

CERTIFIED FOR PUBLICATION

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re D.B., a Person Coming Under the Juvenile
Court Law.

C067353

THE PEOPLE,

(Super. Ct. No. JV125361)

Plaintiff and Respondent,

ORDER MODIFYING OPINION

v.

[NO CHANGE IN JUDGMENT]

D.B.,

Defendant and Appellant.

THE COURT:

It is ordered that the opinion filed herein on October 31, 2012, be modified as follows:

1. On page 3, in the last paragraph, the citation to “*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469” is amended to read:

(*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469,
disapproved of on other grounds by *In re Greg F.* (2012) 55 Cal.4th 393.)

2. On page 4, after the sentence that begins “In *V.C. v. Superior Court*,” add as footnote 2 the following footnote:

² *In re Greg F., supra*, 55 Cal.4th 393, disagreed with *V.C. v. Superior Court, supra*, 173 Cal.App. 4th 1455, to the extent it held that a court did not have discretion to dismiss a minor’s most recent offense in order to

make the minor eligible for commitment to the DJF under the terms of section 733, subdivision (c). (*In re Greg F.*, *supra*, 55 Cal.4th at pp. 402, 419-420.) This case does not involve that particular issue.

There is no change in the judgment.

BLEASE _____, Acting P. J.

BUTZ _____, J.

DUARTE _____, J.

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(Super. Ct. No. JV125361)

APPEAL from a judgment of the Superior Court of Sacramento County, Stacy Boulware Eurie, Judge. Affirmed in part and reversed in part with directions.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Catherine Chatman, Supervising Deputy Attorney General, and Michael Dolida, Deputy Attorney General, for Plaintiff and Respondent.

A juvenile who is adjudged a ward of the court can be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) only if “the most recent offense alleged in any petition and admitted or found to be true by the court is . . . described in” Welfare and Institutions Code section 707, subdivision (b), or

Penal Code section 290.008, subdivision (c). (Welf. & Inst. Code, § 733, subd. (c).)¹

The issue presented here is whether a juvenile may be committed to the DJF if the petition alleges and the court finds that the juvenile committed several offenses on more than one occasion, but the most recent occurring offense was not one described in section 707, subdivision (b) (hereafter 707(b)).

Here, the wardship petition alleged nine counts. The “most recent offense[s]” alleged in the petition and found to be true by the court were alleged to have occurred on May 30, 2010, and were not offenses described in section 707(b). The remaining offenses were alleged to have occurred one week earlier, on May 23, 2010. One of these alleged offenses (robbery), which the court found to be true, was an offense described in section 707(b).

Defendant argues section 733, subdivision (c), means exactly what it says, and that he was therefore ineligible for commitment to the DJF. The People argue the phrase “most recent offense” does not refer to the date the offense was committed, but to the date the petition is filed and adjudicated. In other words, the People contend the statute means a ward may be committed to the DJF only if the most recent *petition* containing an allegation found true by the court alleges an offense that is described in section 707(b).

We discern no ambiguity in the statutory language, and conclude that the statute’s reference to “the most recent offense alleged in any petition” means the most recently occurring offense. We shall remand for further dispositional proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

D.B. was 16 years old in May 2010. The first seven counts of D.B.’s juvenile wardship petition were alleged to have occurred on May 23, 2010. On that date, D.B. and another person approached Marcus Robinson as Robinson was sitting in his car,

¹ References to an undesignated section are to the Welfare and Institutions Code unless otherwise indicated.

which was parked in front of Robinson's mother's house. D.B. punched Robinson in the jaw, and when Robinson tried to run away, D.B. and two others punched him six or seven times, took his car keys, wallet, and necklace, then drove away in Robinson's car. Robinson suffered a fractured jaw, abrasions, and bite marks. One of the charges resulting from this occurrence was carjacking, a violation of Penal Code section 215. Carjacking is an offense described in section 707(b).

The last two counts of D.B.'s juvenile wardship petition were alleged to have occurred one week later, on May 30, 2010. On that date, a police officer stopped D.B. and asked for his name. D.B. gave a false name, and, suspecting as much, the officer attempted to detain him. D.B. ran away but was soon caught by other officers. Robinson happened to see D.B. as he was fleeing the police, and identified D.B. to the officers as the person who had attacked him and taken his car the week before.

