Filed 11/17/03 In re Issac G. CA2/6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re ISAAC G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE Plaintiff and Respondent, v. ISAAC G., Defendant and Appellant.	2d Juv. No. B161700 (Super. Ct. No. SMJ-14287) (Santa Barbara County)

Isaac G. appeals from an order committing him to the California Youth Authority (CYA) for a maximum term of nine years based on multiple sustained wardship petitions. (Welf. & Inst. Code, §§ 602, 777.)[1] He contends that the trial court abused its discretion in ordering the CYA commitment, that it failed to declare whether two offenses were felonies or misdemeanors (§ 702), and that it miscalculated the aggregate confinement period and custody credits. We amend the commitment order to

provide that the maximum period of confinement is eight years and ten months, and affirm the commitment order as modified.

Facts and Procedural History

Appellant has abused drugs since age 10 and has a chronic history of behaviorial and social problems. On May 26, 1998, he was detained on an original section 602 petition for petty theft (Pen. Code, § 484, subd. (a)). Appellant admitted the allegation and absconded before the disposition hearing. Thereafter, the trial court declared appellant a ward of the court and released him to the care of his mother with probation terms including house arrest. Appellant was ordered to attend the Counseling and Education Center and wear an electronic monitoring device.

Supplemental petitions (§ 777) were filed October 14, 1998 and November 4, 1999, for violating probation. The trial court sustained the petitions. With respect to the October 14, 1998 supplemental petition, appellant was detained 14 days at juvenile hall. On the November 4, 1999 supplemental petition, appellant was granted probation with 30 days house arrest.

A third supplemental petition (§ 777) was filed January 14, 1999, after appellant tested positive for marijuana. The trial court found that appellant had violated probation and ordered him detained 16 days.

Subsequent 602 petitions were filed on March 8, 1999 and March 16, 1999, for two counts of residential burglary (Pen. Code, § 459), two counts of burglary of a vehicle (Pen. Code, § 459), multiple counts of petty theft (Pen. Code, § 484, subd. (a)), and resisting a peace officer (Pen. Code, § 148, subd. (a)(1)). With respect to the March 16, 1999 petition, appellant admitted the counts for residential burglary (count 1), burglary of a vehicle (count 2), and resisting a peace officer (count 7). The trial court

---

(Fn. cont'd.)

1 Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

dismissed the remaining counts and placed appellant at the Tri Counties Regional Boot Camp.

A subsequent 602 petition was filed May 18, 1999, for vandalism (Pen. Code, § 594, subd. (b)(4)). Appellant admitted the allegation and was ordered back to boot camp.

A supplemental petition (§ 777) was filed June 18, 1999, for violating probation and disruptive behavior at boot camp. The trial court detained appellant 12 days and returned him to boot camp.

An amended supplemental petition (§ 777) was filed August 17, 1999, alleging that appellant went AWOL and tested positive for cocaine, methamphetamine, and marijuana. By stipulation, the petition was dismissed and appellant was returned to boot camp.

A section 777 supplemental petition was filed September 22, 1999, alleging that the previous disposition was ineffective and that appellant was a disciplinary problem. The trial court sustained the petition and placed appellant in a group home

An amended supplemental petition (§ 777) was filed January 31, 2000, for residential burglary (Pen. Code, § 459; count 1), giving false information to a police officer (Pen. Code, § 148.9, subd. (a); count 2), petty theft (Pen. Code, § 484, subd. (a); count 3), and vandalism (Pen. Code, § 594, subd. (b)(4); count 4). After appellant was arrested on a warrant, he admitted counts 2 and 4 (false information to a police officer and vandalism) and was placed in a residential treatment program.

A supplemental petition (§ 777) was filed May 19, 2000, after appellant went AWOL and violated probation. Appellant admitted the allegation and was placed in Los Prietos Boys' Camp.

A subsequent 602 petition was filed December 4, 2001, for possession of a controlled substance (Health & Saf. Code, § 11377). Appellant admitted the allegation and was committed to Los Prietos Boys' Camp where he was cited for disciplinary violations.

A section 777 supplemental petition was filed May 14, 2002, alleging violation of probation. Appellant refused to be transported to Los Prietos Boys' Camp and told his probation officer "that he would only get into trouble 'up there' and would be back in a few days." Appellant admitted violating probation and was placed on 60 days home detention with counseling and electronic monitoring. On July 24, 2002, he went AWOL.

