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SJC-12915
SJC-12916

COMMONWEALTH vs. JORDEN TERRELL
(and a companion case[1]).

Suffolk. September 9, 2020. - January 19, 2021.

Present: Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.[2]

Youthful Offender Act. Practice, Criminal, Sentence. Department of Youth Services. Constitutional Law, Sentence, Equal protection of laws. Due Process of Law, Sentence.

Civil actions commenced in the Supreme Judicial Court for the county of Suffolk on December 23, 2019.

The cases were reported by Gaziano, J.

Katherine W. Briggs for Department of Youth Services.
Melissa Allen Celli for Gabriel Lopez.
Eva G. Jellison for Jorden Terrell.
Meredith Shih & Audrey Murillo, for Massachusetts Association of Criminal Defense Lawyers, amicus curiae, submitted a brief.

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[1] Commonwealth vs. Gabriel Lopez.

[2] Justice Lenk participated in the deliberation on this case prior to her retirement.

BUDD, J. A Juvenile Court judge committed the defendants, both youthful offenders, to the custody of the Department of Youth Services (DYS or department) until the age of twenty-one. The judge additionally ordered DYS to "credit" the time that the two defendants spent detained in DYS custody prior to being adjudicated against their postadjudication confinement. The department sought relief from the orders pursuant to G. L. c. 211, § 3, and a single justice reserved and reported the cases to the full court. For the reasons that follow, we vacate those portions of the orders requiring DYS to credit the youthful offenders' preadjudication detention.[3]

Background. As a result of events occurring in November 2017, Gabriel Lopez was indicted as a youthful offender for carrying a firearm without a license in violation of G. L. c. 269, § 10 (a).[4] A separate incident involving Jorden Terrell

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[3] We acknowledge the amicus brief submitted by the Massachusetts Association of Criminal Defense Lawyers.

[4] General Laws c. 119, § 52, defines a youthful offender as

> "a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and [eighteen], an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of [G. L. c. 269, § 10 (a), (c), or (d), or G. L. c. 269, § 10E] . . . ."

led to his indictment as a youthful offender on a violation of G. L. c. 269, § 10 (a), as well as other charges. After being found dangerous pursuant to G. L. c. 276, § 58A, both defendants were held without bail in DYS custody in hardware-secure (i.e., locked) residential facilities.

Each defendant admitted to sufficient facts, and each was committed to DYS custody until the age of twenty-one as a youthful offender pursuant to G. L. c. 119, § 58, third par. The judge further ordered DYS to credit the time each spent detained in DYS custody prior to being adjudicated.[5]

After its motions to reconsider had been denied, the department filed petitions in the county court pursuant to G. L. c. 211, § 3, seeking to vacate the orders requiring preadjudication credit. The single justice reserved and reported the cases to this court.

Discussion. The defendants maintain that the judge had statutory authority to order the department to reduce the length of their confinement by the number of days that they had been in custody prior to disposition, and that, at any rate, they were entitled to such credit on constitutional grounds. See Commonwealth v. Bernardo B., 453 Mass. 158, 161 (2009) (judges authorized to oversee constitutionality of actions by executive

[5] Lopez had been detained for 239 days and Terrell for 197 days.

branch). The defendants also argue that the failure to award preadjudication credit is fundamentally unfair.

The department argues that the language of the relevant statutes makes plain that a judge's authority is limited to the adjudication and sentencing of a youthful offender. If the judge orders the juvenile committed to DYS custody, it is the department, not the judge, that decides whether the juvenile is to be placed in confinement and, if so, for how long.[6] The department further contends that declining to award credit for time spent detained prior to adjudication is not a constitutional violation, nor is it fundamentally unfair. We agree with the department.

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[6] When juveniles have been adjudicated and committed to the custody of the Department of Youth Services (DYS or department), DYS may exercise its custody in a variety of ways, ranging from granting committed juveniles conditional liberty to placing them in confinement. G. L. c. 120, § 6. The department defines conditional liberty (also referred to as conditional or supervised release) as "[t]he placement of a youth in any community-based setting (including [a juvenile's] home), contingent upon the youth's agreement to abide by certain predetermined rules." 109 Code Mass. Regs. § 8.03 (2016). At the other end of the spectrum, the department may place committed juveniles fourteen years of age or older in residential facilities that are either "hardware-secure" or "staff-secure." See 109 Code Mass. Regs. § 2.02 (2016); 109 Code Mass. Regs. § 4.06(4) (2017).

Treatment settings may change over the course of a juvenile's commitment depending on his or her needs. See, e.g., 109 Code Mass. Regs. § 4.06(3).

1. Statutory analysis. The defendants argue that, although there is no specific statute that provides for the awarding of credit to youthful offenders for time served in confinement prior to adjudication, G. L. c. 218, § 59, vests Juvenile Court judges with the ability to order such credit. The provision states:

> "Except as otherwise provided by law, the divisions of the juvenile court department shall have and exercise, within their respective jurisdictions, the same powers, duties, and procedure as the divisions of the district court department; and all laws relating to district courts or municipal courts in their respective counties or officials thereof or proceedings therein, shall, so far as applicable, apply to said divisions of the juvenile court department.
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> "The divisions of the juvenile court department shall also have jurisdiction in equity concurrent with the supreme judicial court and with the superior court department in all cases and matters arising under the provisions of [G. L. cc.] 119 and 210."