The occurrence on May 30, 2010, resulted in two counts: violation of Penal Code section 148, subdivision (a)(1) (resisting a police officer), and violation of section 148.9, subdivision (a) (false identification to a police officer). Neither of these offenses is described in section 707(b).

The trial court found all the charges to be true, and sustained the petition.

D.B. argued below that he did not qualify for a DJF commitment because the most recent offense alleged in the wardship petition was not an offense described in section 707(b). The juvenile court found that the phrase "most recent offense" as used in section 733, subdivision (c) referred to the date the petition was filed and not the date the offense was committed. The juvenile court committed D.B. to the DJF for the maximum confinement term of 11 years 8 months.

DISCUSSION

The Legislature enacted section 733, subdivision (c), in order to implement the Budget Act of 2007. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469.) Its purpose was " "to reduce the number of youth offenders housed in state facilities by

enacting realignment legislation which shifted responsibility to the counties for all but the most serious youth offenders. . . .” [Citation.]’ [Citation.]” (*Id.* at p. 1469.)

Section 733 states in its entirety:

“A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:

“(a) The ward is under 11 years of age.

“(b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.

“(c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007.”

In *V.C. v. Superior Court, supra*, 173 Cal.App.4th 1455, this court held that the juvenile court could not dismiss the most recently sustained petition, which did not contain an offense that qualified for a DJF commitment, in order to make a qualifying offense in an earlier sustained petition the most recent offense. As we recognized in that case, our interpretation of any statute begins with an analysis of the language, and if the meaning of the language is unmistakable, we need go no further. (*Id.* at p. 1467.) Only if the language of the statute is ambiguous when applied to the facts before us do we examine the Legislature’s intent in drafting the statute. (*Id.* at pp. 1467-1468.) As to the plain meaning of section 733, we stated:

“The language of section 733(c) allows commitment to DJF only when ‘*the most recent offense* alleged in any petition and admitted or found to be true by the court’ (italics added) is an eligible offense. The statute does not focus on the overall or entire delinquent history of the minor or on

whether the minor may be generally considered a serious, violent offender. The language looks to the minor's 'most recent offense.' The Legislature has specifically determined it is the minor's most recent offense that determines the minor's eligibility for DJF commitment." (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.)

The People urge us to interpret the words "most recent" as modifying the petition and adjudication, rather than the offense. According to this interpretation, the minor could be confined to the DJF if any *offense* alleged in the most recent *petition* and admitted or found to be true by the court is described in section 707(b). The language of section 733, subdivision (c), is simply not susceptible to this interpretation.

The People argue we should ignore the plain meaning of the statute because it results in an absurd consequence that the Legislature did not intend. We may ignore the plain meaning of an unambiguous statute only when a literal interpretation would yield absurd results. (*People v. Albillar* (2010) 51 Cal.4th 47, 55.) A literal interpretation of the statute does not produce absurd results.

The purpose of section 733, subdivision (c), was to reduce the number of youth offenders housed in the DJF. (*In re N.D.* (2008) 167 Cal.App.4th 885, 891-892.) The Legislature chose to do this by targeting currently violent or serious juvenile offenders to be sent to the DJF. (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.) The Legislature chose to determine those who were currently violent or serious offenders by looking to their "most recent offense." The Legislature could have chosen any 707(b) qualified offense committed in the past year or 6 months. This, arguably, would have insured that every currently violent or serious offender was sent to the DJF. However, the Legislature chose to consider only the "most recent offense."

The People's proposed interpretation could result in consequences inimical to the statute's purposes under different circumstances. As D.B. notes, such an interpretation would allow the court to send a juvenile to the DJF for a 707(b) offense committed years before the most recent non-707(b) offense, as long as the 707(b) offense is filed in the

most recent wardship petition. Such a result would not further the legislative intent of sending only currently violent or serious juvenile offenders to the DJF. (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.)

In light of our determination that D.B. was ineligible for a DJF placement, we need not consider his argument that the juvenile court abused its discretion when it committed him to the DJF.

DISPOSITION

The matter is remanded to the juvenile court with instructions to reverse the dispositional order committing D.B. to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities and conduct a new dispositional hearing in accordance with the views expressed herein. The judgment is affirmed in all other respects.

BLEASE, Acting P. J.

We concur:

BUTZ, J.

DUARTE, J.