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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re Jorge G., A Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JORGE G., Defendant and Appellant.	A172001 (San Mateo County Super. Ct. No. 21-JW-0378)

Jorge G. was committed to a secure youth treatment facility after he pled no contest to murder for acts he committed when he was 14 years old. The juvenile court conducted six-month review hearings pursuant to Welfare and Institutions Code section 875, and declined to reduce his baseline term of confinement.[1] This appeal arises from the juvenile court's order on November 21, 2024, declining to reduce Jorge's baseline term at his fourth six-month review hearing. We find no error and affirm.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

In January 2019, two groups arrived at an elementary school parking lot under the false pretense of conducting a marijuana transaction. Each group arrived with the intent to rob the other. As part of this ruse, the 17-year-old victim got into a vehicle but fled after he was struck on the head. As the victim was fleeing, then 14-year-old Jorge and another member of his group fired at the victim, who was shot twice. One bullet struck the victim's left hip. The bullet that killed the victim struck him in the back. After a lengthy investigation, Jorge was arrested in November 2021.[2]

In September 2022, Jorge pled no contest to count 1, which charged him with second degree murder in violation of Penal Code section 187, subdivision (a). The juvenile court determined that Jorge's maximum term of confinement was until his 25th birthday in 2029. Under section 875, subdivision (c)(1), a ward's maximum term of confinement "represent[s] the longest term of confinement in a facility that the ward may serve."

In November 2022, the juvenile court declared Jorge a ward of the court and committed him under section 875 to a secure youth treatment facility. Using guidelines that were in effect at the time, the juvenile court set Jorge's baseline term of confinement at seven years. (§ 875, subd. (b)(1); Cal. Code Regs., tit. 9, § 30807.) Section 875, subdivision (b)(1), defines a ward's baseline term of confinement as "the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community."

[2] The facts in this paragraph are drawn from a report prepared by the probation department in advance of Jorge's disposition hearing and cited by Jorge on appeal in his description of the facts of his underlying offense.

In May 2023, the juvenile court held Jorge's first six-month review hearing and did not modify Jorge's baseline term of confinement. In January 2024 and May 2024, respectively, the juvenile court held Jorge's second and third six-month review hearings and denied Jorge's requests to reduce his baseline term.

On June 26, 2024, the juvenile court held a hearing to determine Jorge's baseline term of confinement after California Rules of Court, rule 5.806 changed the baseline term for murder from seven years to a range of four to seven years.[3] After briefing and hearing from counsel, the juvenile court selected a lower baseline term of five years, noting the criteria and factors it deemed relevant. Among other things, the juvenile court "considered the confinement time considered reasonable and necessary to achieve the rehabilitation of the youth[,] the amount of time the youth has already spent in custody for the current offense[,] . . . and any progress made by the youth in programming and development." The juvenile court noted "He has been in custody for the last two years and seven months. And during this time, the record will reflect that he has made tremendous progress in programming and development."

In advance of his fourth six-month review hearing, in November 2024, Jorge filed another request to reduce his baseline term, which the prosecutor opposed. In connection with the hearing, the probation department submitted a report to the juvenile court that stated: "Despite [Jorge's] generally compliant behavior, he incurred two serious rule violations during this review period. On August 18, 2024, [Jorge] was found in possession of explicit photos of a person he identifies as his girlfriend; as a result, he

[3] All undesignated references to rules are to the California Rules of Court.

received a 'zero.' On November 1, 2024, [Jorge] was observed communicating with his girlfriend and another party via a messaging service on his laptop; as a result, some of his laptop privileges were temporarily suspended." The report noted that "this officer is not opposed should the Court consider a downward adjustment to [Jorge's] baseline term."

At the review hearing, the juvenile court acknowledged the probation department's recommendation, but did not agree with it. The juvenile court stated: "This Court expects the youth and this kind of a charge to, at the very minimum, follow the rules of the Hall. No sneakiness allowed. . . . I don't like it and I don't approve of it. [¶] . . . I appreciate that he has done well and that's all good, but that is my baseline here. I'm not going to start making excuses for this kind of a charge with this kind of conduct and not considering it. I take it seriously."

The juvenile court declined to reduce Jorge's baseline term of confinement because of his serious rule violations. The juvenile court explained: "You are doing some amazing things while you are here. But one of the most basic things that this Court . . . requires is that you follow the rules in the Hall, not that you play with those rules or take advantage of those rules or get around those rules. [¶] . . . [¶] So you can do all this great stuff, which you are doing for you, and the Court acknowledges it. But you are also violating the rule. You are getting around it because you want to, because you want to have contact with your girlfriend, because you want to talk to other people, because that is what you want to do . . . . [¶] Just because you can, doesn't mean you should. And that is one of the most basic things that I want you to take away from this experience. . . . [¶] Just because you are smart with a computer and you can get past a filter or figure out a clever way to communicate with your partner and get pictures of her, that's

great; but you are violating the rules of the Hall. That matters to me, the judge, who you are appearing in front of."