A subsequent 602 petition was filed August 9, 2002 for escape from home visitation (§ 871, subd. (d)) and grand theft of a transmitter device from juvenile hall (Pen. Code, § 487, subd. (a)). A section 777 supplemental petition was also filed August 9, 2002, alleging that appellant attended counseling with alcohol on his breath and went AWOL.

Appellant was arrested on a warrant in Lompoc following a police chase. On August 20, 2002, an amended subsequent 602 petition was filed for resisting an executive officer (Pen. Code, § 69; count 1), resisting a peace officer (Pen. Code, § 148, subd. (a)(1); count 2), vandalism (Pen. Code, § 594, subd. (b)(2(A); count 3), giving false information to a police officer (Pen. Code, § 148.9, subd (a); count 4), and trespass (Pen. Code, § 602, subd. (j); count 5). Appellant admitted count 1 (escape from home visitation) of the August 9, 2002 petition, and admitted count 2 (resisting a peace officer), count 4 (giving false information to a police officer), and count 5 (trespass) of the August 20, 2002 petition. The remaining counts and August 9, 2002 section 777 supplemental petition were dismissed with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754).

On August 27, 2002, a section 777 supplemental petition was filed alleging that appellant violated probation and engaged in disruptive conduct at juvenile hall. Appellant admitted the allegation.

At the disposition hearing on the section 777 supplemental petition and the August 20, 2000 amended subsequent 602 petition, the trial court committed appellant to CYA for a maximum term of nine years with 756 days custody credit.

CYA

Appellant contends that the commitment to CYA was an abuse of discretion. On review, the judgment will not be disturbed where it is supported by substantial evidence. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) The commitment order must consider the best interests of the minor and the public's interest in safety and protection. (§ 202, subd. (d); *In re Domanic B.* (1994) 23 Cal.App.4th 366, 372.) "[T]he 1984 amendments to the juvenile court law reflect[] an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. [Citation.]" (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.)

At the disposition hearing, the trial court considered a psychological evaluation by Doctor Chris McDonald which stated that mental health interventions were not effective and that appellant was not interested in rehabilitation. Doctor McDonald opined that appellant was "at high risk to reoffend" and recommended placement in a highly secure and structured environment.

The trial court also considered a probation department disposition report recommending CYA. The report stated that appellant would reoffend if not placed in a secure environment and has been a ward of the court since 1998.[2] "During that time, the minor has continued to engage in criminal activity despite numerous interventions and services offered. He has been tried at the Camino Segundo Counseling and Education Center, in the Multi-Agency Integrated System of Care (MISC) program, at Aaron's

---

[2] The report states that appellant absconded July 24, 2002 and was arrested in Lompoc on a "high risk" arrest warrant. Officers "attempted to apprehend him, [and appellant] fled and resisted arrest. He ran through several back yards of neighboring residences, ran on rooftops of houses, and destroyed a metal shed. When he was subsequently apprehended by officers, he attempted to kick and hit at them and continued to resist arrest. The minor had to be pepper sprayed and physically restrained in order to be placed in the patrol car."

The report further states that appellant gave the officers a false name and denied there was a warrant for his arrest. Appellant wedged himself in the passenger door and "continued to struggle and kick his feet. He was then removed from the patrol unit and

(Fn. cont'd.)

Group Home, EE's Residential Treatment Center, Tri-Counties Boot Camp, two commitments to Los Prietos Boys' Camp and in the Aftercare Transition School program. He has served periods of detention in the Juvenile Hall, utilized all forms of home detention and most recently had [the] benefit of a very comprehensive three-tiered treatment plan . . . . He has served a cumulative total of over two years local custody time and has had numerous warrants for his arrest over the last several years. Despite all these interventions, the minor has made no progress on probation and continues to violate the law."

The trial court stated: "[I]f there was a case where everything has been tried that could be tried, this is the case." We agree. Appellant was provided every opportunity to reform and participate in programs less restrictive than CYA. The probation report and psychological evaluation warned that appellant was likely to re-offend if not placed in a highly secure and structured environment. Based on his juvenile record, his poor performance on probation, and his unwillingness to cooperate, the trial court reasonably concluded that appellant would benefit from a CYA commitment. (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-556.) At CYA, appellant will receive counseling, education, job skills training, and victim impact and gang awareness classes. Substantial evidence supports the finding that a less restrictive placement is not appropriate. (*In re Ricky H.* (1981) 30 Cal.3d 176, 184; *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 58.)

