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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MALCOLM B., a Person Coming
Under the Juvenile Court Law.

B232859
(Los Angeles County
Super. Ct. No. YJ32993)

THE PEOPLE,

Plaintiff and Respondent,

v.

MALCOLM B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Stephanie M. Davis, Referee. Affirmed.

James M. Crawford, 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, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Taylor Nguyen, Deputy Attorney General, for Plaintiff and Respondent.

Minor Malcolm B. appeals his commitment to the Division of Juvenile Justice (DJJ) for a period of two years. Malcolm contends the juvenile court abused its discretion because there was insufficient evidence that he was unsuitable for a local treatment program, less restrictive alternatives were inadequate, and he would probably benefit from the commitment. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Minor's Juvenile History

On March 20, 2009, the People filed a petition under Welfare & Institutions Code section 602¹ charging Malcolm with one count of second degree robbery. The petition was amended to add a charge of grand theft. On June 15, 2009, Malcolm admitted the allegations of count 2, and the court dismissed count 1. The court declared Malcolm a ward of the court and ordered him placed on home probation with conditions.

On December 1, 2009, the People filed a second petition charging Malcolm with one count of possession of marijuana for sale in violation of Health and Safety Code section 11359. On January 5, 2010, Malcolm admitted the charge, and the court declared Malcolm was to remain a ward of the court, and placed him in a short-term camp community placement program.

On June 21, 2010, the People filed the current petition which alleged three counts against Malcolm: assault with a semiautomatic weapon (Pen. Code, § 245, subd. (b)), possession of a firearm by a minor (Pen. Code, § 12101, subd. (a)(1)), and possession of live ammunition by a minor (Pen. Code, § 120101, subd. (b)(1)). The petition alleged as to count 1 that the minor personally used a handgun during the commission of the offense (Pen. Code, §§ 12022.5, 1192.7, subd. (c), 667.5, subd. (c)) and alleged as to all counts that the offenses were gang related (Pen. Code, § 186.22, subds. (b)(1)(A) & (b)(1)(C)).²

¹ All statutory references herein are to the Welfare & Institutions Code unless otherwise noted.

² The gang allegations were later stricken.

At the detention hearing held June 22, 2010, Malcolm denied the allegations of the petition. On June 21, 2010, the People filed a petition alleging that Malcolm was unfit to be tried as a juvenile pursuant to section 707, subdivision (b). The court denied the petition, finding that Malcolm was amenable to the care, treatment and training available through the juvenile court.

B. Factual Background

1. Prosecution Case

On June 17, 2010, at about 2:35 p.m., Terryon Taylor was driving northbound on Flower Street in Inglewood. He was wearing jeans, a T-shirt, and tennis shoes. As Taylor was making a left turn, he saw Malcolm and a woman on the left side of the road. Taylor noticed Malcolm appeared to be flagging him down. Taylor slowed down and opened his window. Malcolm tapped his female companion, and she pulled a 9-millimeter gun out of her purse and passed it to Malcolm. Malcolm looked angry, and pointed the gun at Taylor. Taylor drove away, and he saw that Malcolm was following his vehicle with the gun.

Taylor immediately contacted the police. The police responded to the scene and detained Malcolm's companion, A.M. The police recovered a loaded 9-millimeter handgun from A.M.'s purse. The police separately detained Malcolm, and later at the police station, they recovered a bullet from his front pocket. Taylor went to a field lineup and identified Malcolm.

2. Defense Case

Malcolm testified that he lived about two blocks from the intersection where he encountered Taylor. According to Malcolm, Taylor began harassing Malcolm and A.M., who was his girlfriend. Taylor had the music in his car on very loud, and drove by them. Malcolm looked at Taylor, who slowed his car down and asked Malcolm, "Where are you from?" Taylor stopped his car. Malcolm began to curse at Taylor, and Taylor became angry. Taylor opened the door to his car, and Malcolm believed Taylor was going to shoot him. A.M. took the butt of the gun out of her purse and showed it to

Taylor, who drove off. Malcolm denied making hand signs at Taylor, pointing the gun at him, and denied he belonged to a gang.

