Filed 3/11/11 In re Robert C. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re ROBERT C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ROBERT C., Defendant and Appellant.	A127357 (Solano County Super. Ct. No. J39597)

I. INTRODUCTION

After defendant Robert C. admitted several counts of a Welfare and Institutions Code section 602 petition filed by the Fresno District Attorney, including an allegation of violating Penal Code section 288, subdivision (a),[1] the matter was transferred to Solano County for disposition. The Solano County juvenile court committed defendant to the Division of Juvenile Facilities (DJJ) for a potential maximum term of four years. On appeal, defendant contends the juvenile court abused its discretion in committing him to DJJ, and further contends he is entitled to a trial by jury before he can be subject to the "lifetime burdens" flowing from his section 288, subdivision (a), adjudication—sex offender registration, residency restrictions under "Jessica's Law" (Proposition 83) and potential civil commitment as a sexually violent predator. We affirm.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

II. BACKGROUND

We summarize here only the facts germane to the matters raised on appeal.

In June or July 2008, defendant's eight-year-old stepsister told her parents—defendant's father and stepmother—that several weeks earlier, she and defendant had played hide-and-seek and had ended up in the bathroom, where defendant undressed and masturbated in front of her. She said defendant forced her to touch his penis, and then to rub her hand back and forth. He also told her to suck and lick his testicles. She refused and ran out of the bathroom. When confronted by his parents, defendant denied the conduct. Several weeks later, during a family meeting, he admitted masturbating in front of his stepsister, but continued to deny touching her. He was sent to live with his mother in Solano County. On November 25, 2008, the Fresno District Attorney filed a Welfare and Institutions Code section 602 petition alleging that on or about June 1, 2008, through September 1, 2008, defendant committed a lewd act on his eight-year-old stepsister (§ 288, subd. (a)). On January 15, 2009, defendant admitted the allegation, but withdrew his admission in March, after a psychological evaluation found him unsuitable for deferred entry of judgment.

In February 2009, defendant's stepbrother told his parents defendant had molested him two years earlier when he was eight years old. He later said that when he was nine years old, defendant threatened him by holding a knife to his throat and putting a pillow over his face as though to suffocate him. He claimed defendant warned him not to tell anyone about the incidents, and he was too frightened to say anything until his sister disclosed what defendant had done to her. On April 30, 2009, the Fresno District Attorney filed a supplemental petition alleging that on or about March 1, 2007, through April 1, 2007, defendant also committed crimes against his stepbrother. On May 12, 2009, the juvenile court dismissed all counts of the supplemental petition except count 5 alleging assault likely to produce great bodily injury (§ 245, subd. (a)(1)). On July 14, two additional counts were added, assault with a deadly weapon (§ 245, subd. (a)(1)) and dissuading a witness from testifying (§ 136.1, subd. (a)(1)).

On July 27, 2009, defendant admitted the alleged lewd act on his stepsister and the assault with a deadly weapon on his stepbrother. The remaining counts were dismissed. The case was transferred to Solano County for disposition.

As noted above, while the case was venued in Fresno, the juvenile court had ordered a psychological evaluation to determine whether defendant was eligible for deferred entry of judgment. The evaluation, prepared by Nilakshi Wanaguru, was submitted on March 3, 2009, and concluded defendant was ineligible because he denied molesting his stepsister, displayed no remorse, guilt or empathy, viewed himself as "extremely virtuous," and was over 18 years old. Wanaguru believed there was a significant risk defendant would reoffend and recommended he participate in individualized sex offender therapy.

