

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KJ 0336

STATE OF LOUISIANA IN THE INTEREST OF J.N.

Judgment Rendered: SEP 21 2012

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 92,948, DIVISION "A"

THE HONORABLE KATHLEEN STEWART RICHEY, JUDGE

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDONALD, J.

In January 2008, J.N., a child, who was then fifteen years old, was charged by petition number 92948 with aggravated burglary (count 1), in violation of La. R.S. 14:60; armed robbery (count 2), in violation of La. R.S. 14:64; false imprisonment with a dangerous weapon (count 3), in violation of La. R.S. 14:46.1; and simple burglary of an inhabited dwelling (count 4), in violation of La. R.S. 14:62.2.¹ He denied the allegations, but thereafter withdrew his plea and admitted the allegations as charged to counts 2, 3, and 4. Count 1 was dismissed. At the same hearing, he also admitted to or pled no contest to all of the charges in petition number 92735.

After dispositional delays were waived, the court rendered the following dispositions: on count 2, commitment until his twenty-first birthday, concurrent with counts 3 and 4 and with petition number 92735 counts 1 through 5; on count 3, three years commitment, concurrent with counts 2 and 4, and with petition number 92735 counts 1 through 5; on count 4, three years commitment, concurrent with counts 2 and 3 and with petition number 92735 counts 1 through 5.²

In November 2011, J.N. filed a motion to reconsider and/or terminate disposition. In December 2011, after a hearing on the motion, the court terminated J.N.'s disposition. The State now appeals, raising one issue for review. We reverse the juvenile court's ruling terminating the disposition and reinstate the disposition.

¹ In November 2007, J.N. was charged by petition number 92735 with unauthorized use of a motor vehicle (count 1), in violation of La. R.S. 14:68.4; resisting a law enforcement officer (count 2), in violation of La. R.S. 14:108; aggravated flight from an officer (counts 3 and 4), in violation of La. R.S. 14:108.1; and possession of a controlled dangerous substance (cocaine) (count 5), in violation of La. R.S. 40:967(C). Also, in March 2008, he and another individual were indicted by a grand jury with one count of armed robbery. J.N. was never prosecuted under that indictment.

² At the same hearing, the juvenile court imposed dispositions for the charges in petition number 92735. None of those dispositions exceeded three years.

The juvenile admitted to the charges, and the facts were not developed. The juvenile court “questioned the State and the juvenile as to the circumstances of the offense and found a factual basis for the admission to the allegation in the petition.”

ASSIGNMENT OF ERROR

In the only assignment of error, the State contends that the juvenile court erred in terminating J.N.’s disposition prior to the imposed term of commitment when he was adjudicated a delinquent pursuant to La. Ch. Code art. 897.1(B). The State argues that Article 897.1(B) mandates that a commitment for armed robbery be served in its entirety, and that La. Ch. Code art. 909 explicitly prohibits the termination of a commitment imposed under Article 897.1(B).

On the delinquency adjudication based on armed robbery, in violation of La. R.S. 14:64, the juvenile court ordered the juvenile “committed to the custody of the Department of Public Safety and Corrections, until his 21st birthday, with credit for time served, which commitment was made executory this date.” At the time of the adjudication and disposition, on August 26, 2008, the juvenile was sixteen years old. On November 9, 2011, when he was nineteen years old, the juvenile filed a motion and order to reconsider and/or terminate disposition. As support, the motion stated that J.N. was on a minimum-custody level, had received his GED, was enrolled in the computer-tech vocational trade, and was attending Delta Community College at the University of Louisiana in Monroe, Louisiana. It also declared that J.N. had “reached maximum benefits from his placement with the Office of Juvenile Justice.”

The hearing on the motion to reconsider and/or terminate disposition was held on December 28, 2011. While the State acknowledged that J.N. had made a lot of progress during his time in State custody and was clearly one of the better residents, it stated that “unfortunately” the District Attorney’s hands were “tied” by

the law. Presumably referring to Article 897.1(B), the State argued that it had to object to J.N.'s motion because the law did not allow modifications. However, the State perceived a "gap" in the law because it did not seem to address a transition for juveniles who made progress to reintegrate them into society. Reading the law to not prohibit furloughs, the State said that it would not object to allowing J.N. to have generous furloughs.