Felony-Misdemeanor Findings

Appellant claims that the matter must be remanded because the trial court failed to declare whether the possession of a controlled substance offense (December 4, 2001 petition) and second degree burglary (March 16, 1999 petition) were felonies or

---

(Fn. cont'd.)

placed on the ground. A cinch was placed around his ankles and attached to the top portion of the handcuffs."

misdemeanors. Where the minor is found to have committed a "wobbler," the trial court must state whether the offense is a felony or misdemeanor. (§ 702; *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.)

In *In re Manzy W*, *supra,* 14 Cal.4th at p. 1209, our Supreme Court held that remand is not "'automatic' . . . [T]he record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error. . . . The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*Ibid.*)

Appellant has not augmented the record to provide a transcript of the adjudication hearings on the December 4, 2001 and March 16, 1999 petitions. The minute orders and probation reports, however, indicate that the trial declared the misdemeanor-felony status of each offense. In sustaining the December 4, 2001 petition for possession of a controlled substance, the trial court signed an adjudication hearing order stating that the offense was a misdemeanor.[3] The probation report, which was read and considered at the disposition hearing, stated that the offense was a misdemeanor.

With respect to the March 16, 1999 petition for second degree burglary, the trial court signed an adjudication hearing order stating that the offense was a felony. (See *In re Robert V.* (1982) 132 Cal.App.3d 815, 823 [felony determination based on signed order sufficient], cited with approval by *In re Manzy W., supra*, 14 Cal.4th at 1208, fn. 6.) The disposition report indicates that the offense was sustained as a felony.

---

[3] The December 4, 2001 petition was amended January 10, 2002 to allege that the drug offense was a misdemeanor. Appellant was advised that the maximum term of confinement was one year and admitted the allegation.

The record supports the inference that the trial court was aware of and exercised its discretion in determining whether the offenses were felonies or misdemeanors. (*In re Manzy W.*, *supra,* 14 Cal.4th at p. 1209.) Appellant has not shown, by specific citation to the record, that the trial court failed to comply with section 702. (*In re Kathy P.* (1979) 25 Cal.3d 91, 102.)

Maximum Commitment Period

Appellant contends, and the Attorney General agrees, that the trial court erred in calculating the maximum commitment period. Where the commitment is based on multiple petitions and previously sustained petitions, the maximum period of confinement is calculated by adding the principal term and subordinate terms plus enhancements. (*In re Jovan B.* (1993) 6 Cal.4th 801, 810; see § 726, subd. (c) ["'maximum term of imprisonment' shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code"].)

The trial court erred by imposing a four month term for escape from home visitation. (§ 871, subd. (d)) As a subordinate term, the maximum term is two months (one-third of six months; § 871, subd. (d); Pen. Code, § 19.) We conclude that the maximum period of confinement is eight years ten months, not nine years.

Custody Credits

Appellant argues that he is entitled to three additional days custody credit but provides no citation or authority or citation to the record. (Cal. Rules of Ct., rule 14, subd. (a)(1)(B) & (C).) The issue is deemed waived. (*People v. Mendoza* (1986) 183 Cal.App.3d 390, 398.) "[A] point suggested on appeal cannot be considered where the brief fails (as it does herein) to point out the page of the record where the alleged error is supposed to have occurred. [Citations.]" (*People v. Gidney* (1937) 10 Cal.2d 138, 142.)

In his reply brief, appellant attempts to recalculate the custody credits. He claims that he was detained in juvenile hall between September 25, 1999 and October 12, 1998 and is entitled to 18 days credit. The September 24, 1998 minute order states that appellant was detained and granted an early release to enroll in CEC (the Counseling and

Education Center). The October 14, 1998 probation violation report states that appellant got the early release, was placed on house arrest, and following his October 2, 1998 enrollment at CEC "earned only 3 days credit out of 7 days possible" because of misconduct. "On October 14, 1998, while on house arrest for the above, the minor was arrested when he failed to report for CEC as required."

It is well settled that a minor is not entitled to predisposition credits for time spent in home arrest or at a nonsecure facility. (*In re Randy J.* (1994) 22 Cal.App.4th 1497, 1504-1505.) Appellant has failed to show that the trial court erred in calculating custody credits.

The clerk of the Santa Barbara County Superior Court is directed to amend the September 11, 2002 commitment order to reflect that the CYA commitment is for a period not to exceed eight years ten months. The clerk is further directed to forward a certified copy of the amended order to CYA. The September 11, 2002 commitment order, as amended, is affirmed in all other respects.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Barbara J. Beck, Judge

Superior Court County of Santa Barbara

Meghan B. Clark, under appointment by the Court of Appeal, for Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L. Fuster and Victoria B. Wilson, Supervising Deputy Attorneys General, for Plaintiff Respondent.