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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.M., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B293060 (Super. Ct. No. TJ21780) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. A.M., Defendant and Appellant.	

A.M. appeals orders of the juvenile court committing him to the Division of Juvenile Facilities (DJF) after dismissing a sustained count in a prior Welfare and Institutions Code section 602 petition.[1] That count for his 2015 possession-of-a-firearm-by-a-minor offense (Pen. Code, § 29610) was A.M.'s "most recent

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

offense," and it did not qualify him for a DJF commitment. (§ 733, subd. (c).) The juvenile court entered the dismissal under section 782, which made A.M. eligible for a DJF commitment after A.M., pursuant to a negotiated plea agreement, admitted committing voluntary manslaughter (Pen. Code, § 192, subd. (a)) in 2014. The California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) had previously rejected A.M.'s eligibility for a DJF commitment when it determined his most recent offense was the 2015 firearm offense. We conclude the court did not abuse its discretion by entering the dismissal order and committing A.M. to DJF. We affirm.

FACTS

On November 10, 2014, A.M. and his companion planned to rob a man during a meeting. A.M. test fired a .40 caliber semi-automatic handgun to ensure it was operable and gave the gun to his companion. A.M. and his companion went to meet the intended victim. During the attempted robbery, A.M.'s companion "racked the slide" of the gun. The intended victim heard that noise and shot A.M.'s companion, who later died at a hospital. A.M. fled from the crime scene before the police arrived.

As a result of this offense, on December 6, 2016, the People filed a section 602 petition alleging that on November 10, 2014, A.M. committed murder (Pen. Code, § 187, subd. (a)) (count 1), conspiracy to commit robbery (*id.,* §§ 211, 182, subd. (a)(1)) (count 2), and attempted second degree robbery (*id.*, §§ 664, 211) (count 3).

In the interim, on June 22, 2015, A.M. admitted the allegation of a section 602 petition that on June 3, 2015, he possessed a firearm as a minor (Pen. Code, § 29610), a felony. He was placed in the Camp-Community Placement Program. His

period of physical confinement was not to exceed three years eight months.

In January 2017, the probation department submitted a report to the juvenile court relating to the December 6, 2016, section 602 petition concerning the November 10, 2014, offense. This additional report stated, "[A.M.] IS CONSIDERED DANGEROUS BASED ON THE CIRCUMSTANCES OF THE INSTANT OFFENSE." It recommended that he "BE FOUND AN UNFIT SUBJECT TO BE DEALT WITH UNDER THE JUVENILE COURT LAW." It said that he should "REMAIN DETAINED AT JUVENILE HALL AND THAT THE CASE BE CONTINUED FOR FURTHER PROCEEDINGS IN ADULT COURT."

On February 26, 2018, the juvenile court denied the People's motion to transfer A.M. to "a Court of Criminal Jurisdiction [pursuant to section 707, subdivision (a)(1)]." It found A.M. "would be amenable to the care, treatment or training programs available through the facilities of the Juvenile Court."

On March 20, 2018, the probation department submitted a pre-plea report stating, "[A.M.] PRESENTS A SIGNIFICANT AND AN UNREASONABLE RISK TO THE COMMUNITY." While in county confinement, "[A.M.] INVOLVED HIMSELF IN MULTIPLE SERIOUS RULE INFRACTIONS THAT INCLUDED FIGHTING." He needs "ANGER MANAGEMENT COUNSELING, SUBSTANCE ABUSE COUNSELING, ANTI-GANG COUNSELING AND INDIVIDUAL MENTAL HEALTH COUNSELING." "IF RELEASED WITHOUT APPROPRIATE COUNSELING AND OTHER REHABILITATION INTERVENTIONS, [A.M.] WOULD FALL BACK INTO THE CRIMINAL LIFESTYLE."

At an April 6, 2018, hearing, the People advised the juvenile court that the parties had reached a negotiated plea agreement relating to the November 10, 2014, offense that led to the December 6, 2016, section 602 petition. The agreement provided the People would add a count 4, an allegation of voluntary manslaughter, with an occurrence date of November 10, 2014. A.M. admitted that allegation. The murder and remaining allegations of the section 602 petition (counts 1, 2, and 3) were dismissed.

