Filed 8/4/17 In re V.N. CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| In re V.N., a Person Coming Under the Juvenile Court Law.<br>_____<br>THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>V.N.,<br><br>Defendant and Appellant. | B272025<br><br>(Los Angeles County Super. Ct. No. TJ20729) |

APPEAL from an order of the Superior Court of Los Angeles County, Kevin Brown, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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V.N. (born in April 1997) appeals from an order of the juvenile court that he obtain competency education services from the regional center. His notice of appeal specifically challenges the jurisdiction of the juvenile court. Appellant's appointed counsel filed a no-issue brief under *People v. Wende* (1979) 25 Cal.3d 436.[1] We notified appellant of his right to respond, but received no response.

The record on appeal shows that a Welfare and Institutions Code section 602[2] petition was filed against appellant in 2013, alleging receipt of stolen property and attempted second degree burglary. (Pen. Code, §§ 496, subd. (a), 664, 459.) Entry of judgment was deferred,[3] and appellant was placed home on

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[1] In case No. B280449, appellant filed a companion petition for writ of habeas corpus challenging the same order on the same ground. By order dated February 27, 2017, we indicated that the petition would be considered together with this appeal. The petition has been considered and is denied by separate order filed this date.

[2] Further undesignated statutory references are to the Welfare and Institutions Code.

[3] Section 970 et seq. authorizes the juvenile court, "under specified conditions, and upon the minor's admission of the allegations of the petition, to place the minor on probation without adjudging him or her to be a ward of the court. [Citations.] If the minor fails to perform satisfactorily, the court may 'lift the deferred entry of judgment,' impose the 'judgment previously deferred,' and make an appropriate dispositional order. [Citations.] If judgment is *not* so imposed—i.e., if the minor performs satisfactorily—the admission of the charges 'shall not constitute a finding that a petition has been sustained for any purpose.' [Citation.] Instead, the charges 'shall be dismissed,'

informal probation.

A second section 602 petition was filed in May 2015, alleging that in January of that year appellant had committed vandalism, causing damage of over $400. (Pen. Code, § 594, subd. (a).) The second petition was filed under the same case number as the first, but was assigned to a different department. In September 2015, appellant's counsel declared a doubt about appellant's competence. An Evidence Code section 730 evaluation was ordered, and proceedings were suspended. In November 2016, Judge Kevin Brown in Department 250 found appellant incompetent to stand trial on the second petition.

On March 1, 2016, Judge Donna Q. Groman in Department 261 held a progress report hearing on the first petition. The judge began by observing that appellant had "completed everything for our case" but that he had "pick[ed] up an adult case for which he [is] on summary probation now."[4] The judge commented that "we don't need to find that he successfully

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'the arrest upon which the judgment was deferred shall be deemed never to have occurred,' and 'any records in the possession of the juvenile court shall be sealed, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether a minor is eligible for deferred entry of judgment pursuant to Section 790.' [Citation.]" (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308, fn. omitted.)

[4] The record on appeal contains no evidence of an adult case. In any event, "[t]here is nothing inherently inconsistent in concluding that a minor should be tried in adult court for offenses committed when he is older, but retaining juvenile jurisdiction for purposes of earlier acts." (*In re Kasaundra D.* (2004) 121 Cal.App.4th 533, 542 (*Kasaundra D.*).)

completed deferred entry of judgment because he picked up the adult case. But I don't see a need to keep him on both supervision." The prosecutor agreed, noting that appellant would turn 19 in April 2016, and "the court has done all that they can for this young man. . . . Now he is in adult court and will have to take his chances there." Judge Groman then stated: "So People move to dismiss the petition and I will not order the record sealed. He will need to go through the regular sealing process unless you want me to go ahead and find that he successfully completed deferred entry of judgment." The prosecutor urged the judge to seal the record, and the judge ruled: "So the court will find the minor has successfully completed deferred entry of judgment and pursuant to [§ 793, subd. (c),] I'll order the petition dismissed and the record sealed."