3. *Disposition*

The court, following the adjudication hearing at which it sustained the allegations of the petition, stated its tentative ruling would be to commit Malcolm to DJJ because Malcolm constituted a safety risk, and Malcolm had contacted the victim (Taylor) while in juvenile hall. Malcolm asked to be sent to the Dorothy Kirby Center, but the court refused because the Dorothy Kirby Center was less secure and one of the court's concerns was security, stating: "I think, quite frankly, if [Malcolm] is given the opportunity to see the outside of a nonsecure facility, that he will not be here any longer, that he will leave." Malcolm argued that Camp Onizuka would be appropriate because it was a camp for juveniles who needed special treatment.

Malcolm filed an opposition to commitment to DJJ and a sentencing memorandum in which he argued that pursuant to section 736, he would not benefit from commitment to DJJ because his social worker believed Malcolm had a significant history of anxiety, grief and trauma. A friend of Malcolm had been shot to death in front of his house. Further, Malcolm had been very close to his mother. Malcolm was taken from his mother when he was six; his mother later died from cancer. Malcolm was sent to live with his aunt, but was physically and sexually abused in her home. As a result, Malcolm was sent to live with his 20-year-old brother, who did not have the time to care for him. Malcolm asserted that he required a therapeutic setting, but DJJ was more like an adult prison and was plagued with racial and gang violence. Thus, he argued, commitment to DJJ, due to closure of some DJJ facilities and the inability to house juveniles close to their homes and the prevalence of violence at DJJ, would exacerbate his anxiety and insecurity.

Further, Malcolm contended that his offenses did not show extensive planning, but rather were impulsive acts; the offenses were not related and did not represent an escalating pattern of criminality. Although Malcolm was alleged to have pointed a gun at a passing vehicle, the weapon was not discharged, nor was there any indication that

Malcolm intended to fire the gun. Individual therapy, anger management, and substance abuse counseling were available at Camp Onizuka, Dorothy Kirby Center, and Camp Glenn Rockey.

At Malcolm's disposition hearing, Charles Trask, director of intake at Camp Onizuka in Lancaster, testified that the camp currently has 72 youths; its maximum capacity is 80 youths. It is a Youthful Offender Block Grant (YOBG) Program, pursuant to which probation violations would result in detention. The camp uses an enhanced assessment process, and has direct contact with the Department of Mental Health. Probationers who have had multiple camp placements, a history of failure in camps, or a history of violent crimes are sent to Camp Onizuka. Trask testified that youths who have not committed a section 707, subdivision (b) offense are not sent to DJJ anymore; rather, Camp Onizuka and the YOBG camps were an alternative to having the section 707, subdivision (b) offenders either paroled or sent to the county. The camp typically accepts youths who have had previous camp orders or have a section 707, subdivision (b) offense, who are heavily "gang entrenched," and who have a history of poor performance in previous camps. There was no guarantee Malcolm would be accepted at Camp Onizuka.

George Mayhorn, a probation officer, is a detention service officer at Los Padrinos Juvenile Hall and Unit R which houses the high risk offender minors. Malcolm was housed at Los Padrinos sometime in 2010, and Mayhorn came into contact with him on a daily basis commencing in March 2011. Mayhorn did not believe Malcolm should be committed to DJJ; while at Los Padrinos, Malcolm had behaved very well. Malcolm had held the position of teen counsel and unit messenger at Los Padrinos. This position was a reward for good behavior, and required him to be in the top 10 of the "merit letter," meaning that he had not been fighting or sent to the special handling unit. A person who is teen counsel acts as a spokesperson for the unit. Mayhorn's opinion that Malcolm was a proper candidate for camp was not changed by numerous reports that Malcolm had engaged in poor behavior while in juvenile hall, including a fight with other minors. In Mayhorn's view, Malcolm behaved responsively and appropriately while at Los Padrinos.