The trial court sustained that section 602 petition after A.M. admitted the new count 4. A.M. was committed to DJF with a maximum confinement period of six years. The juvenile court found A.M.'s "mental and physical conditions and qualifications render it probable that he will benefit from the reformatory discipline and other treatment provided by [DJF]."

On May 25, 2018, the probation department notified the juvenile court that "DURING THE REVIEW PROCESS, DJJ HAS DETERMINED THAT [A.M.'S] MOST RECENT SUSTAINED [offense]" for possession of a firearm is not a section 707, subdivision (b) offense, "THUS, MAKING HIM INELIGIBLE FOR DJJ." Because that offense did not fall within the category of serious offenses required for a DJJ commitment (§ 733, subd. (b)), the probation department said A.M. would remain in juvenile hall until further order of court.

On August 3, 2018, the People requested the juvenile court dismiss A.M.'s "non-DJJ eligible" 2015 possession of a firearm count to make him DJJ eligible. In that brief they said that under section 733, subdivision (c), A.M. was not DJJ eligible because his most recent offense was for possession of a firearm in 2015, not his 2014 voluntary manslaughter offense. Therefore,

the dismissal, "in the interest of justice," under section 782 was required to fulfill the parties' expectations in the plea agreement. Voluntary manslaughter is a DJJ-eligible offense. (§ 707, subd, (b)(30).) The People said that if the court did not issue the dismissal order, they would ask permission "to withdraw from the manslaughter plea agreement and reinstate the dismissed murder charge because the People did not receive the benefit of its bargain." (Initial capitalization & boldface omitted.)

At the August 9, 2018, hearing, A.M. did not request the plea agreement to be set aside. His counsel argued that there was no case authority to support the People's request for the dismissal.

The juvenile court dismissed the sustained petition for A.M.'s 2015 firearm possession offense. It ruled it was making the dismissal pursuant to section 782 in the interest of justice and for the "best interest" of A.M. The court then ordered A.M. "committed to the [DJJ]." A.M. appeals both orders.

DISCUSSION

The Dismissal and Commitment Orders

A.M. contends the juvenile court improperly committed him to DJF because his latest crime was not a section707, subdivision (b) offense. He claims the court erred by trying to make him "DJF eligible" by "dismissing a count in a petition long since decided." (Capitalization & boldface omitted.)

"Section [733, subdivision] (c) provides that a juvenile may not be committed to DJF if he or she '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 or subdivision (c) of Section 290.008 of the Penal Code.' " (*In re A.O.*

(2017) 18 Cal.App.5th 390, 393, italics added.) " 'The Legislature's primary purpose in enacting the statute was to reduce the number of juvenile offenders housed in state facilities by shifting responsibility to the county level " 'for all but the most serious youth offenders.' " ' " (*Id.* at p. 396.)

Here A.M.'s manslaughter offense is listed in section 707, subdivision (b), but his firearm possession offense is not. Consequently, only the manslaughter offense made him DJF eligible. But his most recent offense was for firearm possession. The juvenile court dismissed the sustained firearm possession count in the prior section 602 petition to make the manslaughter offense his "most recent offense" and make A.M. eligible for DJF.

Abuse of Discretion

A.M. cites our decision in *In re A.O.*, *supra*, 18 Cal.App.5th 390, and contends the juvenile court erred by using the dismissal order to make him DJF eligible.

In *A.O.*, the juvenile court dismissed a count in a prior sustained petition to make the minor DJF eligible. We said, "Here, the juvenile court did not dismiss a section 602 petition at the disposition stage of the proceedings; instead, it dismissed a single count in a section 602 petition almost three years *after* disposition." (*In re A.O.*, *supra*, 18 Cal.App.5th at p. 395.) We held it erred by making that dismissal order. We said, "On the sparse record before us, it would . . . be impossible to determine whether the court's decision to dismiss the resisting charge . . . for the sole purpose of securing a DJF commitment was a proper exercise of discretion." (*Id.* at p. 397, citation omitted.) "Indeed, we do not have before us any record of the facts underlying the offense that purportedly qualifies him for a DJF commitment." (*Id.* at p. 396.) The People note that the juvenile

court in *A.O.* did not state it made the dismissal pursuant to its authority under section 782 in the interests of justice.

