

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KJ 0370

STATE OF LOUISIANA

IN THE INTEREST OF

C.C.

**On Appeal from the
City Court of Slidell
Parish of St. Tammany, Louisiana
Docket No. 2009 JC 4538, Juvenile Division
Honorable James "Jim" Lamz, Judge Presiding**

**Walter P. Reed
District Attorney
Covington, LA**

**Attorneys for
State of Louisiana**

and

**Kathryn Landry
Special Appeals Counsel
Baton Rouge, LA**

**Annette Roach
Louisiana Appellate Project
Lake Charles, LA**

**Attorney for Appellant
C.C.**

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Judgment rendered JUL 16 2010

PARRO, J.

C.C., a child, was alleged to be delinquent by a petition filed on August 6, 2009, pursuant to the Louisiana Children's Code. The petition alleged that he committed two counts of the felony-grade delinquent act of attempted first degree robbery, violations of LSA-R.S. 14:27 and 64.1. The petition was later amended to delete one count, and C.C. subsequently pled true to the remaining count as alleged in the amended petition. C.C. was adjudicated delinquent in accordance with his plea and the juvenile court ordered him committed to the custody of the Department of Public Safety and Corrections (Department), Division of Youth Services, Office of Juvenile Justice, until his 21st birthday, with credit for time served, with a recommendation for secure placement. The court ordered the first three years to be served "without benefit of parole, probation, or suspension of sentence."

C.C. appeals, designating the following assignments of error:

1. The trial court erred in imposing an illegal disposition upon C.C.
2. The disposition imposed in this case is not the least restrictive alternative available, is nothing more than punishment and is thus constitutionally excessive.

Finding some merit in the assigned errors, we affirm the adjudication of delinquency but modify the disposition and remand the case with instructions.

FACTS

On the night of July 29, 2009, C.C. and two other young men conspired to rob two Hispanic males walking down the street. C.C. had a pellet gun that looked like a firearm, which he pointed at the victims while demanding their money. The victims, who believed it was a firearm, stated that they did not have any money and began screaming for help. C.C. and his cohorts then ran and hid the pellet gun, which was later recovered by officers investigating the crime. *All three conspirators confessed.*

ILLEGAL DISPOSITION

In his first assignment of error, C.C. contends that the juvenile court imposed an illegal disposition when it ordered the first three years of custody with the Department to be served without benefit of parole.

After adjudication of a felony-grade delinquent act other than those described in Article 897.1, the juvenile court may adjudicate a child delinquent and commit the child to the custody of the Department. LSA-Ch.C. art. 897(D). In accordance with LSA-Ch.C. art. 901(C), such commitment may be appropriate if any of the following exists:

1. There is an undue risk that during the period of a suspended commitment or probation the child will commit another crime.
2. The child is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment.
3. A lesser disposition will deprecate the seriousness of the child's delinquent act.
4. The delinquent act involved the illegal carrying, use, or possession of a firearm.

When such a disposition is made, Article 903(C) provides, in part:

The order of commitment may require the department to take physical custody of a child adjudicated a delinquent, committed to its custody pursuant to Article 897(D) [for a felony-grade delinquent act] or Article 899(D) [for a misdemeanor-grade delinquent act], and recommended by the court or the department for assignment to a secure program or facility, within fourteen days from the date of the court's signing of the judgment of disposition when the child is in or is going to be placed in the physical custody of a parish juvenile facility.

Thus, the juvenile court has the authority to recommend a secure placement.

Article 898, in pertinent part, governs the duration of a disposition based on a felony-grade adjudication:

- A. No judgment of disposition shall remain in force for a period exceeding the maximum term of imprisonment for the felony forming the basis for the adjudication. The court shall give a child credit for time spent in secure detention prior to the imposition of disposition.
- B. When modification and parole is not prohibited by Article 897.1, if an order of commitment to custody of the Department of Public Safety and Corrections is subsequently modified and the child is placed on parole, the maximum term of parole shall be the remainder of the sentence originally imposed.

Although this article provides maximum disposition limitations, Article 898 does not authorize the juvenile court to place limitations on a child's parole eligibility at the time of the initial disposition. Such limitations are authorized and mandated only for the enumerated offenses set forth in Article 897.1. Furthermore, once a child has been committed to the custody of the Department, the Department has **sole** authority over

the placement, care, treatment, or any other considerations deemed necessary. LSA-Ch.C. art. 908(A).

In this case, the court ordered that

this juvenile be placed in the care of the Office of Juvenile Justice until his 21st birthday with a recommendation of secure care.

The Court notes for the record that this is a recommendation, and OJJ is free to give him non-secure care if they desire to do so.

My recommendation is secure care, regular.

The first three years are to be served without benefit of parole, probation, or suspension of sentence.

Based on our interpretation of Article 898 *in pari materia* with Article 897.1, we find the juvenile court legally erred in ordering the first three years of custody to be served without benefit of parole. Accordingly, we amend the custody order to delete this restriction.

