Filed 2/4/05 In re Matthew H. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re MATTHEW H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MATTHEW H., Defendant and Appellant.	F045398 (Super. Ct. No. 04CEJ600219-1) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Denise Whitehead, Judge.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Wanda Hill Rouzan and Jeffrey D. Firestone, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J., and Dawson, J.

Appellant, Matthew H., was charged in a petition filed pursuant to Welfare and Institutions Code section 602 with assault with a deadly weapon likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1), count one) and battery causing great bodily injury (Pen. Code, § 243, subd. (d), count two). On February 23, 2004, Matthew admitted count two. Count one was dismissed.

On March 8, 2004, the juvenile court ordered a psychological evaluation of Matthew. The probation report prepared for the April 16, 2004, disposition hearing recommended Matthew be placed in the boot camp Delta Program. The juvenile court, however, committed Matthew to the California Youth Authority (CYA) for a maximum term of four years. The court imposed a $100 restitution fee pursuant to Welfare and Institutions Code section 730.6 and a $20 security fee

On appeal, Matthew contends the juvenile court abused its discretion in committing him to CYA rather than choosing a less restrictive alternative. Matthew further contends, and respondent concedes, the court erred in imposing the security fee.

FACTS

A. Offense and Victim's Injuries

Matthew received a phone call from Danielle B. who asked Matthew to physically harm her boyfriend, Dustin M.[1] On January 31, 2004, Matthew launched a plan to lure Dustin to the home of Robert N. so that Matthew and his friends could attack Dustin. On February 1, 2004, Brandon R. called Dustin and invited him to Robert's home. Dustin arrived at 12:17 a.m., exiting his truck and walking toward the backyard.

Dustin was confronted by someone wearing a ski mask who struck him on the head. When Dustin fell to the ground, several people began to hit and kick him until he

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[1] The facts are derived from the probation report, the psychological report, and the disposition hearing.

stopped moving. When Dustin regained consciousness, he drove himself home. Danielle B. later told Dustin he had been attacked by Matt, Brandon, Stephen, and Robert.

On February 2, 2004, deputies talked to Robert who told them that the Y-Boys, also known as the Y2K, had attacked Dustin. Robert stated that the plan to attack Dustin occurred after Danielle told them she had an incident with Dustin. Robert told investigators that Matthew and another assailant were wearing ski masks. Matthew approached Dustin and hit him over the head with a beer bottle. Matthew and two other minors began punching and kicking Dustin after he fell to the ground. The assailants "beat the hell" out of Dustin until he stopped moving.

After he admitted count two, Matthew told the probation officer that he attacked Dustin after Dustin had beat up Danielle whom Matthew referred to as his "home girl." Matthew told the probation officer he was very drunk at the time of the attack. Matthew said he understood that what he did was wrong and he felt badly for Dustin because of the seriousness of his injuries.

Dustin suffered two hairline skull fractures and several other injuries. Dustin's mother explained during the disposition hearing that the attackers only stopped hitting Dustin because he went into convulsions and they thought they had killed him. Dustin suffered a swollen brain and the neurologist told Dustin's mother that it was too early to determine if Dustin would have permanent brain injuries as a result of the attack.

B. Probation Report

Matthew admitted to the probation officer that he hit Dustin over the head with a bottle. Matthew explained he was "drunk as hell" at the time. Matthew was living with his grandmother in Selma. He had been living with his mother in Illinois. Matthew told the probation officer he had been admitted into a psychiatric ward in Illinois. Matthew had been living with his grandmother since 2001.

Though Matthew was not attending a school campus, he was receiving A's and B's in an independent study program. Matthew began experimenting with drugs and

alcohol at age 11. He denied he was involved in a gang, but told the probation officer he was a member of a tagging crew called TDK, or, Triple Digits Krew. The sheriff's department identified Matthew and the co-participants in the attack as members of the Y-Boys. Matthew committed two prior misdemeanors, disturbing the peace at school and possession of marijuana.

The probation officer found that Matthew expressed remorse for his conduct. The probation officer considered a recommendation that Matthew be committed to CYA, but noted he had not been afforded a prior opportunity to reform at the local level. The probation officer recommended Matthew be placed in the Elkhorn Correctional Facility Delta Program which could assist violent offenders.

The juvenile court conducted a hearing on March 8, 2004. The court stated it had read the probation report but was concerned that a local commitment was not appropriate. The court granted defense counsel's motion for a continuance so that Matthew could undergo a psychological evaluation.

C. Psychological Evaluation

The psychological report was prepared by Melissa Witt, a psychological trainee under the supervision of Dr. Valerie Forward. Matthew told Witt he hit Dustin until he stopped moving. Matthew admitted to selling drugs when he lived with his mother in Illinois, and that he continued doing so after he moved to California. Matthew was oriented to person, place, time, and situation. He denied experiencing delusions or hallucinations. Matthew told Witt he thought about "beating people's ass everyday."

Matthew described his mother as having a substance abuse problem. He admitted he was arrested in Illinois at age 14 prior to moving to California. Matthew blamed his poor relationship with his mother on her many boyfriends and described his father as a loser. Matthew said that his mother physically abused him on different occasions. Matthew said he had a great relationship with his grandparents and described them as lifesavers.

Matthew tested in the average range for intellectual functioning. Matthew's reading and spelling ability is at a post-high school level and his mathematical skill is at a high school level. His perception and graphomotor skills tested at a level for children nine years younger than his age. Matthew is chronically impulsive and has great difficulty in affect regulation. He is self-centered, rebellious, combative to authority, and lacks empathy or compassion. Matthew is not depressive and does not exhibit feelings of hopelessness. Each of Matthew's stories has aggressive themes.

