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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.C., a Person Coming
Under the Juvenile Court Law.

B285095

(Los Angeles County
Super. Ct. No. VJ45560)

THE PEOPLE,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Fumiko Hachiya Wasserman, Judge.
Affirmed.

Courtney Selan, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Margaret E. Maxwell and Lindsay Boyd,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Juvenile defendant and appellant M.C. is a transgender male.¹ After appellant admitted to one count of robbery, the juvenile court held a contested disposition hearing. At the conclusion of the hearing, the court ordered appellant committed to a community camp placement. Appellant appeals from that placement, arguing that the court abused its discretion by failing to consider less restrictive alternatives. We find no abuse of discretion. Further, because appellant failed to raise his constitutional claims in the juvenile court, we find he has forfeited them on appeal. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I. Procedural Background

The Orange County District Attorney filed a petition under Welfare and Institutions Code section 602, charging appellant with two counts of second degree robbery (Pen. Code, § 211/212.5, subd. (c); counts one and two)², one count of second degree burglary (§§ 459, 460, subd. (b); count three), one count of evading a pursuing peace officer while driving recklessly (Veh. Code, § 2800.2; count four), and one count of misdemeanor hit and run with property damage (Veh. Code, § 20002, subd. (a);

¹Appellant testified that he identifies as male and came out as transgender in the ninth grade. The record from the trial court uses female pronouns to refer to appellant; however, we use male pronouns herein, consistent with appellant's stated preference and the parties' briefs on appeal.

²All further statutory references herein are to the Penal Code unless otherwise indicated.

count five). Appellant was 17 years old at the time of the charged incident.

Appellant admitted the robbery as alleged in count one. The juvenile court found the allegations true and dismissed the remaining counts. The court transferred the matter for disposition to Los Angeles County, appellant's county of residence.

The court held a contested disposition hearing in July 2017. At the conclusion of the hearing, the court declared appellant a ward of the juvenile court pursuant to Welfare and Institutions Code section 602. The court placed appellant in the care, custody, and control of the probation officer and ordered appellant to the camp community placement program for a term of seven to nine months. Appellant timely appealed.

II. *Evidence*

A. *Prosecution case*

The following evidence was adduced at the disposition hearing. On January 21, 2017, around 4:40 p.m., appellant, Jeremy Merriweather, and Robert P. robbed a cell phone store in Fountain Valley. Surveillance footage from the store showed the three suspects entering the store; Robert P. displayed a handgun to the employees. Appellant and Merriweather walked to the back of the store and tried to open the safe. Discovering the safe was locked, they returned to the front of the store. Appellant grabbed a store employee by the arm and pushed him into the back room to open the safe. Once the safe was open, appellant and Merriweather emptied the contents into bags, including several cell phones. Meanwhile, Robert P. took money out of the cash register as he held another store clerk at gunpoint. The suspects then fled the store.

The store employees alerted police. One of the phones taken by the suspects had a GPS tracker that allowed the police to monitor their movements as they drove from Orange County toward Los Angeles. Multiple law enforcement agencies pursued the suspects' vehicle; ultimately, Los Angeles County Sheriff's deputies followed the car until it was involved in a collision.

Footage from a news helicopter showed the crash. Afterward, appellant got out of the rear driver's side door of the car and tried to flee the scene. A gun was recovered from the car; it was later determined the gun had been stolen from a security guard in Los Angeles during a September 18, 2016 robbery committed at gunpoint by two males and one female. There was no evidence suggesting that appellant was in possession of a gun during the robbery.

Detective Brent Emerson testified to several reports identifying Merriweather and Robert P. as gang members.³ He did not have similar information regarding appellant. He opined, based on his investigation and experience, that the robbery was "well thought out, executed well." Specifically, he noted that the "entry and exit was in less than a minute" and the robbery was "performed almost without communicating" between the suspects. In addition, the fact that the robbery occurred when there were only employees in the store suggested prior surveillance.

Orange County deputy probation officer Tina Dao recommended that appellant be transferred to adult court based on the sophistication of the offense and possible gang involvement. She testified that the institutional staff who had

³At the time of the robbery, Robert P. was 17 years old. Merriweather was in his thirties.

direct contact with appellant had identified him as a potential gang member based on his tattoos, mail he had written and received, his use of the moniker “Buddah,” and association with other gang members. Dao also noted that the victims of the robbery were significantly impacted—one employee was on disability leave and reported severe bouts of paranoia as a result of the incident. In addition, Dao testified that she had considered appellant’s active role in the robbery, the severity of the offense, and the calculated, “possibly premeditated” nature of the crime. She concluded that appellant “should be supervised at a high level . . . in a detention center that offers some sort of rehabilitation program treatment.”