The Department of Public Safety and Corrections did not join the motion or make any recommendation, but did recognize that J.N. had done extremely well and said they were prepared to make arrangements for him to have as many furloughs as possible. The Office of Juvenile Justice gave its opinion that J.N. had been acting "exemplary." J.N.'s counsel emphasized his progress in rehabilitation, noting that he was already doing things that people in society do, such as attending college. He asked the court to exercise its discretion and grant J.N. extended furloughs. J.N. also informed the court that his brother, who lived in Texas, was willing for J.N. to live with him and attend college there.

The juvenile court then stated:

"Well you know the first Article in Title 8 says; that the whole purpose of this is rehabilitation, is to redirect children – children, young people and have them um, make better choices and avoid criminal behavior. Later on in that Title of the Code, it says that if you commit the offense of armed robbery, you have to stay in secure custody for the entire disposition; and it removes from the Juvenile Court Judge, the ability to tailor a disposition to meet the circumstances of the case and the circumstances of the kid. Um, you more than most have earned the right for early release; but I can't release you. I can't parole you; however, I do retain the ability to terminate a case. It's done, you're release [sic]. Good luck. ... I'm granting the Motion over the State's objection."

J.N. is now twenty years old. He will be twenty-one on July 27, 2013.

Article 897.1, which addresses disposition after adjudication of certain felony-grade delinquent acts, provides, in pertinent part:

B. After adjudication of a felony-grade delinquent act based upon a violation of R.S. 14:64, armed robbery, the court shall commit the

child who is fourteen years of age or older at the time of the commission of the offense to the custody of the Department of Public Safety and Corrections to be confined in secure placement *for the length of the term imposed by the court at the disposition hearing without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence.*
(Emphasis added)

The State's position is that the juvenile court erred in terminating the disposition because Article 897.1(B) mandates that once a commitment for armed robbery is imposed, as is the case here, the juvenile must serve that commitment in its entirety. The issue before us now is whether the juvenile court had the authority to terminate the disposition early.³

While Article 897.1(B) expressly prohibits modification, termination is not even mentioned. The State suggests that is because termination is no different from modification and is actually the ultimate modification. The State also argues that termination is undoubtedly included within the prohibition against modification because to find otherwise would render that portion of the statute absurd and meaningless. J.N. reads the statute narrowly, as reserving to the juvenile court the authority to terminate a disposition even if it cannot modify it.

Both parties cite Article 909 to support their respective positions. Article 909, which addresses modification authority generally, provides:

Except as provided for in Article 897.1, after the entry of any order of disposition, the court retains the power to modify it, including changing the child's legal custody, suspending all or part of any order of commitment, discharging conditions of probation, or adding any further condition authorized by Article 897(B) or 899(B). It may also terminate an order of disposition at any time while it is still in force.
(Emphasis added)

At issue is whether the restrictive language at the beginning of the first sentence, "[e]xcept as provided for in Article 897.1," applies to the first sentence only, or whether it extends to the second sentence of Article 909, thus explicitly prohibiting termination.

³ Neither party challenges whether that disposition was proper at the time it was imposed.

Legislative intent is the fundamental question in all cases of statutory interpretation, and rules of statutory construction are designed to ascertain and enforce the intent of the statute. **State v. Campbell**, 2003-3035 (La. 7/6/04), 877 So.2d 112, 117; **State v. Peters**, 2005-2069 (La. App. 1st Cir. 5/5/06), 935 So.2d 201, 203-04. It is presumed that the legislature enacts each statute with deliberation and with full knowledge of all existing laws on the same subject. Thus, legislative language is interpreted by the courts on the assumption that the legislature was aware of existing statutes, rules of construction, and judicial decisions interpreting those statutes. It is further presumed that the legislative branch intends to achieve a consistent body of law. **Id.**

To ascertain the meaning of Articles 897.1 and 909, we look first to La. Ch. Code art. 801, which states the purpose of the Children's Code chapter on delinquency. Article 801 provides:

The purpose of this Title is to accord due process to each child who is accused of having committed a delinquent act and, *except as provided for in Article 897.1*, to insure that he shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare and the best interests of the state and that in those instances when he is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which the parents should have given him.
(Emphasis added)

We also consider La. R.S. 15:906, which addresses a juvenile's release from commitment, and states:

A. (1) *Except as provided for in Children's Code Article 897.1*, the Department of Public Safety and Corrections may recommend to the committing court the release of any juvenile committed to its care, who, in the opinion of the department, is ready to be returned to his own home, or to a substitute home. Such juvenile may be discharged by the court without supervision or may be placed under supervision until further orders of the court.

