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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.A., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B285368
(Super. Ct. No. TJ21085)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

On July 12, 2016, a petition was filed pursuant to Welfare and Institutions Code section 602, former subdivision (a),¹ alleging that appellant D.A., a minor, committed robbery (Pen. Code, § 213, subd. (b)) (the “first petition”). Following a

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

dispositional hearing, the juvenile court ordered appellant suitably placed on the sustained first petition.

In another petition, filed on August 30, 2016, it was alleged that appellant committed assault upon a peace officer (Pen. Code, § 245, subd. (c)) (the “second petition”). The juvenile court found the alleged assault to be true, sustained the second petition, and ordered appellant to remain detained in juvenile hall. Appellant entered into a plea agreement whereby the juvenile court would dismiss the sustained second petition if appellant did not engage in any assaultive behavior while placed at the Dorothy Kirby Center.

Thereafter, appellant was involved in a fight with other minors. Appellant submitted a letter to the juvenile court admitting the altercation and stating there was no excuse for his actions.

At a continued dispositional hearing on the second petition, the juvenile court declined to dismiss the petition pursuant to the plea agreement. Appellant contends the juvenile court violated his federal and state constitutional due process rights by denying him an evidentiary hearing to determine his compliance with the plea agreement. The record reflects, however, that the court continued the dispositional hearing for the specific purpose of allowing appellant to address whether the second petition could be dismissed. We conclude the court did not abuse its discretion by refusing to grant appellant a further continuance. We also conclude that any purported error was harmless. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On March 19, 2017,² an individual approached appellant at a church service and began to disrespect his gang. Appellant stood up and moved towards the individual “in an aggressive manner while ignoring staff’s instructions to stop and return to his seat.” Appellant then engaged in a “mutual fight” with the individual. Other minors joined in the altercation. Appellant “failed to follow staff instructions during the incident requiring the use of physical interventions in order to regain control”

On April 10, appellants’ probation officer filed a section 778 petition requesting that appellant be placed at home on probation. The juvenile court granted the request.

Appellant’s mother notified the probation officer that appellant left home without permission on June 21. Appellant subsequently was arrested and detained in juvenile hall.

On August 9, the juvenile court placed appellant in a Community Detention Program. Appellant removed his ankle bracelet and left home without permission. Once again, appellant was arrested and detained in juvenile hall.

On September 7, the parties appeared for disposition of the second petition. Defense counsel asked for a continuance until September 26 to address the issue of whether the juvenile court could dismiss the second petition. The court granted the request. The prosecutor stated he needed “to look further” into whether appellant had violated the terms of his plea agreement.

When the parties appeared on September 26, the juvenile court stated it was not inclined to dismiss the second petition. Defense counsel asserted that appellant had fulfilled his obligations under the plea agreement because even if the fight in

² All dates are in 2017 unless otherwise stated.

the church did occur, “it was either mutual combat or self-defense, which would not be a violation” Defense counsel requested “an actual hearing on the disposition.” He wished to identify the witnesses who were present at the fight and who reported on it so that they could be called to testify at a formal hearing.

The juvenile court replied that it had already continued the hearing and asked if either party had subpoenaed witnesses. Neither party had done so. The court also noted that “neither party asked the court to order in any representative from probation.” The court expressed doubt, based on the documented incidents, that “any representative from any facility . . . could . . . testify in a manner that would change the facts that exist at this time.”

The prosecutor argued that appellant’s conduct during the fight in the church was a clear violation of the plea agreement. The prosecutor did not believe any witnesses needed to be called because the documentary evidence would suffice. Defense counsel responded that a dispositional hearing was required because the probation officer’s report was inadmissible. He also reiterated that appellant’s behavior did not constitute an assault because he was provoked.

The juvenile court found “no good cause to continue the hearing.” It noted the matter was initially set for hearing on September 7 and was continued to September 26 at appellant’s request. Appellant did not follow up with a formal motion to continue the hearing and was unprepared to proceed on September 26. The court found, based on the evidence before it, that appellant had failed to comply with the plea agreement. It noted that “at no time has [appellant] earned the right to have

the petition dismissed.” The court placed appellant under the supervision of the probation department for referral to the Camp Community Placement Program for seven to nine months.

