab arrived at the Mission Promenade in Pomona. The three entered the cab and sat in the back with appellant directly behind the cab driver. The three told the driver they wanted to go to a location in Ontario. After the driver asked for payment in advance, he was pulled from behind by his collar. One of the three put a knife to the driver's throat and said, "Mother fucker take us where we want to go. We are from Pomona."

The driver, fearing for his life, began driving in the promenade parking lot when he saw security guards. He yelled for help and stopped the cab, and security guards approached. Appellant and his confederates exited the cab and fled. Shortly thereafter, police detained appellant and a companion in the vicinity, and the driver identified them as two of the assailants. Police found "a small folding knife/box cutter" in appellant's waistband. Police took appellant to a hospital for alcohol intoxication. The knife caused a one and one-half inch to two-inch laceration on the left side of the cab driver's neck.

Based on the incident, a petition filed November 26, 2013, alleged appellant committed kidnapping (count 1) with personal use of a deadly and dangerous weapon (a knife) (Pen. Code, §§ 207, subd. (a), 12022, subd. (b)(1)), and assault with a deadly weapon (a knife) (Pen. Code, § 245, subd. (a)(1); count 2). On December 20, 2013, appellant waived his constitutional rights and entered a negotiated admission to count 2, a felony. The court found the petition true as to that count, sustained the petition, and dismissed count 1. The court entered an order of wardship pursuant to Welfare and Institutions Code section 602, placed appellant in camp for three months, calculated a maximum theoretical confinement period of four years,¹ and imposed various probation conditions.

2. The October 2014 and May 2015 Welfare and Institutions Code Section 777, Subdivision (a) Notices.

a. *The October 27, 2014 Notice.*

A Welfare and Institutions Code section 777, subdivision (a) notice (notice) filed October 27, 2014, alleged appellant violated conditions of his probation. The notice alleged as count 1 that as of October 13, 2014, appellant had not attended school, thus violating probation condition No. 1, requiring him to follow the rules given to him, and condition No. 9, requiring him to go to school daily. The notice alleged as count 2 that on multiple dates between April 2014 and September 2014, inclusive, appellant tested positive for marijuana, and once in 2014 he tested positive for cocaine, a

¹ Penal Code section 245, subdivision (a)(1), provides that a violation of that subdivision “shall be punished by imprisonment in the state prison for two, three, or four years.”

violation of probation condition No. 17 that he not possess or use “[mind-altering] subst[ances] except [as] prescribed by [a] doctor.”

The notice alleged as count 3 that in September 2014, appellant’s cell phone contained gang-related photographs of appellant, and in October 2014, his cell phone contained photographs of him participating in gang-related activity, a violation of probation condition No. 13 that he not associate or communicate with anyone not approved by his parents or parole officer, and condition No. 13B that he not associate or communicate with gang members or taggers. The notice alleged as count 4 that appellant “failed to report to probation as instructed on [July 8, 2014].”

On October 27, 2014, appellant waived his constitutional rights and admitted counts 1 through 4 in the notice. The court found true the notice and found appellant in violation of probation. The court entered an order continuing wardship pursuant to Welfare and Institutions Code section 602, placed appellant in camp for six months, and imposed various probation conditions.

b. *The May 1, 2015 Notice.*

A notice filed May 1, 2015, alleged appellant violated conditions of his probation. A supporting declaration from a deputy district attorney stated, “[b]ased upon my review of the attached reports that are incorporated herein by reference, the minor is in violation of conditions . . . of the court’s order by: [¶] 1. Being suspended from school for fighting behavior. [¶] 2. Being defiant and disrespectful to probation/camp staff. [¶] 3. Failure to follow instructions of probation/camp staff.” Attached documents included a March 23, 2015 special incident report from a camp probation officer. The report discussed

appellant's disruptive behavior at the camp and concluded, "[t]his camp setting is not fit for [the] minor."

On May 1, 2015, appellant waived his constitutional rights and admitted counts 1 through 3 in the notice. The court found true the notice and found appellant in violation of probation. The court entered an order continuing wardship pursuant to Welfare and Institutions Code section 602, placed appellant in camp for five to seven months, and calculated a maximum theoretical confinement period of four years. The record does not reflect that appellant appealed from any of the above discussed proceedings.

3. The Present September 1, 2015 Notice.

A notice filed September 1, 2015, alleged in three counts that appellant violated various probation conditions on August 27, 2015, by possessing a knife and marijuana at Parkwest High School, as discussed below. Count 1 alleged that on August 27, 2015, Pomona police arrested appellant at the school for possessing a knife on school grounds in violation of Penal Code section 626.10, subdivision (a)(1), and for possessing marijuana in violation of Health and Safety Code section 11357, subdivision (b). Count 1 alleged this conduct violated probation condition No. 1, prohibiting appellant from committing any crimes.

