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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B271949
(Super. Ct. No. J1379153)
(Santa Barbara County)

THE PEOPLE,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

S.B. (minor) appeals from the judgment entered after the sustaining of juvenile wardship petitions under Welfare and Institutions Code section 602, subdivision (a). Minor admitted that he had committed misdemeanor vandalism (Pen. Code, § 594, subd. (b)(2)(A))¹ and misdemeanor trespass on railroad

¹ All statutory references are to the Penal Code unless otherwise stated.

property. (§ 369i, subd. (a).) The juvenile court found true an allegation that minor had committed first degree residential burglary, a felony. (§§ 459, 460.) The court continued minor on probation on condition that he be committed for 180 days to Los Prietos Boys Camp.

Minor contends that the juvenile court failed to exercise discretion in determining his maximum term of physical confinement and erroneously calculated that term. He also contends that certain probation conditions are vague and overbroad.²

We modify the maximum term of physical confinement and affirm in all other respects.

Maximum Term of Physical Confinement

The juvenile court was required to specify minor's maximum term of physical confinement. (Welf. & Inst. Code, § 726, subd. (d)(1).) His maximum term for first degree residential burglary is six years. (§ 461, subd. (a).) In juvenile cases, consecutive misdemeanor terms are calculated as one-third of the maximum punishment. (*In re Eric J.* (1979) 25 Cal.3d 522, 536-538; *In re David H.* (2003) 106 Cal.App.4th 1131, 1133-1134.) Thus, minor's maximum consecutive term for misdemeanor vandalism is four months (one-third the maximum punishment of one year). (§ 594, subd. (b)(2)(A).) His maximum consecutive term for misdemeanor trespass is two months (one-third the maximum punishment of six months). (§§ 19, 369i, subd. (a).)

Accordingly, the maximum aggregate term of physical confinement is six years, six months. Based on 365 days per year and 30 days per month, the maximum aggregate term is

² Because the facts underlying minor's offenses are not relevant to his contentions, we omit a summary of the facts.

2,370 days ($6 \times 365 = 2,190 + 180 = 2,370$). But the probation report states that the maximum term is 2,630 days. The juvenile court adopted the probation report's statement of the maximum term.

“Welfare and Institutions Code section 726 permits the juvenile court, in its discretion, to aggregate terms . . . on the basis of multiple counts” (*In re David H.*, *supra*, 106 Cal.App.4th at p. 1133.) Minor claims that “the court failed to exercise its discretion in determining whether or not to aggregate the three terms [one felony term and two consecutive misdemeanor terms] for the purpose of computing the maximum term of physical confinement.” The claim is forfeited because minor failed to raise it below. (*In re Travis J.* (2013) 222 Cal.App.4th 187, 201 [“In juvenile court, as in an adult criminal proceeding, a claim that the court failed to make or articulate a discretionary sentencing choice must be raised by objection in the trial court in order to preserve the claim for appeal”].)

In any event, minor has not rebutted the presumption that the juvenile court exercised its discretion to aggregate the three terms. (See *People v. Mosley* (1997) 53 Cal.App.4th 489, 496 [“general rules concerning the presumption of regularity of judicial exercises of discretion apply to sentencing issues”]; *People v. Brown* (2007) 147 Cal.App.4th 1213, 1229 [because “[e]rror may not be presumed from a silent record,” a “remand is unnecessary if the record is silent concerning whether the trial court misunderstood its sentencing discretion”].)

On the other hand, the juvenile court's miscalculation of the maximum term of confinement is unauthorized and may be corrected at any time. (See *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205 [“a sentencing court's computational

error resulting in an unauthorized sentence can be corrected at any time”]; *People v. Scott* (1994) 9 Cal.4th 331, 354 [“legal error resulting in an unauthorized sentence commonly occurs where the court violates mandatory provisions governing the length of confinement”].) We must modify the disposition order to show that minor’s maximum term of physical confinement is six years, six months.

Vague and Overbroad Probation Conditions

In his opening brief, minor challenges two probation conditions. One requires him to “[n]ot own or have in [his] possession or under [his] custody and control . . . burglary tools.” The other requires minor to “[n]ot unlawfully use or possess alcoholic beverages, marijuana or any other drugs, intoxicants or narcotics, or drug paraphernalia.” Minor claims that these conditions are unconstitutionally vague and overbroad because they do not include “a requirement of express knowledge or intent.”

After minor had filed his opening brief, our Supreme Court filed its opinion in *People v. Hall* (2017) 2 Cal.5th 494. In his reply brief, minor “recognizes that this court is bound by [*Hall*] and must therefore reject his claims.” The Supreme Court concluded that similar probation conditions are not unconstitutionally vague. (*Id.* at p. 501.) It construed the conditions as impliedly including a scienter requirement. (*Id.* at pp. 501-502.) The court declared: “Because no change to the substance of either condition would be wrought by adding the word ‘knowingly,’ we decline defendant’s invitation to modify those conditions simply to make explicit what the law already makes implicit.” (*Id.* at p. 503, fn. omitted.)

Disposition

The judgment (i.e., March 2, 2016 disposition order) is modified to show that minor's maximum term of physical confinement is six years, six months. In all other respects, the judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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