The Solano court ordered a further evaluation, which was prepared by Jennifer Kirkland and submitted on August 22, 2009. Kirkland reported defendant had been home schooled, was at grade level in reading but below in math and spelling, and had had no established routines. She concluded this resulted in his having "inadequate social skills," poor judgment, and an inability to anticipate consequences. He was "socially immature" and "developmentally arrested." She believed these "deficits" likely contributed to his "internal state" that led him to "sexually offend against his younger siblings." But "[w]here and how [he] picked up sexual acting out with children is unfathomable." Everyone involved denied that defendant had been a victim of such behavior. "Sexual risk measures" placed defendant "at the moderate to moderate high range." Kirkland believed defendant's admission of some improper conduct, although he continued to deny any sexual misconduct as to his stepbrother, was "real progress." Based on this "breakthrough," Kirkland thought defendant was "amenable to outpatient treatment **provided there is substantial structure and social support for him in the community**. To place [him] in the community without sufficient support would . . . set him up to fail." Kirkland observed "even though [defendant] is deemed amenable to outpatient treatment, he may have the most opportunities for actual help and support in the DJJ system." If defendant remained in the community, "ironclad rules and automatic diversion to DJJ for

violation of terms of probation need to be communicated and enforced. If given any leeway for undermining his own rehabilitation, there is a chance of behavioral deterioration and possible reoffense."

On September 18, 2009, defense counsel advised the court an elderly friend of defendant's mother might consider letting defendant live with him. The court ordered probation to investigate the potential placement. Probation reported the individual, Mr. Cernota, was 79 years old and not concerned with defendant's offenses, commenting "boys will be boys." Cernota's adult daughter was very upset about a possible placement of defendant, and stated her father was barely able to care for himself and was mentally unstable. Probation concluded Cernota's home was not an appropriate placement.

Defendant's mother then proposed placement with a Mrs. Munoz. Probation reported Munoz thought defendant simply needed "an address" and was willing to let him live in a trailer behind her business. The trailer is the restroom for the employees. Munoz would not provide defendant with a job or transportation to school, counseling or support services. Probation concluded this would not provide defendant with a stable living situation or the support and resources necessary for treatment.

The dispositional report was filed on December 2, 2009. The report recounted difficulties and challenges in defendant's upbringing. It examined community placement options and concluded none was satisfactory. Defendant's mother and stepfather had lost their home to foreclosure, and his mother was also "colluding with [defendant] in denial" of the allegations. His older brother was employed and living with friends. His father would not allow defendant to return to live with his family. His stepsiblings were still traumatized after a year of counseling. His grandfather was supportive, but lived in too remote a location for transportation or work prospects. His uncle and aunt lived out of state, but near an community park and playground, not acceptable for a convicted sex offender. Other community placements were unavailable or inappropriate for a 19-year-old sex offender. Defendant could remain at DJJ until he was 25 years old. A DJJ placement would allow him to complete high school, and to take college or vocational

training classes. In addition, DJJ would be obligated to provide a sex offender program, and it offered a two-year Sexual Behavior Treatment Program (SBTP).

At the dispositional hearing, both defendant and the People presented witness testimony. Daniel Macallair, executive director of the Center of Juvenile and Criminal Justice, testified for defendant. Macallair has evaluated DJJ since 2002, including participating on the Little Hoover Commission Advisory Panel examining conditions within DJJ. His most recent report, in 2009, recommended DJJ should be shut down. Macallair referred to three reports of the Special Master in *Farrell v. Cate* (Alameda County Superior Court No. RGO3079344). That lawsuit challenged the adequacy of many conditions at the DJJ, and a comprehensive consent decree was entered in 2004.[2] One of the areas of concern was the DJJ's sexual behavioral treatment units, and the reports indicated DJJ had not achieved full compliance with the decree in that regard or in the area of youth safety. Macallair was critical of the Chaderjian facility, where defendant would be placed, expressing concern about overcrowding and gang violence. He also expressed concern about whether there would be a delay in receiving treatment and identified deficiencies in the program, including no uniform SBTP curriculum, insufficient staff, and inadequate record keeping. He recommended defendant be placed in juvenile hall, with SBTP counselors traveling to the hall to work with him until he is 21 years old. Macallair acknowledged such a placement was "out of the ordinary" and "on the margins" and had not spoken with anyone at the juvenile hall about it.