The People contend here, by contrast, the juvenile court was properly exercising its discretion to make a dismissal in "the interests of justice" under section 782. "[S]ection 782 specifically requires that any dismissal of a delinquency petition serve *both* 'the interests of justice *and the welfare of the minor*.' " (*In re Greg F.* (2012) 55 Cal.4th 393, 417.)

Under section 733, the minor's latest offense determines whether he or she is DJF eligible. But in *Greg F.*, our Supreme Court said, notwithstanding section 733, a juvenile court may in appropriate cases exercise its "ability to dismiss a delinquency petition under section 782." (*In re Greg F.*, *supra*, 55 Cal.4th at p. 415.) It rejected the claim that section 733 eliminated that authority and held a juvenile court acting under section 782 may dismiss a more recently sustained section 602 petition. It said the court has "discretion to dismiss a [section] 602 petition and commit a ward to DJF when, in compliance with section 782, such dismissal is in the interests of justice and for the benefit of the minor." (*Id.* at p. 402.) The "policies served by section 733 are not so unyielding they cannot tolerate *occasional exceptions* when *the severity of a minor's offenses, and the minor's own special needs*, call for a disposition that includes DJF." (*Id.* at p. 417, italics added.) "Where the *minor has previously failed* in a series of local programs, or where, as here, no local programs will accept the minor, statewide confinement in the structured setting offered by DJF *may decisively outweigh other considerations*." (*Id*. at p. 418, italics added.)

In *A.O.*, the juvenile court had simply stated that the post-dispositional dismissal order was for the purpose of making the

"minor DJJ eligible." (*In re A.O.*, *supra*, 18 Cal.App.5th at p. 396.) We said, "This is a plainly insufficient statement of reasons for the dismissal." (*Ibid.*) The juvenile court did not make findings to show it had properly exercised its discretion to make a valid dismissal under section 782. We said, "[A] dismissal under section 782 must be supported by a statement of reasons set forth in the minutes." (*A.O.*, at p. 396.) "This requirement is mandatory, not directory." (*Ibid.*) "Accordingly, the failure to comply with this requirement renders the dismissal 'without effect.' " (*Ibid.*)

Here, by contrast, the juvenile court made findings on factors our Supreme Court recognized as exceptions to the normal applicability of section 733, and findings on why a DJF commitment was particularly appropriate in this case. In *Greg F.*, the court said, "A DJF commitment is not necessarily contrary to a minor's welfare. The DJF has many rehabilitative programs that can benefit delinquent wards. . . . Some wards, like the minor here, may be best served by the structured institutional environment and special programs available only at the DJF." (*In re Greg F.*, *supra*, 55 Cal.4th at p. 417, citations omitted.)

The juvenile court here found the DJF-structured environment was necessary for A.M.'s rehabilitation. It said the result achieved by the dismissal was "in his best interest." It found making him DJF eligible would enable him to attend a "program which will give him both educational and counseling opportunities." "Those counseling opportunities are not available" in his current placement. The court said A.M. needed the "several years left" on his DJF commitment to "benefit" from those programs. It noted that he could receive "college courses"

with a DJF commitment that he could not receive with alternative placements. These findings are supported by the probation department's pre-plea report which noted the services A.M. needed. A.M.'s counsel also believed A.M. needed such services. At the April 6 hearing, he said, "My concern is getting [A.M.] started on a rehabilitative program as soon as possible."

The juvenile court also considered "the severity of [the] minor's offenses" in determining that a DJF commitment was necessary. (*In re Greg F.*, *supra*, 55 Cal.4th at p. 417.) A.M.'s offense was more serious than the offenses committed by the minors in the *A.O.* and *Greg F.* cases. It involved a person's violent death. The probation department said that A.M. was "DANGEROUS" and that he "PRESENTS A SIGNIFICANT AND AN UNREASONABLE RISK TO THE COMMUNITY." A.M. consequently was one of "the most serious youth offenders" qualified for a DJF commitment. (*In re A.O.*, *supra*, 18 Cal.App.5th at p. 396.) A.M. had not progressed in rehabilitation and he failed to learn or benefit from the services previously offered to him. The trial judge said, "I . . . decided that . . . it was appropriate for [A.M.] to be a candidate for trial in the juvenile court versus the adult court. . . . [But] [h]ad I known . . . that it was not possible to have him at DJJ, . . . it is very possible that I would have felt differently."