(2) *Except as provided for in Subsection B of this Section*, it is hereby declared to be the public policy of this state that commitment of a juvenile to the care of the department is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile and that, therefore, the

recommendations of the department should be given careful consideration by the court in determining what is to the best interest of the juvenile. If, after release from the care of the department, but while the juvenile is still under the supervision of the court, the court deems it advisable to return the juvenile to the care of the department, a recommitment order shall be furnished the department.

B. In cases governed by Children's Code Article 897.1, it is hereby declared to be the public policy of this state that commitment of a juvenile to the custody of the Department of Public Safety and Corrections for confinement in secure placement without benefit of parole, probation, suspension of imposition or execution of sentence, or modification of sentence, is necessary and proper because for these very serious offenses the protection of society is the primary objective. (Emphasis added)

In addition, we take into account that in 2004, Article 897.1(B) was amended to remove a restriction on furloughs. Under certain circumstances, current law authorizes temporary furloughs for deserving students of any juvenile institution. A furlough is meant to serve as a rehabilitative tool to assist the child in maintaining family and community relations during the period of his commitment. However, a furlough is not to be considered a release from commitment. La. R.S. 15:908(A).

J.N. argues that when the legislature amended Article 897.1 to allow furloughs, it expanded the juvenile court's authority and recognized that for some juveniles serving a full disposition was more detrimental than beneficial. Notably, in the instant case all parties involved agreed that J.N. should be allowed to have furloughs. The juvenile court instead terminated the disposition.

We must evaluate all applicable statutes together to determine the legislature's intent regarding the treatment of juveniles who are adjudicated delinquent because of certain serious felony offenses and the juvenile court's authority to terminate a disposition before the term of commitment is complete. Louisiana Revised Statutes 15:906(B) is very clear that in enacting Article 897.1, the legislature's primary objective was to protect society from juveniles who commit "very serious offenses," including armed robbery. The legislature's

chosen method of attaining this goal was to keep those particular juveniles away from society for the duration of their commitment and to restrict the juvenile court's authority to modify a disposition. In addition, in Article 801, Article 897.1 is exempted from the Children's Code's general statutory purpose of ensuring that the child receives the care, guidance and control conducive to his welfare and the best interests of the State. This is further direction that the purpose of Article 897.1 is not rehabilitation, and that termination is not an action contemplated within that article. We also note that when Article 897.1 was added to the Children's Code in 1993, Article 909 was amended to include the phrase "[e]xcept as provided for in Article 897.1." Since the legislature enacted Article 897.1 with the primary objective of protecting society from certain violent juveniles, we read that additional language to apply to all of Article 909, including the authority to terminate. In addition, while the removal of furloughs from Article 897.1 in 2004 gave the juvenile courts one tool to help integrate a deserving juvenile back into society, we do not interpret that amendment as diminishing the specific purpose of Article 897.1, articulated in La. R.S. 15:906(B). A furlough, which is a temporary measure during which the juvenile court retains jurisdiction, is not equivalent with termination or even modification of the disposition.

Accordingly, we construe Article 897.1 and Article 909 as restricting the juvenile court's authority to terminate a disposition. To hold otherwise would violate the meaning of Article 897.1 and lead to an absurd result. It is illogical to allow a greater action, termination, but prohibit a lesser one, modification, when the stated purpose of Article 897.1 is to protect society from certain violent juvenile offenders.

For the foregoing reasons, we reverse the decision of the juvenile court terminating the disposition and reinstate the disposition.

REVERSED; DISPOSITION REINSTATED.