Filed 4/5/04 In re Jamie O. CA5

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

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| In re JAMIE O., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>JAMIE O.,<br><br>Defendant and Appellant. | F043460<br><br>(Super. Ct. No. JW 100513-00)<br><br>**OPINION** |

**THE COURT***

APPEAL from a judgment of the Superior Court of Kern County. Charles Pfister, Judge.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, and Matthew L. Cate, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Vartabedian, A.P.J., Buckley, J., and Wiseman, J.

Appellant Jamie O., a minor, admitted an allegation that he committed an assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1). Subsequently, following a disposition hearing, the court ordered appellant committed to the California Youth Authority (CYA) and declared the maximum period of physical confinement to be four years.

On appeal, appellant's sole contention is that the court erred in ordering CYA commitment. We will affirm.

## FACTUAL AND PROCEDURAL BACKGROUND[1]

***Instant Offense***

On May 16, 2003, appellant was a passenger in a car with three other persons when he and his companions "recognized the victim"; "drove up to the victim"; and got out of the car, at which point one of appellant's companions began fighting with the victim. "At some point during this fight, [appellant] stepped forward and stabbed the victim with a large handled knife." A witness reported that appellant, as he stepped away from the victim, said, " 'I will put that on someone. You can tell them I did that to you." Appellant and his companions then got back in the car and "fled the scene."

The victim sustained "several severe lacerations and a collapsed lung." He was transported to Kern Medical Center, where he was "hospitalized for several days . . . ."

***Dismissed Count***

It was also alleged that appellant committed a second degree burglary (Pen. Code, §§ 459; 460, subd. (b)), based on the following. Police, investigating a report of a burglary, made contact with appellant. After an officer informed appellant that he had been seen "on video," appellant stated, " 'Well, I guess you got me then . . . .' " Later, appellant admitted breaking a window at a business, returning later and acting as a look-out as his companion entered the building. He also stated that he and his companion fled when they saw a the investigating officer's patrol vehicle. The burglary count was

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**1** Factual background information is taken from the report of the probation officer.

dismissed, with the People reserving the right to comment and appellant agreeing to make restitution.

***Additional Background***

When asked by the officer investigating the burglary as to his "gang involvement," appellant responded, " 'Yeah, I'm a Varrio Baker, okay?' " He later told the probation officer that he has not been " 'jumped in,' " but he "admit[ted] he has gang membership 'through other ways.' "

Speaking to the probation officer, appellant admitted "responsib[ility] for . . . breaking the window of the business," but "denied any actual participation or responsibility in the stabbing incident."

Appellant, who was 15 years old at the time of the disposition hearing in June 2003, had not attended school since September 2002, when he was suspended from Centennial High School for fighting, after being enrolled for two days. Appellant "should be finishing up his freshman year of high school" but previous to his abortive high school enrollment he was enrolled in a charter school at the seventh grade level and he "has earned absolutely no high school credits."

The probation officer, in recommending CYA commitment, opined, "[i]n addition to treatment programs afforded to the minor through such a commitment, the minor can also be provided with an opportunity to initiate this high school education," and "the minor can benefit by the reformatory discipline and other treatment programs as provided by [CYA]."

At the disposition hearing, defense counsel argued for placement in the Crossroads program. In ordering CYA commitment, the court stated, "[t]he way the stabbing took place, the minor is very, very fortunate that he didn't actually manage to kill this other boy, and I do not believe that the limited programs we have here in the community with camp or Crossroads could begin to address the mindset that this minor demonstrated that day or [provide him] with the long-term rehabilitation required . . . ."

## DISCUSSION

Appellant contends the court abused its discretion in ordering appellant committed to CYA.

"To support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; accord, *In re Pedro M.* (2000) 81 Cal.App.4th 550, 556.) On appeal, " 'The decision of the juvenile court may be reversed . . . only upon a showing that the court abused its discretion in committing a minor to CYA. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must 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.' " (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53; accord, *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.)