Melissa Pitts, a parole agent for DJJ, testified that the DJJ offers basic high school diplomas and general education diploma (GED) courses in accredited programs, as well as vocational training at all but one of their facilities (which houses very young offenders). DJJ conducts an extensive assessment process of each youth, including academic testing, physical exams, and psychological testing. Those youths exhibiting anxiety or suicidal thoughts are given a second level mental health examination. DJJ has mental health units designed to treat youths with more serious mental health issues. Minors who are in the intensive behavior treatment program in Norwalk do not go to school in the regular school area, but attend separate classes. DJJ has family days and attempts to place youths near their home in order to facilitate contact with families. DJJ also has a gang intervention program through a partnership with an organization known as “Project Impact” that uses former gang members. Most of the youths at DJJ have been exposed to significant trauma and violence, and only about 15 percent are in the mental health program. DJJ is only about 45 percent in compliance with a consent decree requiring changes to its programs and facilities.

On his own behalf, Malcolm apologized to the court for his crimes and advised the court he wanted to change his life. He had been studying to take his GED and was being tutored.

The court stated that it did not believe DJJ was a place for minors the courts could not “figure out what else to do with” or for whom the courts considered “there [was] nothing else that can be done for them.” The court noted that with respect to Malcom, an important issue was public safety, which in the court’s view included “safety within the juvenile justice community, as well as the community outside these doors. And in this case, [safety] is an area of concern because he has committed a very serious crime. It is a [section] 707[, subdivision] (b) offense.” The court found Malcolm’s conduct in using the gun to be impulsive, and that a person with a gun who thinks impulsively can be more dangerous than the offender who plans their crime. On the other hand, the court recognized Malcolm’s mental health issues as a result of physical and sexual abuse that

needed to be addressed. The court noted that one distinction between DJJ and camp was that minors at DJJ had more serious mental health issues than Malcolm because they had diagnoses of bipolar disorder or attention deficit hyperactivity disorder (ADHD) and were on medication, and Malcolm did not need such services.

The court concluded, “[h]aving said that, [Malcolm] is a ticking time bomb. If he does not get the mental health services to deal with the sexual and physical abuse that he has experienced and the sense of abandonment, he is a ticking time bomb. And the chances of something again more serious happening are monumental. So he does need mental health services.” The court continued, “[t]he other issue [the court] always [has] to consider is someone’s receptiveness to treatment. . . . Malcolm’s history shows that he, at this point, has not been receptive to treatment. He’s avoided treatment. . . . [W]hen I consider the length of time that is needed for treatment, I have to consider the unwillingness to receive treatment as part of that length of time.” The court found a community placement was “completely out of the question” because Malcolm was a “tremendous risk” to the community; Malcolm was “desperate” to go home and that would cause him to leave a suitable placement the moment he was placed. The court found that nine months in camp was not sufficient because Malcolm needed extended treatment. Further, Malcolm’s impulsive behavior was, in the court’s view, dangerous to the community.

As a result, the court terminated the previous order of home probation, found that Malcolm would benefit from the reformatory, discipline, or other treatment provided by DJJ. The court sustained the allegations of the petitions, found his maximum confinement time was 20 years and four months, and committed Malcolm to the DJJ for a period of two years.

DISCUSSION

Malcolm argues that there is insufficient evidence to support his commitment to DJJ because the evidence does not demonstrate that he would benefit from commitment to the DJJ and that less restrictive alternatives would be ineffective or inappropriate. He

argues that he was not involved in a serious pattern of criminal activity and his history was relatively minor, and his acts are more consistent with instability in his home and prior physical and sexual abuse than with a person seeking to engage in more sophisticated and violent criminal activity. Lastly, Malcolm argues the juvenile court ignored recommendations that a camp placement was most suitable for him.