The minute order of the hearing states that the June 2013 petition was dismissed with prejudice, and that the case was dismissed and sealed under section 793, subdivision (c). The order does not show that jurisdiction was terminated.

On March 21, 2016, Judge Brown in Department 250 held a progress report hearing on the second petition. The judge noted that according to the probation report, appellant was eligible for regional center services. Judge Brown found that there was "substantial probability" that appellant "can attain competency through the regional center," ordered the center to provide "competency education services," and ordered appellant and his father to report to the center and cooperate. The court continued the matter for a progress report on competency.

Throughout the hearing, appellant's attorney objected that the juvenile court no longer had jurisdiction, citing *Kasaundra D.*, *supra*, 121 Cal.App.4th 533. In that case, this division held

that where three juvenile delinquency petitions were "filed under the same superior court case number, an order terminating jurisdiction issued by the judicial officer presiding over proceedings on two petitions requires proceedings on the other petition to cease." (*Id.* at p. 535.) The court noted that juvenile petitions are generally filed under the same case number, and a ruling on one petition may impact another. (*Id.* at pp. 540–541.) The judicial officer handling the first two petitions terminated jurisdiction over the appellant on the grounds that she had turned 19 and had not been supervised or arrested since the filing of the third, yet unadjudicated, petition two years earlier. (*Id.* at pp. 537, 542.) The judicial officer handling the third petition disagreed, ruled that the order terminating jurisdiction had no effect on the unadjudicated petition, and proceeded to adjudicate it. (*Id.* at p. 538.) The appellate court reasoned that an appeal would have been the proper vehicle for challenging the order terminating jurisdiction and that one judicial officer may not second-guess another. (*Id.* at p. 542.)

In support of her contention that the juvenile court lacked jurisdiction, appellant's attorney offered a three-page document, identified on the record as defense exhibit A, which memorialized some of the proceedings in Department 250.[5] According to both the prosecution and the court, defense exhibit A showed only that

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[5] Defense exhibit A has not been lodged on appeal. At the March 21, 2016 hearing, one of the documents in the exhibit was described as a "juvenile court register of action." It reflected that department 261 had been advised of the finding of incompetency in department 250. Another document was described as incorrectly citing to Penal Code section 793, subdivision (c) in dismissing and sealing the petition that was subject to deferred entry of judgment.

Department 250 had dismissed and sealed the first petition, on which deferred entry of judgment had been granted. The exhibit did not show Department 250 had terminated jurisdiction or taken any action regarding the second petition, which was pending in Department 261. In contrast, appellant's counsel argued: "My understanding is that when [deferred entry of judgment] terminates it says also that the terminated case is dismissed. [Deferred entry of judgment] terminated with prejudice. . . . [A]nd it was sealed. So it seems that all petitions pertaining to that case number . . . would then be terminated with regards to jurisdiction. As such, pursuant to [*Kasaundra D.*], I believe this court no longer has jurisdiction to this petition under this case number." The court disagreed, stating that under section 793, subdivision (c), upon the minor's satisfactory performance, the court had no discretion to do anything other than dismiss the charges in the petition on which deferred judgment had been granted and seal the record.

Section 793, subdivision (c) neither requires, nor authorizes terminating jurisdiction. Rather, it states that if the minor has performed satisfactorily, "the charge or charges in the wardship *petition* shall be dismissed" and the records sealed. (§ 793, subd. (c), italics added.) In her final ruling under that statute, Judge Groman did not state that she was terminating jurisdiction, and the box on the minute order for terminating jurisdiction was not checked. *Kasaundra D.*, *supra*, 121 Cal.App.4th 533, therefore, is distinguishable.

Having reviewed the record on appeal under *People v. Kelly* (2006) 40 Cal.4th 106, we find no arguable issues warranting reversal and affirm the order.

## DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MNAELLA, J.