Psychologist Heather Bowlds, the SBTP coordinator for all of the DJJ, testified for the People. She was well aware of the litigation against the DJJ and obligations of the consent decree. She was also personally involved in the efforts to improve the SBTP and bring it into compliance. She stated there had been significant changes in treating juvenile sex offenders, moving away from the "cookie cutter" approach for adult offenders, toward an individualized approach for juveniles. DJJ also had implemented

[2] These reports were not introduced into evidence. While we granted defendant's request for judicial notice of these reports, we made no determination as to their ultimate significance on appeal.

some of the other improvements required by the consent decree including a new standardized monitoring system, a new record keeping system, and the Sexual Behavior Task Force. She also observed most violence at DJJ involves gang members and anyone who is a gang member cannot participate in SBTP. Therefore, the SBTP units tend to be less violent than the "core" units. Bowlds did not foresee any overcrowding problems and, in fact, none of the SBTP units were at capacity, so there was no waiting for SBTP. Bowlds believed defendant was appropriate for SBTP and it would serve his need for a structured environment with appropriate treatment. Bowlds also testified specifically about Chaderjian. Defendant would be in a unit devoted to SBTP and thus be in a "therapeutic community" at all times, have his own bedroom, attend high school and be with wards his own age. Outpatient treatment, in contrast, would be less intensive. On parole, defendant would continue SBTP treatment in the community.

Defendant also called Ms. Munoz to testify. She confirmed what had been reported by probation.

He additionally called Ms. Garcia-Marcus, his probation officer. She confirmed what had been reported to the court about alternative community placements. She also discussed three licensed sex offender programs to which she often referred wards. However, these programs met only once a week. She acknowledged she would not have recommended DJJ had she found an appropriate local placement. Nevertheless, she considered DJJ the appropriate placement for several reasons: the seriousness of his offenses, the greatest structure, and the most intensive treatment and rehabilitation program. In addition, defendant would receive education and transitional services once paroled.

The People urged that defendant be committed to the DJJ as recommended by probation. Defense counsel urged that he be released to live in Munoz's trailer or detained at juvenile hall, with an SBTP provider going to the hall and providing treatment and counseling.

The juvenile court committed defendant to DJJ. The court provided a lengthy and exceptionally thoughtful recitation of its reasons. It summarized the testimony, reviewed

every community option, and reviewed the services and treatment that would be provided at DJJ. The court recognized this was "a difficult case" in that defendant "has absolutely no criminal record . . . and also because Dr. Kirkland's report says that he can be safely placed back in the community if there's sufficient stability, structure and support." None of the suggested community placements, however, met that criteria. That left DJJ. However, the court "was extremely impressed by Dr. Bowlds," who has "made some very serious efforts to improve on a program that's been subject to many criticisms." The court believed Bowlds would accomplish the group and individual therapy goals she discussed. Most of Macallair's information, on the other hand, was several years old and "there's been a lot of efforts to improve the situation since then that were articulated by Dr. Bowlds." Furthermore, "the DJJ program provides the most comprehensive structure, support and stability for [defendant]. And he would clearly have his food, clothing and shelter provided, and since clearly those basic needs would be met, he would be able to function on a high level and not be thinking about his daily needs . . . . [¶] He would be able to finish his education . . . ." The court lastly observed that while it "hate[d] to send [defendant to] DJJ . . . the severity of these attacks [was] alarming . . . that makes me think this case does fall within the purview of DJJ quality because they weren't just attacks, they were more terrorizing children in the course of the attacks."

The court did not, however, commit defendant for the maximum allowable period. Instead, the trial court committed him for a four-year period (low term of three years on the § 288, plus one-third the midterm on the § 245, running consecutively), plus credit for time served. Defendant filed a timely notice of appeal from the commitment order.

