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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.T., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B290501
(Super. Ct. No. YJ39192)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

D.T. appeals from a disposition order entered after the juvenile court sustained a petition for attempted second degree robbery (Welf. & Inst. Code, § 602; Pen. Code, §§ 664, 211),¹ ordered a five to seven month camp placement, and determined that the maximum term of confinement on the

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

petition and three prior sustained petitions was four years eight months. Appellant was given 45 days predisposition credits. We modify the judgment to reflect that the aggregated maximum term of confinement is four years and that appellant is entitled to 51 days additional predisposition credits. The judgment, as modified is affirmed. (Pen. Code, § 1260.)

Factual and Procedural History

A petition was filed for attempted second degree robbery arising out of a “purse snatch.” Appellant grabbed Maria Cal’s purse and fought over the purse as Cal’s 10-year old son screamed for help. Appellant and a male accomplice fled the scene but were detained shortly thereafter by the Los Angeles Police. Cal and an eyewitness, Pedro Enriquez, identified appellant as the assailant in a field show up.

At the disposition hearing, the trial court declared the attempted robbery a felony and considered three prior sustained petitions: a May 25, 2017 petition for attempted robbery (Pen. Code, §§ 664, 211); a June 20, 2017 petition for petty theft (Pen. Code, §§ 484, subd. (a), 490.2); and an October 17, 2017 petition for tampering with a vehicle (Veh. Code, § 10852) during an attempted car burglary. Aggregating the four petitions, the trial court ordered camp placement for five to seven months, determined that the aggregated maximum commitment was four years eight months, and gave appellant 45 days predisposition credit.

Maximum Term of Confinement

After a section 602 petition is sustained, the trial court can consider the juvenile’s entire record and aggregate the maximum term of confinement for offenses in previously sustained petitions and the current offense. “Aggregation is not

mandatory or automatic, but rests within the sound discretion of the juvenile court. [Citation.]” (*In re Adrian R.* (2000) 85 Cal.App.4th 448, 454.) The trial court need not state its reasons for aggregating petitions. (*In re Ismael A.* (1989) 207 Cal.App.3d 911, 914.)

Appellant argues, and the Attorney General agrees, that the trial court miscalculated the maximum term of confinement. When aggregating previously sustained petitions, the maximum confinement term is the upper term on the current offense plus one-third the midterm on the subordinate felonies or misdemeanors in the prior sustained petitions. (§ 726, subd. (d)(3); Pen. Code, § 1170.1, subd. (a); *In re David H.* (2003) 106 Cal.App.4th 1131, 1133-1134.) For attempted second degree robbery (the current offense), the upper term is three years. (Pen. Code, §§ 18, 213, subd. (b); see *People v. Moody* (2002) 96 Cal.App.4th 987, 990.) Added to that is eight months (one-third the two-year midterm) for attempted robbery (first sustained petition), plus two months (one-third the midterm of six months; Pen. Code, §§ 19, 490) for misdemeanor petty theft, and two months (one-third the midterm of six months; Pen. Code, § 19; Veh. Code, § 10852) for tampering with a vehicle (third sustained petition), for an aggregate maximum term of four years. We accordingly modify the judgment to reflect that the maximum confinement period is four years.

Appellant contends that the trial court failed to exercise its discretion in not considering a term of confinement less than the maximum term of confinement. (§ 726, subd. (d)(3); see *In re Alex N.* (2005) 132 Cal.App.4th 18, 25, fn. 2 [juvenile court has discretion to aggregate or not].) Appellant forfeited the issue by not objecting. (*In re Travis J.* (2013) 222 Cal.App.4th

187, 201.) On the merits, there was no abuse of discretion. The trial court found that appellant was AWOL when he committed the offense, that appellant had two sustained petitions for attempted robbery, and that it was appellant's fourth sustained petition for "theft-related offenses."

In determining the appropriate disposition, the trial court considered the circumstances and gravity of the offense and appellant's extensive record. (§ 725.5.) The trial court found that appellant was "AWOL from placement when yet another crime has taken place I'm concerned about the continuing involvement in criminal activity and his AWOL status from placement." Appellant makes no showing that the trial court erroneously believed that section 726 mandated aggregation or "that it lacked the discretion to not aggregate." (*In re Alex N.*, *supra*, 132 Cal.App.4th at pp. 24-25.) It is presumed that the trial court was aware of and followed the applicable law in setting the maximum period of physical confinement. (See, e.g., *In re Julian R.* (2009) 47 Cal.4th 487, 499.)

Predisposition Credits

Appellant was awarded 45-days predisposition credit on the current petition. Appellant argues, and the Attorney General agrees, that appellant is entitled to an additional 51 days predisposition credit which was given on November 2, 2017 with respect to the third sustained petition. Where the trial court elects to aggregate the period of confinement on multiple petitions, the trial court must also aggregate the predisposition credits attributable to each petition. (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1232.)

Disposition

The disposition order is modified to reflect a maximum period of confinement of four years and 96-days predisposition credit. The clerk of the superior court is directed to prepare an amended May 2, 2018 disposition order to so reflect. As modified, the judgment is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Irma J. Brown, Judge

Superior Court County of Los Angeles

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

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