Section 202 provides for the care, treatment and guidance of minors who come under the jurisdiction of the juvenile court. Pursuant to section 202, subdivision (e)(5), a juvenile may be sent to DJJ.³ The purpose of DJJ is to achieve “community restoration, victim restoration, and offender training and treatment.” (§ 1700.) No ward of the juvenile court shall be committed to the DJJ unless the court is fully satisfied that the mental and physical condition and qualifications of the minor are such as to render it probable that the minor will be benefited by the reformatory educational discipline or other treatment provided by DJJ. (§ 731.) In determining the disposition order, “the court shall consider, in addition to other relevant evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.)

“The juvenile court’s decision to commit a minor to the [DJJ] will be reversed only when an abuse of discretion is shown. [Citation.] The evidence, however, must

³ Section 202, subdivision (b) provides in pertinent part: “Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. . . . [¶] . . . [¶] (d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter. [¶] (e) As used in this chapter, ‘punishment’ means the imposition of sanctions. It does not include retribution[.] . . . Permissible sanctions may include any of the following: [¶] . . . [¶] (5) Commitment of the minor to the [DJJ].”

demonstrate probable benefit to the minor from commitment to the [DJJ] and that less restrictive alternatives would be ineffective or inappropriate. [Citation.]” (*In re George M.* (1993) 14 Cal.App.4th 376, 379; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) An abuse of discretion occurs when the juvenile court ““exceeds the bounds of reason, all of the circumstances being considered.”” (*In re Carl N.* (2008) 160 Cal.App.4th 423, 431–432.)

We indulge all reasonable inferences to support the commitment decision of the juvenile court and will not disturb its factual findings when they are supported by substantial evidence. (*In re Carl N., supra*, 160 Cal.App.4th at p. 432.) “Although the DJJ is normally a placement of last resort, there is no absolute rule that a DJJ commitment cannot be ordered unless less restrictive placements have been attempted. [Citations.] A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.)

“In 1984, the Legislature replaced the provisions of section 202 with new language which emphasized different priorities for the juvenile justice system. [Citation.] The new provisions recognized punishment as a rehabilitative tool. [Citation.] Section 202 also 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.] [¶] Thus, it is clear that the Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety. This interpretation by no means loses sight of the ‘rehabilitative objectives’ of the Juvenile Court Law. [Citation.] Because commitment to [the DJJ] cannot be based solely on retribution grounds [citation], there must continue to be evidence demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate. However, these must be taken together with

the Legislature’s purposes in amending the Juvenile Court Law.” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.)

While less restrictive alternatives need not have been tried first, the court must consider them before ordering incarceration. (*In re Michael G.* (1988) 44 Cal.3d 283, 298.) Within the parameters that juvenile proceedings are primarily rehabilitative and retributive punishment is not allowed, “the court has broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public. [Citation.] . . . Given these aims, and absent any contrary provision, juvenile placements need not follow any particular order . . . , including from the least to the most restrictive. [Citations.] Nor does the court necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried.” (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) Finally, there is no requirement that the court find precisely how a minor will benefit from being committed to DJJ. The court need only find if it is probable a minor will benefit from being committed. (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

Here, the juvenile court decided upon a commitment to DJJ after considering and rejecting the nine-month camp community placement program as inadequate to meet Malcolm’s specific need for protracted treatment that would be not available in a nine-month camp commitment because of his mental health issues as a result of the physical and sexual abuse he had suffered. The court recognized that Malcolm’s behavior was resulting in an escalating pattern of criminality, his behavior was impulsive, he was a flight risk, and Malcolm had not been receptive to prior treatment. The court found him to be a “ticking time bomb” and that he posed a risk to the community. We find no abuse of discretion. “The purposes of juvenile wardship proceedings are twofold: to treat and rehabilitate the delinquent minor, and to protect the public from criminal conduct. [Citations.] The preservation of the safety and welfare of a state’s citizenry is foremost among its government’s interests” (*In re Jose C.* (2009) 45 Cal.4th 534, 555.) In view of Malcolm’s conduct in this case and his history, the juvenile court reasonably

determined Malcolm and the public would benefit from placing him in a locked facility, where he has the opportunity for rehabilitation while the community is protected from further acts of violence he may commit.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.