Declining to reduce Jorge's baseline term of confinement, the juvenile court stated: "I am not happy that these are considered—it says 'serious rule violations.' In the face of that, how can I possibly consider a reduction, a downward reduction in time? [¶] You are going to get there because you are doing well, but not when you come before this judge in this court with these violations. . . . [¶] I have discretion here. . . . [¶] . . . [¶] . . . I have one requirement, follow the rules in the Hall. [¶] So because of that, the Court declines . . . to reduce the time here because of these serious rule violations." The juvenile court added: "I'm certain that the next report will be better and then I will consider it because you have done well in the Hall, but this is a step back." At the end of the hearing the juvenile court concluded: "I'm going to set this, then, for another review in six months' time. [¶] I know you can do a lot better . . . . [I]t's my job, according to the law, to motivate you . . . . [¶] . . . I will not do it if I have serious rule violations."

Jorge filed this appeal.

DISCUSSION

Section 875 requires the juvenile court, in committing a ward to a secure youth treatment facility, to set a "baseline term of confinement" that "represent[s] the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community." (§ 875, subd. (b)(1).) Under rule 5.806, in setting the baseline term, the juvenile court must start with the range designated for the ward's offense and then select the baseline term based on the individual facts and circumstances of the case. (Rule 5.806(b), (d).) The rule lists the following factors for the juvenile court's

consideration: (1) the circumstances and gravity of the commitment offense; (2) the youth's prior history in the juvenile justice system; (3) the confinement time considered reasonable and necessary to achieve the rehabilitation of the youth; and (4) the youth's developmental history. (Rule 5.806(b).)

Section 875 also requires the development of an "individual rehabilitation plan" for the ward, which must identify the ward's needs and describe the programming, treatment, and education to be provided in relation to the identified needs. (§ 875, subd. (d)(2).)

Under subdivision (e)(1) of section 875, the juvenile court must hold a progress hearing "not less frequently than once every six months" to "evaluate the ward's progress in relation to the rehabilitation plan" and to "determine whether the baseline term of confinement is to be modified." At the review hearing, "[t]he court shall consider the recommendations of counsel, the probation department and any behavioral, educational, or other specialists having information relevant to the ward's progress." (§ 875, subd. (e)(1)(A).) "At the conclusion of each review hearing, upon making a finding on the record, the court may order that the ward remain in custody for the remainder of the baseline term or may order that the ward's baseline term or previously modified baseline term be modified downward by a reduction of confinement time not to exceed six months for each review hearing." (*Ibid.*) Under rule 5.807(c)(1), the juvenile court's finding on the record must "support[] an order as to whether the youth is to remain committed to the secure youth treatment facility for the remainder of the baseline term or if the baseline term is to be reduced." Under rule 5.806(c), "[t]o provide an incentive for each youth to engage productively with the individual rehabilitation plan approved by the court under section 875(b)(1), each probation department operating a secure youth treatment facility must

implement a system to track the positive behavior of the youth in a regular and systematic way and report to the court at every progress hearing on the youth's positive behavior, including a recommendation to the court on any downward adjustment that should be made to the baseline term in recognition of the youth's positive behavior and development." Under rule 5.807(c), at the progress review hearing, the court must consider: "(A) the progress of the youth in relation to the rehabilitation plan in light of the programming made available to the youth, and (B) the recommendations of probation concerning the youth's positive behavior in the secure youth treatment facility program as required by rule 5.806(c)."

We review the juvenile court's decision at the review hearing for an abuse of discretion. (*In re Tony R.* (2023) 98 Cal.App.5th 395, 414 (*Tony R.*).) "The abuse of discretion standard of review 'asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts.' " (*Ibid.*) "We ' " '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.' " ' " (*Ibid.*) "We review the court's findings for substantial evidence, and ' "[a] trial court abuses its discretion when the factual findings critical to its decision find no support in the evidence." ' " (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1154 (*Nicole H.*).) In reviewing challenges to a juvenile court's dispositional findings for substantial evidence, " ' " '[w]e do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.' " ' " (*In re A.F.* (2024) 102 Cal.App.5th 778, 784–785 (*A.F.*).)

Here, the juvenile court did not abuse its discretion in denying Jorge's motion for a reduction at his fourth six-month review hearing because

substantial evidence supported the juvenile court's findings that Jorge was "violating the rules of the Hall" and had taken "a step back." In advance of the review hearing, the juvenile court read and considered the report filed by the probation department, which noted that Jorge had incurred two "serious rule violations" for possessing explicit photographs of his girlfriend and communicating with his girlfriend and another party via his laptop. Given these two undisputed incidents, we cannot conclude that the juvenile court's findings—that Jorge was "violating the rules of the Hall" and had taken "a step back"—" ' "find no support in the evidence." ' " (See *Nicole H.*, *supra*, 244 Cal.App.4th at p. 1154.)

In light of the juvenile court's findings, the juvenile court's denial of Jorge's request for a reduction in his baseline term does not fall outside the bounds of reason. (See *Tony R.*, *supra*, 98 Cal.App.5th at p. 414.) The juvenile court reasonably viewed Jorge's willingness to "play with . . . or take advantage of [the] rules" at the secure youth treatment facility as an indicator of insufficient progress toward preparing Jorge for the "real world." Under these circumstances, the juvenile court could reasonably conclude that additional progress was necessary before Jorge's baseline term could be reduced.