Appellant’s Los Angeles County probation officer, LaQuita Harvey, also testified. She spoke to two of the victims from the robbery, both of whom were in counseling, suffered from anxiety, and had not been able to return to work. She recommended that appellant be ordered to community camp placement. She noted that the recommendation was approved at several levels of the probation department. She testified about the rehabilitative services available at the camp placement, including therapeutic services dealing with gender dysphoria issues. She also acknowledged that appellant had no prior law enforcement contact or arrests.

B. *Defense case*

The defense presented the testimony of clinical psychologist Dr. Robert Rome. Dr. Rome performed a psychological evaluation of appellant on June 20, 2017. He diagnosed appellant with unspecified adjustment disorder with gender dysphoria. Dr. Rome testified that appellant identified as male. In the “highly gender classified situation of juvenile hall,” where appellant was

grouped with females, appellant's gender dysphoria resulted in withdrawal, feelings of low self esteem, and depression. At the time of the evaluation, appellant had been detained in juvenile hall for five months. Dr. Rome recommended that appellant should be sent home on probation, given his isolation and segregation in a juvenile hall environment. Although Dr. Rome acknowledged that a camp placement would "generally be appropriate" and appellant's learning disability and therapy needs could be addressed there, he believed that appellant's gender dysphoria would make him "extremely uncomfortable" in a camp setting. He acknowledged this situation was unusual, and that he "normally would not recommend a disposition in this kind of case of simply going home on probation." He did not review the police report or surveillance footage in this case.

Appellant's mother and father testified. His mother stated that she had a close relationship with appellant and that she had never had any problems with appellant's behavior. Appellant's mother stated that "Buddah" was a family nickname for appellant. She also described incidents where appellant was bullied at school when he began to transition his appearance.

Appellant testified on his own behalf. He acknowledged that he had made "wrong choices" by "trying to follow the crowd" and "fit in," including trying to fit in with Robert P., his cousin. The day of the robbery, appellant thought they were going to get something to eat. When they pulled up to the cell phone store, Robert P. and Merriweather "let me know what the plan was" and said that even if appellant did not go into the store, he would still be charged if they were caught. According to appellant, they told him he did not have a choice, so "I just followed their lead." He did not have a phone or a car and did not want to be stranded

in Orange County. Appellant also testified about being bullied, starting in ninth grade. He denied being a gang member.

C. Court's ruling

The court ordered community camp placement, finding it to be the least restrictive alternative. The court noted it did not find appellant's testimony "completely credible." The court further found it was a "matter of immediate and urgent necessity for the protection of the minor and the person and property of others that the minor be detained."

DISCUSSION

I. No Abuse of Discretion to Order Camp Placement

Appellant contends the trial court abused its discretion in ordering camp placement instead of a less restrictive alternative. In particular, appellant points to his lack of a prior criminal record and the hardships he would face as a transgender male in a female camp. We find no abuse of discretion.

"We review a juvenile court's commitment decision for abuse of discretion, indulging all reasonable inferences to support its decision." (*In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1320.) "[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered." (*In re Carl N.* (2008) 160 Cal.App.4th 423, 432.) An appellate court will not lightly substitute its decision for that of the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617, disapproved on other grounds by *Nikolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 115, fn. 20.) "In determining whether there was substantial evidence to support the commitment, we must examine the

record presented at the disposition hearing in light of the purposes of the Juvenile Court Law.” (*In re Carl N.*, *supra*, 160 Cal.App.4th at p. 432.)

“Minors under the juvenile court’s jurisdiction must receive the care, treatment, and guidance consistent with their best interest and the best interest of the public. ([Welf. & Inst. Code,] § 202, subd. (b).) Additionally, minors who have committed crimes must receive the care, treatment, and guidance that holds them accountable for their behavior, is appropriate for their circumstances, and conforms with the interest of public safety and protection. (*Ibid.*) This guidance may include punishment that is consistent with the rehabilitative objectives. (*Ibid.*)” (*In re Oscar A.* (2013) 217 Cal.App.4th 750, 756.)

Appellant argues that he should have been given “the opportunity to benefit from lesser restrictions before greater restrictions are imposed upon him.” But the juvenile court is not required in all circumstances to attempt the least restrictive option (home placement under supervision) before proceeding through progressively more restrictive disposition orders. (*In re Ricky H.* (1981) 30 Cal.3d 176, 183 [“there is no absolute rule that a Youth Authority commitment should never be ordered unless less restrictive placements have been attempted”].) Instead, the court must determine based on the evidence whether the purposes of the juvenile court law could be accomplished by placement of appellant in a less restrictive facility. (*Id.* at p. 184.) The juvenile court here expressly found that the least restrictive alternative supported by the evidence was camp placement.