III. DISCUSSION

A. The Commitment to DJJ

1. Standard of Review

In *In re Carl N.* (2008) 160 Cal.App.4th 423, 431-433 (*Carl N.*), the Court of Appeal provided a concise overview of the applicable standard of review: "The decision

of the juvenile court to commit a juvenile offender to CYA[3] may be reversed on appeal only by a showing that the court abused its discretion. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395 . . . .) '[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered.' (*People v. Giminez* (1975) 14 Cal.3d 68, 72 . . . .) [¶] As the court explained in *In re Michael D., supra*, 188 Cal.App.3d at page 1395, '[a]n 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. [Citations.] 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.' " (*Id.* at pp. 431-432.)

"The statutory declaration of the purposes of the juvenile court law is set forth in [Welfare and Institutions Code] section 202. (10 Witkin, Summary of Cal. Law (10th ed. 2005) § 442, pp. 551-552.) Before the 1984 amendment to section 202, California courts consistently held that ' "[j]uvenile commitment proceedings are designed for the purposes of rehabilitation and treatment, not punishment." ' (*In re Michael D., supra*, 188 Cal.App.3d at p. 1396, quoting *In re Aline D.* (1975) 14 Cal.3d 557, 567 . . . (*Aline*).) California courts treated a commitment to CYA as 'the placement of last resort' for juvenile offenders. (*In re Michael D., supra*, 188 Cal.App.3d at p. 1396.) [¶] However, '[i]n 1984, the Legislature replaced the provisions of section 202 with new language which emphasized different priorities for the juvenile justice system.' (*In re Michael D., supra*, 188 Cal.App.3d at p. 1396, citing Stats.1984, ch. 756, §§ 1, 2, pp. 2726-2727.) Section 202, subdivision (b) (hereafter section 202(b)) now recognizes punishment as a rehabilitative tool. (*In re Michael D., supra*, 188 Cal.App.3d at p. 1396.) That subdivision provides in part: 'Minors under the jurisdiction of the juvenile court who are

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[3] Effective July 1, 2005, the CYA was redesignated the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (Welf. & Inst. Code, § 1710, subd. (a).)

in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests 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*.' (§ 202(b), italics added.)" (*Carl N., supra,* 160 Cal.App.4th at p. 432.)

" 'Section 202 also shifted its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express "protection and safety of the public" [citations], where care, treatment, and guidance shall conform to the interests of public safety and protection. [Citation.]' (*In re Michael D., supra,* 188 Cal.App.3d at p. 1396.) 'Thus, it is clear that the Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety.' (*Ibid.*) It is also clear, as the Court of Appeal recognized in *In re Asean D.* (1993) 14 Cal.App.4th 467, 473 . . . , that a commitment to CYA 'may be made in the first instance, without previous resort to less restrictive placements.' " (*Carl N., supra,* 160 Cal.App.4th at pp. 432-433.)

" 'This interpretation by no means loses sight of the "rehabilitative objectives" of the Juvenile Court Law. [Citation.] Because commitment to CYA cannot be based solely on retribution grounds [citation], there must continue to be evidence demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate. However, these must be taken together with the Legislature's purposes in amending the Juvenile Court Law.' (*In re Michael D., supra,* 188 Cal.App.3d at p. 1396.)" (*Carl N., supra,* 160 Cal.App.4th at p. 433.)

2. The Juvenile Court Acted within Its Discretion in Ordering a DJJ Commitment

Defendant contends there was no showing of probable benefit of a DJJ placement, and the juvenile court abused its discretion by committing him to DJJ so solely because

there was no least restrictive alternative. Defendant's assertion there is no evidence of any probable benefit from a DJJ commitment is essentially a repeat of the argument he made to the juvenile court. He relies on Macallair's highly critical testimony about the DJJ and Chaderjian, in particular. He also relies on the three documents Macallair discussed, which pertained to the status of DJJ's efforts to comply with a consent decree and implement remedial measures. These documents were not themselves admitted into evidence. They are therefore not part of "the record presented at the disposition hearing" (*In re Michael D., supra*, 188 Cal.App.3d at p. 1395), and defendant cannot point to them to demonstrate a lack of evidence to support the court's disposition. In any case, the documents are not outcome determinative. Bowlds discussed them, as well, and explained that while DJJ may have additional work to do, with respect to defendant, in particular, there was a significantly improved SBTP and he would not have to wait for placement in the program.

