Filed 8/30/12 In re Christian R. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHRISTIAN R., a Person Coming Under the Juvenile Court Law.	B236802 (Los Angeles County Super. Ct. No. VJ41013)
THE PEOPLE, Plaintiff and Respondent, v. CHRISTIAN R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Heidi Shirley, Temporary Judge. Affirmed as modified.

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Lea Rappaport Geller, 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, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

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Christian R. appeals from the order declaring him a ward of the juvenile court and placing him home on probation based on a finding that he committed the crime of possession of marijuana for sale in violation of Health and Safety Code section 11359. He contends that the evidence is insufficient to support the finding that he possessed marijuana for sale and that the juvenile court should not have set a maximum term of physical confinement. We modify the order to strike the maximum term of physical confinement and, as modified, affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Welfare and Institutions Code Section 602 Petition*

A Welfare and Institutions Code section 602 petition, filed on April 15, 2011 and amended on September 1, 2011, alleged that on February 2, 2011 Christian committed the crimes of possession of marijuana for sale (Health & Saf. Code, § 11359) and possession of marijuana on school grounds (Health & Saf. Code, § 11357, subd. (e)). Christian denied the allegations.

2. *The Adjudication Hearing*

At the adjudication hearing, Maywood Academy High School teacher Fred Villanueva testified that on February 2, 2011 he saw Christian wandering the school halls after classes had begun. He brought Christian to the dean's office, where he found nine sealed bags of marijuana inside Christian's backpack. Each bag contained roughly one gram of marijuana, and the nine bags had a combined weight of 8.3 grams. Villanueva turned the bags of marijuana over to Officer Jason Muck, the resident police officer at the high school. Based on his training and experience in narcotics-related crimes, Officer Muck opined that Christian possessed the marijuana with an intent to sell because the drugs were packaged in equal amounts of small quantities in separately sealed bags. The marijuana was not in one larger bag or accompanied by drug paraphernalia, such as a pipe or lighter, which would indicate personal use. Officer Muck also opined that Christian carried only six or seven dollars in cash because he was found early in the school day before having a chance to sell the marijuana.

Christian presented no evidence in defense.

3. *The Juvenile Court's Findings and Disposition*

After hearing the evidence, the juvenile court found true the allegation in the petition that Christian had possessed marijuana for sale. The court dismissed the additional count for possession of marijuana on school grounds. The court declared the possession for sale offense a felony and Christian to be a ward of the court, placing him at home on probation. It set a maximum term of physical confinement of three years. Christian timely appealed.

DISCUSSION

1. *Substantial Evidence Supports the Adjudication Finding*

Christian argues the evidence is insufficient to support the juvenile court's finding that he committed the offense of possession of marijuana for sale. We disagree.

The standard of review on appeal for sufficiency of evidence in adult cases governs in juvenile cases as well. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) In evaluating whether the evidence is sufficient to support a conviction, we "review the whole record in the light most favorable to the judgment . . . to determine whether it discloses substantial evidence—that is, evidence [that] is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We draw all reasonable inferences in favor of the trier of fact's conclusion, whether based on direct or circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

"'Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.]' [Citations.]" (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.) Intent to sell can be established by circumstantial evidence. (*Ibid*.) Further, an experienced police officer may give his or her opinion that a defendant possesses a controlled substance for sale based on its quantity and packaging. (*Id*. at pp. 374-375.)

According to the evidence, Christian had nine sealed bags of marijuana in his backpack, each containing roughly a gram of marijuana. Officer Muck testified that

marijuana sellers generally package the drug in small quantities in sealed bags, rather than in one larger bag. Officer Muck also opined that paraphernalia such as a pipe or lighter usually would accompany marijuana that was intended for personal use, and Christian did not possess such items. Viewing this evidence and all reasonable inferences in the light most favorable to the juvenile court's finding, substantial evidence supports the conclusion that Christian intended to sell the marijuana.

Christian contends that the evidence does not support the sale aspect of the offense because he did not possess paraphernalia, such as scales or small bills, used in the sale of marijuana and school administration did not see him approach students to initiate a sale. Nor, according to Christian, could a sale take place in the school hallway where he was found because it did not provide cover for the sale of drugs. Christian, however, draws his own inferences from the evidence to claim that he must have possessed the marijuana for personal use, rather than for sale. We, however, must draw inferences in favor of the juvenile court's finding. (*People v. Kraft*, *supra*, 23 Cal.4th at p. 1053.) Moreover, Christian's hypotheses regarding the evidence do not negate the substantial evidence to support the juvenile court's finding of possession with intent to sell based on the officer's testimony and the quantity and packaging of the marijuana in his possession.

2. *The Maximum Term of Physical Confinement Should Be Stricken*

Christian argues that the maximum term of physical confinement imposed by the juvenile court should be stricken because he was placed at home on probation and not removed from parental custody. We agree.

Welfare and Institutions Code section 726, subdivision (c), provides: "If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." "'Physical confinement' means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution

operated by the Youth Authority." (Welf. & Inst. Code, § 726, subd. (c).) A maximum term of physical confinement thus is appropriate only when a minor is removed from the custody of his parents. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573.)

Because the juvenile court placed Christian at home on probation, and did not remove him from parental custody, a maximum term of physical confinement does not apply in this case. We, therefore, strike the three-year maximum term of physical confinement. (See *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

DISPOSITION

The order is modified to strike the three-year maximum term of physical confinement. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.