DISCUSSION

Appellant contends the juvenile court violated his state and federal constitutional due process rights when it failed to hold an evidentiary hearing to assess his compliance with the plea agreement. The People respond that appellant neglected to file the requisite written notice of his request for a continuance of the hearing, that appellant failed to make a sufficient showing of good cause for a continuance, and that any purported error was harmless. We agree with the People.

Failure to Comply with Section 682

Appellant’s arguments are based on the misconception that the juvenile court did not afford him an opportunity for an evidentiary hearing. At defense counsel’s request, the dispositional hearing scheduled for September 7 was continued to September 26 to address whether the second petition could be dismissed. Appellant was unprepared, however, to present evidence on that date. Instead, he asked for a second continuance.

Section 682, subdivision (a) provides: “To continue any hearing relating to proceedings pursuant to Section 601 or 602, regardless of the custody status of the minor, beyond the time limit within which the hearing is otherwise required to be heard, a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing good cause for the continuance.”

It is undisputed appellant did not comply with this statute when he requested a second continuance of the hearing. This lack of compliance supports the juvenile court's decision to deny the request.

No "Good Cause" for a Second Continuance

"A continuance shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on the motion. Neither stipulation of the parties nor convenience of the parties is, in and of itself, good cause." (§§ 682, subd. (b), 700; Cal. Rules of Court, rule 5.550(a)(2).) "The determination of whether good cause exists is left to the sound discretion of the trial court." (*In re Maurice E.* (2005) 132 Cal.App.4th 474, 481; *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.)

The standard for "good cause" in a juvenile case is the same as in an adult criminal court. (*In re Maurice E.*, *supra*, 132 Cal.App.4th at pp. 480-481.) "To support a continuance motion to secure a witness's attendance . . . , a showing of good cause requires a demonstration, among other things, that the defendant exercised due diligence to secure the witness's attendance." (*People v. Wilson* (2005) 36 Cal.4th 309, 352.)

Here, appellant failed to demonstrate due diligence in securing the testimony of witnesses he believed necessary to show his compliance with the plea agreement. On September 7, the court continued the hearing for 19 days so that appellant could fully address whether the second petition could be dismissed. The court informed appellant of the evidence it would be considering so that they would "be able to have a comprehensive discussion on what was discussed [during the plea agreement] and how that falls into the incident reports that

probation documents during [appellant's] time at Dorothy Kirby.” But appellant did not attempt to locate any witnesses within that 19-day period. Instead, he asked for a further continuance for that purpose. The court’s decision that appellant had failed to show good cause for the continuance was not “outside the bounds of reason.” (*People v. Fuiava* (2012) 53 Cal.4th 622, 650; *People v. Wilson, supra*, 36 Cal.4th at p. 352.)

Any Error was Harmless

Even if the trial court did commit error, appellant has failed to show that it is reasonably probable that an outcome more favorable to him would have occurred in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 837; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1549.) Appellant maintains that because the trial court denied his request for a second continuance, he was unable to prove he did not engage in assaultive behavior. But his own letter to the court conceded he had engaged in such behavior. He stated: “[A]s you know I was involved in an incident that led to further altercations. I understand that my reaction could have been different. There is no excuse for my actions and I absolutely understand. I’ve had a lot running through my head and at the time I couldn’t express my feelings and the anger led me to respond not using a wise mind. Since this event I have apologized to the church volunteers, staff and even minors for this because I know people expect more from me[,] I honestly feel like I let a lot of people down including you[,] your honor.”

Appellant contends the denial of his continuance request could not have been harmless because the only evidence before the juvenile court was inadmissible hearsay in the probation officer’s report. He is incorrect. Hearsay evidence is admissible

in the dispositional phase of juvenile cases. (*In re Vincent G.* (2008) 162 Cal.App.4th 238, 244; §§ 281, 706.) Moreover, a minor has no right to cross-examine the probation officer who prepared the report. (*In re Romeo C.* (1995) 33 Cal.App.4th 1838, 1843.) In light of the overwhelming evidence demonstrating that appellant violated his plea agreement, we conclude any error in denying the continuance request was harmless.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Denise McLaughlin-Bennett, Judge
Superior Court County of Los Angeles

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Appeal, for Defendant and Appellant.

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