The juvenile court carefully considered Macallair's testimony and opinions. It also considered Bowlds's testimony and her contrary opinions. As the trier of fact, the court was entitled to credit Bowlds's first-hand knowledge and to accept her opinions as to the probable benefit of a DJJ commitment. At the time of the court's disposition order, defendant was 19 years old. The DJJ would provide him with "long-term, rehabilitative" programs, including SBTP, in a structured environment, as recommended by Kirkland. He would also have the opportunity to complete his high school education and to continue his education or receive vocational training. This is more than sufficient to demonstrate probable benefit of a DJJ commitment.

It is true defendant had no prior criminal history. But a DJJ commitment need not be a last resort. (*Carl N., supra*, 160 Cal.App.4th at pp. 432-433; *In re Asean D., supra*, 14 Cal.App.4th at p. 473.) The court found defendant's offenses were extremely serious—terrorizing to his half siblings, who several years later were still seriously traumatized by his conduct. The juvenile court was well within its discretion in determining this was criminal conduct "within the purview of DJJ quality."

It is also true the juvenile court hoped there might be an appropriate placement other than DJJ. However, on the basis of extensive and "open minded" investigation by probation, the court concluded this simply was not the case. While defendant insists the court should have adopted Macallair's proposal—that he remain at juvenile hall with SBTP counselors visiting him—there was a sound basis for the court to choose a different course. Not only was there no assurance such an arrangement at juvenile hall was even possible, but the SBTP at DJJ is far more intensive and part of an overall "therapeutic community."

Defendant relies on *Aline D., supra*, 14 Cal.3d 557 (superseded in part by statute as stated in *In re Luisa Z.* (2000) 78 Cal.App.4th 978, 987-988). Aline was a borderline mentally retarded 16-year-old girl, with a history of assaultive behavior and gang association. (*Aline D., supra,* at pp. 559, 561-562.) The court's sole reasoning for her committing her to the CYA was that no other placement was available and it was not going to turn "this lady out into the street." (*Id.* at pp. 561-562.) Although the commitment order contained a printed "finding" the ward would "probably benefit" from a CYA commitment, the record contained no such determination by the court nor any evidence to support such a finding. (*Id.* at p. 562.) *Aline* is readily distinguishable. To begin with, it was decided before the 1984 amendments, which to some degree altered the philosophical approach to juvenile dispositions. Further, as we have discussed, the state of the record here is decidedly different than that in *Aline*—there is substantial evidence of probably benefit from a DJJ commitment.

In sum, the record does not indicate any abuse of discretion on the part of the juvenile court. To the contrary, it demonstrates a thorough assessment and carefully reasoned disposition by the court. The record demonstrates there are probable benefits associated with a DJJ commitment and that defendant was not committed to DJJ "solely" because there was no other appropriate placement. Given our conclusions, we also reject defendant's due process argument, since it is also predicated on the assertion he was committed to DJJ solely because there was "no alternative."

3. Defendant Is Entitled to Full Conduct Credits

The Attorney General agrees with defendant that the commitment should be modified to reflect his complete conduct credits and he should be credited for the additional 34 days he remained in custody following the disposition hearing until he was transferred to the DJJ. We therefore will order the commitment order modified to reflect conduct credits totaling 253 days.