A.M. suggests that in *A.O.* we ruled the authority to dismiss under section 782 exists at the disposition stage, but not *after* the petition has been sustained. But that is not the case. We said that our Supreme Court had *expressly rejected* the claim that "courts have no authority to dismiss under section 782 once the allegations of the petition have been either admitted or found true." (*In re A.O.*, *supra*, 18 Cal.App.5th at p. 395.) We did,

however, note that the court did not reach the issue of the categorical validity of all post-dispositional dismissals. Instead, it raised the cautionary note that in a variety of potential contexts not before it, "[d]ismissing a [section] 602 petition *after* disposition potentially raises a host of constitutional concerns." (*In re Greg F.*, *supra*, 55 Cal.4th at p. 415.) Using such dismissals "solely" to punish the minor is not appropriate. (*A.O.*, at p. 396.) They should be avoided in cases where it would lead to a result the parties could not have anticipated. Consequently, some post-dispositional dismissals that undermine plea agreements and the reasonable expectations of the parties may be constitutionally infirm and contrary to "the interests of justice." (*Greg F.*, at p. 415.)

Here, by contrast, the juvenile court ruled this dismissal *fulfilled the reasonable expectation of the parties* and implemented their plea agreement. It said the agreement that led to the voluntary manslaughter admission was based on "having [A.M.] at DJJ" with a maximum six-year confinement period. It said this was "something that the defense advocated for" and "the People relied upon." "It was also something that this court relied upon." At the April 6 hearing, A.M.'s counsel said that "seeing that we have *resolved his case with a DJJ commitment*," the current "concern" is promptly initiating "a rehabilitative program." (Italics added.)

Moreover, the juvenile court and the parties had assumed that the voluntary manslaughter offense in the 2018 sustained petition would be A.M.'s most recent offense to qualify him for a DJF commitment. The court could reasonably infer that everyone had implicitly believed that the gun possession offense in a 2015 sustained petition would not be the relevant or operable

offense for this plea agreement. A.M.'s counsel said, "The rejection notice from DJJ caught us off guard." "It's a situation that nobody here anticipated."

The juvenile court may have believed that had the most recent offense issue been timely raised, the parties would have agreed to dismiss the gun possession count to complete the plea agreement. (*In re A.O.*, *supra*, 18 Cal.App.5th at p. 396 [prosecutors may dismiss nonqualifying offenses "as part of plea negotiations"].) The result accomplished by the court's action was consistent with its duty to enforce the plea agreement. (*In re Ricardo C.* (2013) 220 Cal.App.4th 688, 698-699.) The People note that a court may enforce "implied terms" in a plea agreement (*K.R. v. Superior Court* (2017) 3 Cal.5th 295, 304), and one of those terms was that there would be no impediment to a DJF commitment. Dismissing the gun possession count here achieved the result the parties intended, corrected their mutual mistake, and made the plea agreement, that A.M. requested, effective and enforceable. It also made the result consistent with "the actual judicial intention of the court" when it approved the plea agreement. (*Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1035.)

The juvenile court noted that if a DJF commitment was not possible, a rescission of the plea agreement would likely occur. (*People v. Superior Court (Sanchez)* (2014) 223 Cal.App.4th 567, 573.) At the hearing the prosecutor said, "If we are not getting the benefit of our agreement, then we want to rescind our agreement, and we want to take this to trial and [A.M.] can have a murder conviction on his record." The court found that possibility would not be in A.M.'s best interest. At the August 9 hearing, neither A.M. nor his counsel requested the plea

agreement to be set aside, nor did they ever express a willingness to subject the plea agreement to a rescission claim. The court said its dismissal allowed A.M. to "get the benefit of his plea bargain" instead of facing the other alternative the People mentioned.

Unlike *A.O.*, here the juvenile court carefully weighed the relevant factors, including the "severity" of the minor's offense and his "special needs." (*In re Greg F.*, *supra*, 55 Cal.4th at p. 417.) "[S]ection 782 has given juvenile courts broad discretion to dismiss delinquency petitions when a dismissal serves the interests of justice and the welfare of the minor." (*Id.* at p. 419.) A.M. notes that courts in other contexts have questioned the validity of post-dispositional dismissals. But given the unique facts of this case, he has not shown the juvenile court abused its discretion.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Catherine J. Pratt, Judge

Superior Court County of Los Angeles

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