Filed 9/1/06 In re Walter M. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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| In re WALTER M., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>WALTER M.,<br><br>Defendant and Appellant. | C049903<br><br>(Super. Ct. No. JVSQ011112) |

While Walter M. (the minor) was a ward of the juvenile court based upon previously sustained petitions, he admitted a charge of committing assault by means of force likely to produce great bodily injury. Two days prior to the dispositional hearing, the minor turned 18 years old.

Following argument on whether the minor could be committed to county jail, the court ordered: "The matter will be retained as a felony. The minor will be continued a ward of the Court until

further order. . . . I'm ordering that the minor serve 180 days in an authorized facility with credit for 39 days already served. My reading of the Charles G[.] case [*In re Charles G.* (2004) 115 Cal.App.4th 608] is that by ordering him confined in an authorized facility gives the Probation Department the discretion to place [the minor] in either facility, juvenile hall or County Jail for the remainder of the time which would be 141 days. The minor will not receive any good time/work time credits. While in custody the minor will not be allowed to participate in the outside work release program and his wardship will be terminated as unsatisfactory upon his release from custody."

On appeal, the minor contends that it was a denial of equal protection of laws for the juvenile court to deny him good time/work time credits, and his trial attorney was ineffective for failing to raise this issue in the juvenile court. We shall affirm the order.

DISCUSSION

Because the parties have proceeded on the theory that the minor was housed in the county jail, we shall address the minor's contention even though the record does not necessarily support their premise.

We disagree with the People's position that the minor forfeited his equal protection argument by failing to raise it in the juvenile court. The issue is properly before us because it presents a pure question of law, i.e., whether any minor housed in county jail is statutorily entitled to good time/work time credits. (*People v. Brown* (1996) 42 Cal.App.4th 461, 475 [appellate court has discretion

to decide equal protection argument which raises pure question of law even though the argument was not raised in trial court].)

The People's reliance on *People v. Carpenter* (1997) 15 Cal.4th 312 is misplaced because that case involved a discretionary decision by the trial court (see *People v. Daly* (1992) 8 Cal.App.4th 47, 55), which required a fully developed factual record. Here, no such factual record is required since only a pure question of law is involved.

Nevertheless, the minor's contention fails on the merits because he cannot meet the first prerequisite for a meritorious claim under the equal protection clause, i.e., "that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530, original italics). "[D]ifferent treatment is permitted for juveniles and adults because juvenile placements are for treatment and rehabilitation whereas adult commitments are usually for punishment. Because of this different purpose, equal protection may not be violated by denying wards of the juvenile court conduct credits that may be earned by adults." (*In re Kenny A.* (2000) 79 Cal.App.4th 1, 8, citing *In re Ricky H.* (1981) 30 Cal.3d 176, 189-190.)

The minor concedes his argument was rejected in *In re Kenny A., supra,* 79 Cal.App.4th 1 but "asks [us] to find *Kenny A.* unpersuasive." We decline the invitation because we conclude that it was correctly decided in this respect.

Because the minor's equal protection argument lacks merit, his trial attorney was not ineffective for failing to raise the issue in

the juvenile court. (*People v. Constancio* (1974) 42 Cal.App.3d 533, 546 [“It is not incumbent upon trial counsel to advance meritless arguments or to undertake useless procedural challenges merely to create a record impregnable to assault for claimed inadequacy of counsel”].)

DISPOSITION

The juvenile court’s order denying the minor good time/work time credits is affirmed.

SCOTLAND, P.J.

We concur:

DAVIS, J.

RAYE, J.