B. Defendant Was Not Entitled to a Jury Trial Before Being Subject to Registration Requirements, Residency Restrictions and Potential Civil Commitment

Following the publication of *In re J.L.* (2010) 190 Cal.App.4th 1394 [119 Cal.Rptr.3d 40] (*J.L.*), review granted March 2, 2011, S189721, defendant sought, and we granted, leave to file a supplemental appellant's brief contending he cannot be subject to the "lifetime burdens" that flow from his section 288, subdivision (a), adjudication—registration as a sex offender, residency restrictions under "Jessica's Law," and potential civil commitment as a sexually violent predator—in the absence of a trial by jury. Like defendant, the juvenile in *J.L.* suffered a section 288, subdivision (a), adjudication and made the same jury trial arguments. The *J.L.* court agreed juveniles cannot be subject to the lifetime residency restrictions without a jury trial, but held otherwise as to registration and possible civil commitment. (*J.L.*, at pp. 43-53.)

The Attorney General contends defendant has forfeited his jury trial arguments because he admitted the section 288, subdivision (a), allegation and made no claim he was entitled to a jury trial when he did so or during the disposition proceedings. An exception to the forfeiture rule applies when a sentence is "unauthorized." (*People v. Scott* (1994) 9 Cal.4th 331, 354.) "[T]he 'unauthorized sentence' concept constitutes a narrow exception to the general requirement that only those claims properly raised and preserved by the parties are reviewable on appeal." (*Ibid.*) Generally, a sentence is "unauthorized" if it "could not lawfully be imposed under any circumstance in the particular case." (*Ibid.*) "[C]laims deemed waived on appeal involve sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner." (*Ibid.*) Here, defendant contends the lifetime burdens flowing from his

section 288, subdivision (a), adjudication were unauthorized on constitutional grounds. Accordingly, his jury trial claim has not been forfeited.

The Attorney General also contends defendant's jury trial claims are not ripe because he is still at DJJ and therefore is not yet subject to the burdens about which he complains. We disagree. Defendant was subject to the "burdens" he now challenges upon being adjudicated of violating section 288, subdivision (a). That he has not yet performed the physical acts of registering or moving into compliant housing, does not make his challenge to his obligation to do both premature and not ripe for review. We therefore turn to defendant's jury trial arguments based on *J.L.*

The *J.L.* court based its jury trial holding as to the residency restrictions of "Jessica's Law" on two premises. First, it concluded *McKeiver v. Pennsylvania* (1971) 403 U.S. 528 (*McKeiver*), does not foreclose a determination that a jury trial is constitutionally required before a juvenile can be subjected to a severe criminal penalty. In *McKeiver*, the Supreme Court rejected jury trial claims by a number of juveniles, none of whom had suffered any serious criminal sanction. While the court held the right to jury trial generally does not apply in juvenile delinquency proceedings, the opinions comprising the plurality decision varied in their analysis. (*J.L.*, *supra*, 119 Cal.Rptr.3d at pp. 49-52.) The *J.L.* court distilled from this amalgam the following proposition: Where the penalty imposed on a juvenile is exceptionally severe and wholly penal in character, and partakes of none of the rehabilitative and benevolent parens patriae philosophy historically undergirding a separate juvenile justice system, the juvenile is constitutionally entitled to a jury trial before suffering such consequence. (See *id.* at pp. 49, 52-53.)

Second, the *J.L.* court concluded the residency restrictions of "Jessica's Law" are wholly punitive in character and exceptionally draconian as to juveniles. (*J.L.*, *supra*, 119 Cal.Rptr.3d at pp. 46-49.) The court relied on its decision in *People v. Mosley* (2010) 188 Cal.App.4th 1090 [116 Cal.Rptr.3d 321] (*Mosley*), review granted January 26, 2011, in which it held the residency restrictions constitute "punishment" and therefore a misdemeanant charged with committing a lewd act but convicted of the lesser included

offense of simple assault had a right to jury trial as to facts supporting discretionary registration. (*J.L.*, at pp. 46-49.) As noted, the California Supreme Court has granted review in *Mosley.*[4]

We conclude the California Supreme Court has spoken clearly on the question of jury trials in juvenile cases, and this precedent compels that we reach a conclusion different than that reached in *J.L.* (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) The court's recent decision in *People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*), is illustrative. In *Nguyen*, the court held juvenile adjudications can constitute "strikes" under the "Three Strikes Law," even though such adjudications are made by a juvenile court, rather than by a jury. The defendant in *Nguyen* made arguments similar to those made here by defendant—that given the extremely grave consequences of a "strike" offense, constitutional protections require that such a conviction be made by a jury.

