Filed 1/10/13 In re O.R. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re O.R., a Person Coming Under the Juvenile Court Law.	B239584 (Los Angeles County Super. Ct. No. PJ48623)
THE PEOPLE, Plaintiff and Respondent, v. O.R., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Morton Rochman, Judge. Modified, and as modified, affirmed.

Adrian K. Panton, 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.

INTRODUCTION

The juvenile court sustained a petition filed under Welfare and Institutions Code section 602 alleging two counts of second degree robbery against minor and appellant O.R. Although he was ordered home on probation, the court set a maximum term of confinement. Because that term of confinement has no legal effect, we modify the judgment by striking the term of confinement, and we affirm the judgment as modified.

BACKGROUND

I. Factual background.

On November 23, 2011, Carlos Velasquez was at a high school playing soccer with his friend, Aaron Berger. The minor asked them for money so that he could get a ride home, but Velasquez said he didn't have any cash. After engaging in some small talk, the minor walked away but he returned with two men, one of whom held a knife. The minor told Velasquez and Berger to turn over anything they had. Berger gave them a phone and cash, and Velasquez gave them his phone and keys. The minor and his companions drove away in Velasquez's car. Police officers later saw the minor in Velasquez's stolen car.

II. Procedural background.

On October 25, 2011, a petition under Welfare and Institutions Code section 602 was filed alleging two counts of second degree robbery (Pen. Code, § 211). On March 1, 2012, the juvenile court sustained the petition and set the maximum term of confinement at six years four months. The minor was declared a ward of court and ordered home on probation.

DISCUSSION

I. The maximum term of confinement must be stricken.

The minor correctly contends that the maximum term of confinement should be stricken. Under section 726, subdivision (c) of the Welfare and Institutions Code, an order of wardship shall specify the maximum term of imprisonment, if the minor is removed from the physical custody of his or her parent or guardian. Where, as here, the minor is *not* removed from his guardian's physical custody but the court nonetheless sets

a maximum term of confinement, the term has "no legal effect." (*In re Ali A.* (2006) 139 Cal.App.4th 569, 574.) The three-year maximum time of confinement must therefore be stricken from the disposition.[1] (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541-542; but see *Ali A.*, at p. 573 [finding it unnecessary to strike the term of confinement].)

II. Custody credits.

At the disposition hearing, the juvenile court did not specify how many days of credit were awarded and instead ordered the probation department to calculate them. The minor now contends he is entitled to 134 days of custody credits. A minor, however, "is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing." (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067; see also Welf. & Inst. Code, § 726, subd. (c).)[2] Because the maximum term of confinement was improperly imposed and is being stricken, the minor is not entitled to custody credits.

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[1] Because we strike the term of confinement, we need not address the minor's additional contention that it should have been six years rather than six years four months.

[2] *In re Harm R.* (1979) 88 Cal.App.3d 438, cited by the minor as support for his position he is entitled to custody credits, is not on point. The minor in *Harm R.* spent time in juvenile hall in between placements, and therefore he was entitled to credit for the time spent in juvenile hall.

DISPOSITION

The judgment is modified to strike the six years four months maximum term of confinement, and the judgment is affirmed as modified.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.