Matthew admitted he had access to and owns many different kinds of guns and knives, including a 12-gauge shotgun. At one time he owned Glocks and an Uzi.

Matthew appeared proud of his drug history and bragged about the number of drugs he has used. His drug of choice is marijuana, but he has tried methamphetamine, LSD, PCP, mushrooms, cocaine, ecstasy, Ketamine, and inhalants. Matthew was also proud of the fact that he had sold every kind of drug except for heroin.

Matthew told the evaluator the attack was not really his fault because he did not call Dustin and was not the only one who hit him. Matthew later admitted he was the one who organized the attack. Matthew was amused when the evaluator asked him if he wore a ski mask during the attack. Matthew discussed the attack in a "superficial manner" and debated with the evaluator concerning the degree of his responsibility.

The psychological evaluation recommended Matthew have a neurological evaluation to assess potential brain damage, attend weekly therapy focusing on his anger and polysubstance dependence, attend group therapy to learn appropriate interpersonal relationships with peers, attend a long-term substance abuse program with regular drug testing, and be supervised in a structured environment.

D. Disposition Hearing

After it was continued on March 8, 2004, the disposition hearing was held on two sessions on April 6, 2004, and April 16, 2004. On April 6, the court noted it read and considered the probation report. The court solicited testimony from the probation

department to establish that violent offenders were eligible for the Delta Program. The matter was continued so the court could determine whether Matthew's offense came within the provisions of Welfare and Institutions Code section 707, subdivision (b).

At the beginning of the April 16 hearing, the court found that Matthew's offense did not come within the provisions of Welfare and Institutions Code section 707, subdivision (b). The court noted it had read the probation report and psychological evaluation. The court considered the gravity of the offense as well as Matthew's prior delinquency history. The court noted Matthew had access to various kinds of weapons, had difficulty accepting responsibility for his behavior, and bragged about his drug history.

The juvenile court was concerned about the ability of the boot camp program to provide Matthew adequate mental health services and noted he had a lengthy history of psychiatric issues. The court found Matthew had a history of violence and that his criminal and delinquent behavior has continued to escalate. The court found the current offense involved advanced planning and was "incredibly violent." Matthew himself personally used a beer bottle to hit the victim over the head. The court found Matthew posed a risk of violence to other minors in the boot camp program.

The court found the boot camp program was inappropriate and that it was inadequate to protect the community from Matthew's violent behavior. The court noted it considered all less restrictive alternatives to CYA placement and held they were all inappropriate dispositions. The court committed Matthew to CYA.

CYA COMMITMENT

Matthew contends the juvenile court abused its discretion in committing him to CYA.

It is clear that a commitment to CYA may be made in the first instance, without previous resort to less restrictive alternatives. (*In re Asean D*. (1993) 14 Cal.App.4th 467, 473; *In re Tyrone O*. (1989) 209 Cal.App.3d 145, 151.) The gravity of an offense,

coupled with other relevant factors, is always a consideration. (*In re Samuel B*. (1986) 184 Cal.App.3d 1100, 1104 [disapproved on another ground in *People v. Hernandez* (1988) 46 Cal.3d 194, 205-206].)

It is error for a juvenile court to fail to consider less restrictive alternatives to CYA commitment. (*In re Teofilio A*. (1989) 210 Cal.App.3d 571.) In *Teofilio A*., neither the juvenile court nor the probation report considered alternatives to CYA commitment. Though the only evidence in the record showed the juvenile was an unsuitable candidate for CYA, the court in *Teofilio A*. proceeded to commit the juvenile to CYA. The 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 Jimmy P*. (1996) 50 Cal.App.4th 1679, 1684.)

Here, in contrast to *Teofilio A*., the juvenile court was expressly aware of local placement alternatives to CYA and rejected them because of the gravity of Matthew's offense, his psychological issues, and the inadequacy of the programming at the local boot camp. The court was concerned about the danger Matthew posed to the general community as well as to others in the boot camp program. The court rejected the probation officer's recommendation that Matthew be placed in the boot camp.

The court's findings were supported by the psychological evaluation. Matthew argued with the evaluator concerning the degree of his culpability even though he eventually admitted he was the primary planner of the attack. The attack caused substantial and potentially long-term injuries to the victim. Matthew bragged about his extensive use and sales of drugs. Though Matthew's prior juvenile record in California was not serious, his antisocial conduct was growing worse prior to the instant offense.

The juvenile court's findings are supported by the record. We review a juvenile court's commitment decision only for abuse of discretion, indulging all reasonable inferences to support the decision of the juvenile court. (*In re Asean D*., *supra*, 14

Cal.App.4th 467, 473.) We find no abuse in the court's exercise of discretion in its order committing Matthew to CYA.

SECURITY FEE

Matthew contends, and respondent concedes, the juvenile court erroneously imposed a $20 security fee.

Penal Code section 1465.8, subdivision (a)(1) provides:

> "To ensure and maintain adequate funding for court security, a fee of twenty dollars ($20) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code."

This section refers to convictions for criminal offenses. A juvenile adjudication of wardship, however, is not a conviction for a criminal offense. (Welf. & Inst. Code, § 203; *In re Joseph B*. (1983) 34 Cal.3d 952, 955.) The $20 security fee does not apply to juvenile offenders. (*Egar v. Superior Court* (2004) 120 Cal.App.4th 1306, 1308-1309.) We will direct the juvenile court to strike the security fee.

DISPOSITION

The juvenile court is directed to strike the $20 security fee, to prepare a new commitment order reflecting this change, and to forward the amended commitment order to the appropriate authorities. The juvenile court's judgment is otherwise affirmed.