There is substantial evidence in the record to support the court’s conclusion. The court heard testimony regarding the

seriousness of the crime—that appellant and the other suspects robbed several store employees at gunpoint—and appellant’s active role in the robbery. Although appellant testified that he did not know of the plan to rob the store and merely followed along out of fear, the surveillance video showed him grabbing and pushing an employee to open the safe, and then filling a bag with stolen items. Prosecution witnesses also discussed the apparent planning and sophistication of the crime. Further, appellant’s flight required pursuit by several law enforcement entities and ended in a collision, from which appellant attempted to flee on foot. There was also evidence that appellant was either in a gang or associated with gang members. Based on these circumstances, two probation officers recommended placement in a restrictive setting. Indeed, appellant’s own expert acknowledged that he would not normally recommend probation under the circumstances, and did so in this case based on information received from appellant and defense counsel, without reviewing the police report or surveillance footage. The court also found appellant’s testimony was not entirely credible.

There is no suggestion from the record that the juvenile court improperly ignored appellant’s gender dysphoria or his lack of criminal record. Instead, appellant argues the court should have weighed these factors more heavily. But the juvenile court was entitled to weigh the seriousness of the crime, appellant’s credibility, the recommendation of the probation officers regarding his need for strict guidance and services, the testimony regarding his gender dysphoria, and all of the other evidence. Notably, in her testimony, appellant’s probation officer specifically discussed the availability of therapy at the camp

related to gender dysphoria issues.⁴ Under these circumstances, it was not an abuse of discretion for the court to order appellant's placement in camp.

II. *Appellant's Constitutional Arguments are Forfeited*

Appellant also contends that his placement in a female community camp violated his constitutional rights under the First, Eighth, and Fourteenth Amendments. He concedes that he did not raise any of these objections in the trial court.⁵ "It is elementary that [appellant] waived these claims by failing to articulate an objection on federal constitutional grounds below." (*People v. Burgener* (2003) 29 Cal.4th 833, 886; see also *People v. Gamache* (2010) 48 Cal.4th 347, 403 [forfeiting Eighth Amendment claim]; *People v. Alexander* (2010) 49 Cal.4th 846, 880, fn. 14 [forfeiting 14th Amendment equal protection claim]; *In re M.H.* (2016) 1 Cal.App.5th 699, 703 [forfeiting First Amendment claim].)

⁴As such, we reject as unsupported appellant's argument that the placement in camp was more punitive than rehabilitative given his transgender identity. Despite this claim, appellant acknowledged that the camp placement "is neither 'torturous' nor is it without providing some means of support for its transgender residents."

⁵With respect to his Eighth Amendment claim, appellant states, without further explanation, that while he did not argue the issue "per se," his counsel's closing arguments at disposition "support a finding by this Court the matter was adequate raised [*sic*]." We find nothing in counsel's argument that would sufficiently raise an objection based on cruel and unusual punishment under the Eighth Amendment. Nor does appellant point us to any specific language.

Alternatively, appellant argues that his attorney's failure to preserve these claims constituted ineffective assistance of counsel. This claim also fails.

"In order to establish a claim of ineffective assistance of counsel, defendant bears the burden of demonstrating, first, that counsel's performance was deficient because it 'fell below an objective standard of reasonableness . . . under prevailing professional norms.' (*Strickland v. Washington* [1984] 466 U.S. 668, 688 [Citation.]) Unless a defendant establishes the contrary, we shall presume that 'counsel's performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy.' (*People v. Carter* (2003) 30 Cal.4th 1166, 1211 [Citation.]) If the record 'sheds no light on why counsel acted or failed to act in the manner challenged,' an appellate claim of ineffective assistance of counsel must be rejected 'unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation.' [Citations.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 745-746.)

"Finally, prejudice must be affirmatively proved; the record must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (*People v. Bolin* (1998) 18 Cal.4th 297, 333; see also *Strickland v. Washington*, *supra*, 466 U.S. at p. 689 ["A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."]; *People v. Fosselman* (1983) 33 Cal.3d 572, 581 [on appeal, a conviction will be reversed on the ground of ineffective assistance of counsel "only if the record on appeal affirmatively

discloses that counsel had no rational tactical purpose for his act or omission”].)

Apart from requesting that this court “consider the facts on their face as they have been presented in briefing under the principles of *Strickland*,” appellant makes no showing how his trial counsel’s failure to object fell below an objective standard of reasonableness, nor of any resulting prejudice. Accordingly, he has failed to meet his burden to demonstrate ineffective assistance of counsel. (See *People v. Williams* (1997) 16 Cal.4th 153, 206 [“Points ‘perfunctorily asserted without argument in support’ are not properly raised.”].)

DISPOSITION

The judgment is affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

MICON, J.*

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