In rejecting these arguments, the California Supreme Court was crystal clear as to its view of *McKiever's* holding—"that the Constitution does not afford the right to a jury trial in juvenile proceedings." (*Nguyen, supra*, 46 Cal.4th at p. 1019.) "The court's decision in *McKeiver* not to find a constitutional jury trial right in juvenile proceedings reflected its concern that the introduction of juries in that context would interfere too greatly with the effort to deal with youthful offenders by procedures less formal and adversarial, and more protective and rehabilitative—at least to a degree—than those applicable to adult defendants." (*Id.* at p. 1023.) The *McKiever* majority also "made clear that the absence of a right to trial by jury did not appreciably undermine the *accuracy* of the *factfinding function* in juvenile cases." (*Nguyen*, at p. 1023.) "Implicit in

[4] And, the same date, January 26, 2011, the Supreme Court granted review in *In re S.W.* (Sept. 28, 2010) 2010 WL 3760256. *In re S.W.* was decided by the same court that decided *J.L.* and *Mosley*, but a different panel. The juvenile in *In re S.W.* also suffered a section 288, subdivision (a), adjudication and also argued he was entitled to a jury trial before he could be subject the lifetime burdens of registration, residency restrictions and potential civil commitment. The *S.W.* court disagreed on all counts, contrary to the *J.L.* court.

the high court's juvenile justice decisions is the premise that this particular safeguard [i.e., jury trial] is not constitutionally essential to a fair and reliable adjudication *in a juvenile case.*" (*Id.* at p. 1026; see also *id.* at p. 1028 (disn. opn. of Kennard, J.) ["In California, a minor accused of a crime in a juvenile court proceeding—unlike a person accused in an adult criminal proceeding—has no right to a jury trial.]; *People v. Superior Court* (1975) 15 Cal.3d 271, 274 ["As all parties hereto are fully aware, neither the state nor the federal Constitution guarantees a jury trial in a juvenile proceeding."].)

Thus, as the Court of Appeal observed in *People v. Smith* (2003) 110 Cal.App.4th 1072, 1079, footnote 8, "in light of nearly 80 years of precedent beginning with *In re Daedler* (1924) 194 Cal. 320 . . . , only the California Supreme Court can now reconsider the question whether the California Constitution confers a right to a jury trial in juvenile court proceedings." In light of this precedent, we need go no further.

It is also our view, however, that the California Supreme Court has additionally rejected *J.L.'s* second premise—that the residency restrictions imposed by "Jessica Law's" are additional "punishment." In *In re E.J.* (2010) 47 Cal.4th 1258, the Supreme Court rejected retroactive and ex post facto challenges by parolees convicted before "Jessica's Law" was enacted, but paroled thereafter. In rejecting these arguments, the Court stated: "Although they fall under the new restrictions by virtue of their *status* as registered sex offenders who have been released on parole, they are not being 'additionally punished' for commission of the original sex offenses that gave rise to that status. Rather, petitioners are being subjected to new restrictions on where they may reside while on their *current parole*—restrictions clearly intended to operate and protect the public *in the present*, not to serve as additional punishment for past crimes." (*Id.* at p. 1278.) Thus, we believe *Auto Equity* requires a different conclusion than that reached by *J.L.* on this point, as well. Finally, even *J.L.* rejected the contention that a juvenile is entitled to a jury trial before he or she can be subject to lifetime registration requirements and potential civil commitment. (*J.L., supra,* 119 Cal.Rptr.3d at pp. 53-55.)

IV. DISPOSITION

The juvenile court's order committing defendant to the DJJ is modified to reflect conduct credits totaling 253 days and, in all other respects, is affirmed.

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Banke, J.

We concur:

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Marchiano, P. J.

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Dondero, J.