" 'In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law. ([Welf. & Inst. Code,] § 200 et seq. . . .)' " (*In re Lorenza M.*, *supra*, 212 Cal.App.3d at p. 53.) "In 1984, the Legislature amended the statement of purpose found in section 202 of the Welfare and Institutions Code. It now recognizes punishment as a rehabilitative tool and emphasizes the protection and safety of the public.[[2]] [Citation.] The significance of this change in emphasis is that when we assess the record in light of the purposes of the Juvenile Court Law [citation], we evaluate the exercise of discretion with punishment and public safety and protection in

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[2] Welfare and Institutions Code section 202 provides in relevant part: "Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interest of public safety and protection, receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (Welf. & Inst. Code, § 202, subd. (b).)

mind." (*Id*. at pp. 57-58, fn. omitted; accord, *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684 ["[a] fundamental premise of delinquency adjudication is that the court must focus on the dual concerns of the best interests of the minor and public protection"]; *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473 ["the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public"].) And while the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule that the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 577; accord, *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151.)

When we consider the current purposes of the juvenile court law, we conclude the court did not abuse its discretion in committing appellant to CYA. Several factors support the conclusion that a disposition less restrictive than CYA commitment would be ineffective and/or inappropriate because such a placement would not be adequate to hold appellant accountable for his actions and/or provide for the safety and protection of the public.

First, the vicious armed assault upon which the instant adjudication is based supports the conclusion that appellant poses a danger to the physical safety of the public, and the burglary upon which the dismissed count was based is likewise a serious offense, and indicates appellant poses a danger to the property interests of others as well. (*In re Samuel B.* (1986) 184 Cal.App.3d 1100, 1104, overruled on other grounds in *People v. Hernandez* (1988) 46 Cal.3d 194, 206, footnote 14 [in determining disposition of juvenile offender, "gravity of the offense is always a consideration with other factors"]. Second, the record contains evidence that appellant is a gang member. (Cf. *In re John H*. (1978) 21 Cal.3d 18, 27 [CYA commitment upheld based in part on minor's gang involvement]; *In re Sergio R*. (1991) 228 Cal.App.3d 588, 602-603 [same]. And third, the probation officer stated that appellant has exhibited no remorse for the instant assault and, indeed, has refused to take responsibility for that offense. (*In re Asean D*, *supra*, 14 Cal.App.4th

at p. 473 [minor's commitment to CYA upheld where his "continuing refusal . . . to take responsibility for [his] crimes[] clearly signaled that he constituted a serious danger to the public unless securely confined."]; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1397 [minor's "unrepentant and cavalier attitude" regarding his offense supported CYA commitment].)

We also conclude that the record supports the conclusion that commitment to CYA would be of probable benefit to the minor. As the probation officer stated, appellant can take advantage of treatment and educational opportunities at CYA. And as noted above, the juvenile court law recognizes punishment as a rehabilitative tool. (*In re Lorenza M.*, *supra*, 212 Cal.App.3d at p. 58.)

Appellant argues that because he is a "first offender" who has not been tried in any placement less restrictive than CYA there is no evidence that such a placement would be rehabilitatively ineffective. For the same reason, appellant contends, he is "not in the category of serious offenders who CYA is intended to rehabilitate." The former argument, however, gives far too little weight to the seriousness of the appellant's criminal conduct and the fact that one of the purposes of the juvenile court law is providing rehabilitation through appropriate punishment that holds delinquent minors accountable for their actions. And the latter argument also gives short shrift to the seriousness of appellant's conduct, in particular the assault, and the danger posed by one with what the court termed the "mindset" evinced by the assault.

We find instructive this court's decision in *In re Lorenza M.*, *supra*, 212 Cal.App.3d 49. In that case, the juvenile court ordered a young, mildly delinquent minor committed to CYA, following an adjudication of vehicle theft, after it found that such commitment would be of probable benefit and that " 'all local less restrictive programs and forms of custody [would be] . . . inappropriate dispositions . . . .' " (*Id*. at p. 52.) This court upheld the disposition. Referring to "the use of punishment as a rehabilitative tool[,]" as provided in the 1984 amendment to the juvenile court law, we stated,

"[w]hether or not Lorenza is a serious juvenile offender or a 'criminal,' her commitment is consistent with the current purposes of the Juvenile Court Law." (*Id*. at p.58.)

The instant offense and the evidence regarding the dismissed count demonstrate a pattern of delinquency far more serious than that of the minor in *Lorenza M.* Thus, in the instant case there is an even stronger basis for concluding, as we do, based on considerations of public safety and the statutorily sanctioned use of punishment as a rehabilitative tool, that the court did not abuse its discretion in ordering appellant committed to CYA.

**DISPOSITION**

The orders appealed from are affirmed.