Count 2 alleged that on August 27, 2015, the school's principal requested appellant's immediate expulsion for possessing a knife with a blade more than three inches long in violation of Education Code section 48915, subdivision (a)(1)(B), for possessing more than an ounce of a controlled substance in violation of Education Code section 48915, subdivision (a)(1)(C)(i), and for selling controlled substances in violation of Education Code section 48915,

subdivision (c)(3). Count 2 alleged this conduct violated probation condition No. 9, requiring appellant to go to school daily and have good behavior at school.

Count 3 alleged that on August 27, 2015, “[Los Angeles County Probation Officer Lorenzo Ball] . . . searched” appellant at the school and found in his underwear a pocket knife with a blade at least three inches long, and two prescription pill canisters full of marijuana. Count 3 alleged this conduct violated probation condition No. 14, prohibiting appellant from possessing or acting like he possessed, a gun, knife, or any other object he knew was a dangerous or deadly weapon. The count also alleged the conduct violated probation condition No. 17, prohibiting appellant from knowingly using or possessing illegal drugs or mind-altering substances except as prescribed by a physician.

At the November 20, 2015 adjudication, Ball testified as follows. On August 27, 2015, Ball was at the school. Earlier that day, he had received calls that appellant was not complying with school rules. Appellant had been at the school perhaps a week and was “hitting people up [and] asking them what gang they were from.”

Ball summoned appellant to the office and began talking with him. Ball smelled the odor of marijuana emanating from appellant. Ball asked appellant if he had anything on him. Appellant replied he had marijuana on him and a folding pocket knife. With appellant in handcuffs, Ball removed from inside the front waistband of appellant’s underwear a knife, plus three baggies of marijuana in a prescription pill canister. The knife blade was perhaps three to four inches long. Appellant later slipped out of his handcuffs and unsuccessfully tried to escape.

Appellant presented no defense witnesses. The court found true the allegations in counts 1 through 3 of the September 1, 2015 notice.

At the dispositional hearing, appellant asked Ball if nine months in camp was preferable to commitment to the Division of Juvenile Justice (DJJ). Ball indicated yes and said appellant needed psychological evaluation. The court asked if Ball had “seen all of the write-ups at camp and all the problems he caused at camp.” Ball indicated he had not. The court asked whether the fact appellant would be 18 years old in December 2015 would mean camp placement would be unavailable for him. Ball indicated yes. The court asked Ball if he had reviewed “all of the interventions that have been placed on [appellant], his entire file.” Ball denied he had reviewed the whole case file and he indicated his camp recommendation was based on reports generated between August 17, 2015, and November 20, 2015.

The prosecutor argued the court should commit appellant to the DJJ. Appellant argued the court should place him in camp for nine months. The court continued the dispositional hearing to December 10, 2015, in order to obtain additional reports.

On December 10, 2015, after further argument from the parties, the court took judicial notice of the entire superior court file. The court extensively discussed its contents and appellant’s unsatisfactory performance in camp as reflected in the file. The court indicated it agreed with the conclusion of the camp probation officer who wrote in the March 23, 2015 report that the camp setting was not fit for appellant. The court indicated camp and less restrictive alternatives were inappropriate, and commitment to DJJ was appropriate.

The court found appellant was under 18 years old at the time of the offense for which the court was committing him to the Division of Juvenile Facilities (DJF).² The court also found the mental and physical condition and qualifications of appellant rendered it probable he would benefit from the reformatory, discipline, or other treatment provided by DJF. The court stated appellant had been declared a ward of the court and the court was committing him to DJF based on the sustained petition filed on November 26, 2013. The court ordered appellant committed to DJF for a maximum theoretical confinement period of four years. On January 19, 2016, appellant filed a notice of appeal.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. On September 19, 2016, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

² “The California Youth Authority (CYA) was renamed California’s Department of Corrections and Rehabilitation, Division of Juvenile Justice, effective July 1, 2005. The Division of Juvenile Facilities (DJF) is part of the Division of Juvenile Justice. [Citations.] DJF is referenced in statutes, . . . that formerly referred to CYA.” (*In re M.B.* (2009) 174 Cal.App.4th 1472, 1474, fn. 2.)

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *Smith v. Robbins* (2000) 528 U.S. 258, 278-284; see *In re Eddie M.* (2003) 31 Cal.4th 480, 486, 502.)

DISPOSITION

The judgment (order continuing wardship) is affirmed.

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GOSWAMI, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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