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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re T. S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. T. S., Defendant and Appellant.	C060646 (Super. Ct. No. JV117295)

Minor T. S. appeals from the juvenile court's dispositional order following a contested hearing that committed him to the Division of Juvenile Justice (Juvenile Justice Division). He contends the court violated his right to due process because its written order of commitment specifies a maximum period of confinement in excess of that imposed in the court's oral findings. He also argues that the court erred in finding that he would benefit from the Juvenile Justice Division commitment. We shall affirm with directions to modify the commitment order.

BACKGROUND

The facts underlying the offenses are not material to the issues on appeal, and we therefore omit them. We will instead provide the necessary procedural background.

In February 2007, the Solano County Juvenile Court sustained a petition alleging that the minor (born in May 1989) came within the provisions of Welfare and Institutions Code[1] section 602 because he committed attempted second degree robbery and misdemeanor battery. It thereafter transferred the matter to Sacramento County for disposition (the residence of the minor's mother).

While the disposition on the Solano County charges was pending in the Sacramento County Juvenile Court, the People filed a subsequent petition. It alleged that the minor had committed child molestation in Sacramento County with two victims between January 2004 and November 2006. (In June 2007, the juvenile court permitted the prosecutor to file an amended subsequent petition, but the parties do not identify any material differences).

The juvenile court accepted the minor's admissions in June 2008 of one allegation of felony child molestation as to one victim and one allegation of felony sexual battery as to the other. The court noted that the combined offenses carried a maximum confinement time of nine years, "[a]nd the minor has

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[1] All further section references are to the Welfare and Institutions Code.

previously adjudicated matters which would add 11 months to that for a total confinement of nine years, eleven months possible." The court referred the matter to probation in preparation for the dispositional hearing.

At the contested December 2008 dispositional hearing, the juvenile court began by correcting its earlier calculation of the maximum confinement time. Rather than 9 years 11 months, it was only 9 years 10 months (in any event still well beyond the minor's 25th birthday). The court committed him to the Juvenile Justice Division[2] "for a period of nine years; picking the nine-year period based on the fact that there are multiple victims here . . . . *I'm not committing him specifically on offenses from Solano County.* I am committing him for eight years on the first offense, and one year on the second offense for which he has admitted here in Sacramento . . . . The minor's maximum age of commitment is to age 25 . . . ." (Italics added.) The court's minute order reflected these findings. However, the written order of commitment to the Juvenile Justice Division, filed the next day, states the minor's maximum period of confinement is 9 years 10 months.

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[2] The evidence relevant to this disposition is incorporated in part II of the Discussion.

DISCUSSION

I

The Maximum Period Of Confinement

The minor contends it was a violation of his right to due process to impose a maximum period of confinement in the written order of commitment in excess of that imposed in the juvenile court's oral findings. He asserts that the written order could not purport to correct any oral misstatement (even if that were the court's intention), because that would have been a species of judicial error. The People simply focus on the question of notice and assert that if there is any error in that regard we should remand for a hearing on the discrepancy between the oral pronouncement and the written order.

The minor is correct that the written order of commitment cannot depart from the oral findings of the juvenile court. By parity of reasoning, an order of commitment in juvenile proceedings is analogous to the abstract of judgment in criminal proceedings, which "may not add to or modify" the oral pronouncement of judgment it purports to summarize. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Contrary to the People's view, there is no ambiguity about the juvenile court's intentions that we must remand to resolve. The court was clearly aware of the maximum period of confinement if it chose to aggregate the Solano County offenses, namely 9 years 10 months. Yet it expressly exercised its discretion to impose a lesser period. (§ 731, subd. (c).) As a result, we will direct the court to issue an amended order of commitment.

II

The Commitment To The Juvenile Justice Division

The July 2008 probation report stated that the Division of Juvenile Facilities had represented that the minor would receive sex offender treatment if housed in the Department of Corrections and Rehabilitation. It also included a psychological evaluation of the minor, which found that he is at high risk of reoffending with other children (being in denial regarding the sexual offenses) and thus needs to be in a locked facility that provides "a full program of daily sex offender treatment" because "[h]e is simply too high a risk to the community at large to be treated in an outpatient facility."

Defense counsel filed a dispositional brief that challenged the proposed commitment to the Juvenile Justice Division on the basis of a consent decree in ongoing litigation in Alameda County. He appended that court's order,[3] which documented the shortcoming of the Juvenile Justice Division as of October 2008 in general despite the Juvenile Justice Division's "manifest good intentions" (a culture of violence, the overuse of restrictive housing, unsafe conditions, antiquated facilities, and an adult corrections mentality), and also the inadequacy of services for sexual offenders in particular. Although the Juvenile Justice Division had developed a model for reform in the sex offender program, it still had not developed a policy to

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[3] The juvenile court took judicial notice of the Alameda County order.

implement it. The training of staff in the program was inadequate and inconsistent, and different therapists offered disparate treatments to different minors. The Juvenile Justice Division also did not have an assessment process for determining the needs of the minors. Finally, the overall amount of treatment was less than three hours per week. However, the Alameda County court declined to appoint a receiver because the Juvenile Justice Division had undertaken substantial structural changes (in particular, hiring a project management consultant) and had recently acquired new management committed to reform.