EXCESSIVE DISPOSITION

C.C. also contends that the disposition imposed is excessive. Article I, Section 20 of the Louisiana Constitution prohibits "cruel, excessive, or unusual punishment." Where excessive commitment is complained of in juvenile proceedings, the record must be reviewed to determine whether the juvenile court imposed the least restrictive disposition authorized, which the court found to be consistent with the circumstances of the case, the child's needs, and the best interest of society. See LSA-Ch.C. art. 901(B); **State in the Interest of J.W.**, 95-1131 (La. App. 1st Cir. 2/23/96), 669 So.2d 584, 586, writ denied, 96-0689 (La. 4/26/96), 672 So.2d 911. The court must state for the record the considerations taken into account and the factual basis therefor in imposing the particular disposition chosen. LSA-Ch.C. art. 903(A)(1).

The penalty for first degree robbery is imprisonment at hard labor for not less than three years and for not more than forty years, without benefit of parole, probation, or suspension of imposition or execution of sentence. LSA-R.S. 14:64.1(B). The penalty for an attempt shall not exceed one-half of the longest term of imprisonment prescribed for the offense attempted. LSA-R.S. 14:27(D)(3). Therefore, the maximum sentence for

an adult convicted of attempted first degree robbery is twenty years, without benefit of parole, probation, or suspension of sentence. In a juvenile disposition, the judgment may not remain in force for a period exceeding the maximum term of imprisonment for the felony forming the basis for the adjudication. LSA-Ch.C. art. 898(A). A maximum term does not apply if the child reaches age twenty-one. LSA-Ch.C. art. 898(C)(5). The disposition in this case, commitment to age twenty-one, does not exceed the maximum term of imprisonment for the felony forming the basis for the adjudication, as C.C. was just shy of his seventeenth birthday at the time of his disposition. His maximum period of commitment, therefore, was just over four years.

A predisposition report was prepared by the Office of Juvenile Justice, which was introduced at the disposition hearing. The report recommended that C.C. be placed in the Department's custody for two years, with a recommendation of secure placement. In stating the considerations taken into account and the factual basis therefor in imposing the disposition, the court emphasized C.C.'s prior delinquent history, including multiple counts of simple burglary, one count of theft of goods, and two counts of theft of a firearm. The court indicated that it considered the disposition guidelines found in the Children's Code and found an undue risk that C.C. would commit another offense, that C.C. was in need of correctional treatment, and that a less restrictive disposition would deprecate the seriousness of the delinquent act. The court further noted that the gun in C.C.'s possession "looked like it was a real gun. And if the victims had been armed, somebody may have been seriously injured or killed. Either you or the other guys that were with you or the victims. I mean, it could have been terrible." The court explained to the juvenile, "[Y]ou need some help. And I consider [you] dangerous at this point. Very dangerous to yourself and very dangerous to other people in the community."

The disposition imposed was not grossly disproportionate to the severity of the offense. The court carefully considered the circumstances of the case, the needs of the child, and the best interest of society. The court imposed the disposition in accordance with the dispositional guidelines of the Children's Code. Accordingly, for the reasons set out above, we affirm the juvenile court's judgment adjudicating C.C. delinquent and

committing him to the custody of the Department until his 21st birthday.

This assignment of error is meritless.

CREDIT FOR TIME SERVED

Although the court ordered, and the minutes reflect, that C.C. receive credit for time spent in secure detention prior to the imposition of disposition, the custody order does not reflect this credit. C.C. asks that we order the juvenile court to amend the custody order.

Louisiana Children's Code Article 898(A) provides, in pertinent part, that "[t]he court shall give a child credit for time spent in secure detention prior to the imposition of disposition." Under the Code of Criminal Procedure, the granting of credit for time served has long been self-operating. See LSA-C.Cr.P. art. 880; **State v. Roberts**, 98-1706 (La. App. 1st Cir. 5/14/99), 739 So.2d 821, 829-30. Thus, it is no longer necessary for an appellate court to amend an adult defendant's sentence to reflect credit for time served. However, the self-operating language is absent from Article 898(A) of the Children's Code. Thus, we amend the disposition to reflect credit for time served.

CONCLUSION

Having found some merit in the assignments of error, the adjudication of delinquency is affirmed and the disposition is modified to delete the restriction that the first three years of custody be served without benefit of parole and to reflect that C.C. receive credit for time served in secure detention prior to the imposition of disposition. Imposition of a new disposition is unnecessary. We simply remand this matter to the juvenile court with instructions to amend the custody order and minutes to reflect these modifications. The juvenile court shall forward a certified copy of these modifications to the Department.

**ADJUDICATION OF DELINQUENCY AFFIRMED; DISPOSITION MODIFIED;
REMANDED WITH INSTRUCTIONS.**