Jorge contends that insufficient evidence supported the juvenile court's denial of his request for a baseline reduction because his progress in relation to his rehabilitation plan and the probation department's recommendation supported a reduction. We disagree. With respect to probation's recommendation, section 875 only requires that the juvenile court consider probation's recommendation, and the court clearly did so here. (See § 875, subd. (e)(1)(A).) With respect to his progress, Jorge correctly notes that, in June 2024, the juvenile court acknowledged that Jorge had made

"tremendous progress," and, in November 2024, at his fourth six-month review hearing, the probation officer commented that Jorge had made "exceptional progress." It is undisputed, however, that: (1) in August 2024, Jorge incurred a serious rule violation; and (2) in November 2024, Jorge incurred another serious rule violation, just 20 days prior to his fourth six-month review hearing. Jorge acknowledges the existence of these two "serious rule violations" but downplays their significance by noting that, despite these violations, the probation department did not oppose reducing his baseline term of confinement. In effect, Jorge is asking this court to reweigh the evidence of his "tremendous progress" against the evidence of his "serious rule violations" and "step back." That is not our role. (See *A.F.*, *supra*, 102 Cal.App.5th at pp. 784–785.) In weighing the evidence at Jorge's fourth six-month review hearing, the juvenile court took Jorge's "serious rule violations" "seriously," and doing so was within its discretion.

Jorge's attempts to distinguish *Tony R.* are not persuasive. Jorge correctly notes that, unlike here, in *Tony R.*, the juvenile court declined to reduce Tony's baseline term of confinement at his first six-month review hearing, Tony had been in two fights since his commitment, and Tony had been assessed to have a "high risk" of recidivism. (*Tony R.*, *supra*, 98 Cal.App.5th at pp. 404, 414, 415.) Additionally, Jorge contends that, unlike Tony, he had "several mitigating circumstances that impacted his behavior in committing his offense," and he "underwent a profound change, participated in many services, and expressed remorse for his actions." Even assuming these assertions to be true, they do not establish an abuse of discretion. Jorge's two "serious rule violations" within the span of two and a half months supported the juvenile court's findings that Jorge had taken a "step back" and still had rehabilitative needs. In light of this substantial evidence, "[i]t was

within the court's discretion to determine that a reduction of his baseline term . . . would not serve his rehabilitative needs and public safety concerns." (See *id.* at p. 414.*)*

Additionally, Jorge contends that the juvenile court's denial of a reduction in his baseline term of confinement "undermines the aim of the Juvenile Justice Realignment Act that . . . there be positive incentives for youth to engage productively with their [individual rehabilitation plan]s." That argument is unavailing. In *Tony R.*, "Tony argue[d] that the incentive for positive behavior will be lost if good performance is not rewarded with a reduction of the baseline term." (*Tony R.*, *supra*, 98 Cal.App.5th at p. 409.) While the court acknowledged that Tony's argument reflected a "valid concern[] that should be among the constellation of factors a juvenile court considers in determining whether a ward's baseline term should be reduced"[4] (*id.* at p. 410), the court ultimately "read section 875 as entrusting juvenile courts to exercise their long-standing broad discretion over juvenile dispositions, consistent with the legislatively established parameters, in first setting a baseline term of confinement and subsequently determining whether a reduction in that term of confinement is warranted." (*Id.* at p. 411.) Here, the record reflects that "motivat[ing]" Jorge was among the factors that the juvenile court considered. The juvenile court did not abuse its broad discretion over juvenile dispositions here by determining that a reduction of Jorge's baseline term was not warranted. (See *ibid.*)

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[4] While the court in *Tony R.* suggested that a juvenile court should consider the concern that the incentive for positive behavior will be lost, section 875 does not require such a consideration. "The Legislature could have worded section 875 to require" such a consideration, but it did not do so. (See *Tony R.*, *supra*, 98 Cal.App.5th at p. 411.)

Finally, in his reply, Jorge suggests for the first time that the juvenile court's reduction of his baseline term from seven to five years pursuant to rule 5.806 "should not have impacted its decision at the six-month review hearing" because "section 875, subdivision (e)(1)(A), requires the court to consider different factors than those a court must consider when selecting a baseline term." In addition to not sufficiently developing the argument for us to consider, Jorge forfeited the argument by raising it for the first time in reply. (See *Malmquist v. City of Folsom* (2024) 101 Cal.App.5th 1186, 1205, fn. 6 [arguments raised for the first time in a reply brief are forfeited]; *People v. Crosswhite* (2002) 101 Cal.App.4th 494, 502, fn. 5 ["reviewing court may disregard claims perfunctorily asserted without development and without clear indication they are intended to be discrete contentions"]; Rule 8.204(a)(1) ["Each brief must: [¶] . . . [¶] (B) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority; and [¶] (C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].)

DISPOSITION

The November 21, 2024 order is affirmed.

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Miller, J.

WE CONCUR:

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Stewart, P. J.

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Richman, J.

A17200l, *People v. Jorge, G.*