Defense counsel called Dr. Karl Buddenhagen, the psychologist who had evaluated the minor in July 2008. Consistent with his report, he stated the minor did not have any apparent psychopathy, but presented a high risk to other children because he had poor self-control. He was in need of a residential treatment program for more than two years (in light of his state of denial). As a result, he needed to be in a locked facility rather than receive treatment on an outpatient basis because of his high risk of reoffending and his need for more intense treatment than is usually offered in outpatient settings. His long-term prognosis with treatment was good, assuming he was cooperative. Because the minor was over 18, the psychologist thought the number of local residential placements was extremely limited in either the public or private sector. Dr. Buddenhagen was not familiar with the therapy programs in the Juvenile Justice Division. However, in the abstract he thought that consistency and standardization in treatment were

important, and treatment of less than three hours a week would be a concern.

Defense counsel requested that the juvenile court order an additional year of custody in jail,[4] followed by a release to the minor's mother with monitoring and ongoing therapy. Counsel argued that (given its problems) a Juvenile Justice Division commitment was not a rehabilitative option for a sex offender.

The juvenile court expressed its dismay about the state of affairs at the Juvenile Justice Division. It noted that it was required under the standards of judicial administration to be aware of available services and treatment and their efficacy. Treatment was essential to prevent the minor from reoffending. The minor would not benefit from defense counsel's proposal of an additional year of local custody, which would simply be punitive because he would continue to go without treatment. The court also did not think that electronic monitoring would be a sufficient alternative to custodial treatment, given that the monitoring would not by itself prevent him from having access to other children, and the outpatient facilities of which the court was aware did not provide intensive supervision of participants. It concurred with Dr. Buddenhagen that there was an absence of any intensive residential programs available for juvenile wards over 18. It noted that the Alameda County Court had found the

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[4] The minor's initial detention was at juvenile hall from June 2007 through May 2008, after which he was in county jail through December 2008.

Juvenile Justice Division was poised to effect significant reform in its sex offender treatment program, and that most of the other problems with the Juvenile Justice Division had nothing to do with the sex offender unit (which the court knew, from programs that it had attended and from visiting the Juvenile Justice Division facilities, was segregated from the other wards). The court attested to other Sacramento County minors who had benefited from the Juvenile Justice Division sex offender treatment program, and some treatment was better than no treatment in the only custodial treatment placement of which the court was aware. Moreover, since the Juvenile Justice Division had not ceased to exist, the court was obliged to consider a commitment to it, whatever Juvenile Justice Division's problems. The court thus found that the minor's "mental and physical conditions . . . are such as to render [it probable][5] that he will be benefited by the reformatory and educational discipline and other treatment . . . provided by the [Juvenile Justice Division]."

The minor concedes that "there was evidence that less restrictive alternatives might be inappropriate or unavailable." The minor contends, however, that the court could not make a finding of his probable benefit from a commitment to the Juvenile Justice Division based only on its familiarity with other minors who benefited from their commitment to the Juvenile

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[5] There is an evident mistranscription reading "improbable."

Justice Division, which would subject the minor to a risk of violence and deficiencies about which the Juvenile Justice Division was not doing anything to remedy.[6] (§ 734.) He contends this case is akin to *In re Teofilo A.* (1989) 210 Cal.App.3d 571, which found that a commitment could not be based on the probation report's mere speculations regarding that minor. (*Id.* at pp. 578-579.)

The case is inapposite, as the juvenile court did not speculate, but relied on its personal familiarity with the Juvenile Justice Division's programs and the success of other wards in them. The minor did not object to this factual basis for the juvenile court's findings, which forfeits the issue on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 353; *In re M.S.* (2009) 174 Cal.App.4th 1241, 1252.) Moreover, the minor does not provide any authority for his proposition that this was impermissible.

Even in the absence of the juvenile court's personal knowledge regarding the Juvenile Justice Division, there was substantial evidence (in the form of the psychologist's evaluation and testimony) to support its conclusion that a commitment in a locked facility was necessary to properly protect the public. (§ 202; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) This is also substantial evidence

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[6] As noted above, the risk of violence was not endemic in the segregated sex offender unit, and the Alameda County order found that the Juvenile Justice Division was in fact committed to improvement.

to support the juvenile court's finding that there was an absence of any local secure facility providing treatment.

While a juvenile court cannot order a Juvenile Justice Division commitment *solely* as a result of a lack of local alternatives, if it finds a minor would benefit from it, we will uphold this exercise of the court's discretion if there is evidence to support the finding of probable benefit. (*In re M.S.*, *supra*, 179 Cal.App.4th at pp. 1250, 1255.) The shortcomings in the record regarding the Juvenile Justice Division program do not detract from the fact that it is nonetheless a treatment program not otherwise available to the minor. Furthermore, the Alameda County order also expressed optimism that the change in Juvenile Justice Division management and the acquisition of project management consultants would bring about the necessary improvements in a more expedited fashion. This is evidence to support the finding of a probable benefit.

DISPOSITION

The disposition order is affirmed. The trial court is ordered to modify the commitment order to reflect oral pronouncement.

ROBIE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.