G. L. c. 218, § 59. The defendants argue that because G. L. c. 279, § 33A,[7] requires judges to award pretrial credit to criminal defendants, judges in the Juvenile Court have the power to do so as well. We are not convinced.

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[7] General Laws c. 279, § 33A, provides:

> "The court on imposing a sentence of commitment to a correctional institution of the commonwealth, a house of correction, or a jail, shall order that the prisoner be deemed to have served a portion of said sentence, such portion to be the number of days spent by the prisoner in confinement prior to such sentence awaiting and during trial."

To understand why, it is instructive to review certain statutes governing the juvenile justice system. General Laws c. 119, § 53, states that the statutory provisions governing the adjudication of children "shall be liberally construed so that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance." We repeatedly have emphasized this long-standing principle. See, e.g., Commonwealth v. Samuel S., 476 Mass. 497, 510-511 (2017); Commonwealth v. Anderson, 461 Mass. 616, 630, cert. denied, 568 U.S. 946 (2012); Commonwealth v. Connor C., 432 Mass. 635, 646 (2000); Department of Youth Servs. v. A Juvenile, 384 Mass. 784, 786 (1981); Police Comm'r of Boston v. Municipal Court of the Dorchester Dist., 374 Mass. 640, 666-668 (1978). See generally R.L. Ireland, Juvenile Law § 1.3, at 18 (2d ed. 2006). This is true even for youthful offenders, who are considered to be more dangerous than delinquent juveniles. See Connor C., supra at 641-642.

One of the ways the Legislature has endeavored to accomplish this goal is by clearly establishing the roles to be played by a judge and the department. It is for a judge to adjudicate and sentence juvenile offenders. G. L. c. 119, § 58.

In the case of youthful offenders, judges have the discretion to choose one of three dispositions: (1) an adult sentence as provided by law; (2) a combination sentence consisting of commitment to DYS until the age of twenty-one together with a suspended adult sentence; or (3) commitment to DYS until the age of twenty-one.[8] G. L. c. 119, § 58, third par.

In choosing the appropriate sentence, the judge is to consider the nature of the offense or offenses, the attendant circumstances, and a number of other factors to "determine the sentence by which the present and long-term public safety would be best protected." G. L. c. 119, § 58, fourth par. Here, the judge committed both defendants to DYS custody for an indeterminate period of time until they reach twenty-one years of age. See G. L. c. 119, § 58, third par.

After adjudication, if a judge places a juvenile in DYS custody, it is for the department to determine the proper course of treatment. See G. L. c. 18A, § 2; G. L. c. 120, § 4. See also Samuel S., 476 Mass. at 504 ("once a judge commits a youthful offender . . . to DYS, the actual terms of that commitment, as a general matter, are wholly within the discretion of DYS, an executive agency"). General Laws c. 120,

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[8] In contrast, the harshest consequence that a juvenile adjudicated delinquent may receive is commitment to DYS until twenty years of age. G. L. c. 119, § 58, second par.

§ 6, provides the department with wide discretion with regard to placement and treatment options, which may or may not involve confinement.[9]

The defendants argue that the judge's orders for DYS to credit their preadjudication detention does not interfere with the department's ability to treat. However, placement, including placement in confinement, and treatment cannot be separated; the Legislature conferred both duties to DYS. G. L. c. 120, §§ 4-6. If a judge had the power to credit a youthful offender for the time he or she spent in preadjudication detention, it would interfere with the department's statutory

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[9] General Laws c. 120, § 6, provides in pertinent part:

"When a person has been committed to [DYS], it may after an objective consideration of all available information --

"(a) Permit him his liberty under supervision and upon such conditions as it believes conducive to law-abiding conduct; or --

"(b) Order his confinement under such conditions as it believes best designed for the protection of the public; or --

"(c) Order reconfinement or renewed release as often as conditions indicate to be desirable; or --

"(d) Revoke or modify any order, except an order of final discharge, as often as conditions indicate to be desirable; or --

"(e) Discharge him from control with notice to the court, except as provided in [G. L. c. 120, § 12], when it is satisfied that such discharge is consistent with the protection of the public."

authority to place, and therefore to treat, the juvenile as it saw fit. The department is tasked with determining whether the treatment prescribed is successful, which necessarily includes a determination of the point at which any such confinement should end. See id.; 109 Code Mass. Regs. § 4.06(3) (2017).

Returning to G. L. c. 218, § 59, importantly, the statute vests Juvenile Court judges with the same powers as District Court judges "[e]xcept as otherwise provided by law." The Legislature has been unequivocal that children in the juvenile justice system should be treated "not as criminals, but as children in need of aid, encouragement and guidance." G. L. c. 119, § 53. Further, the Legislature carefully has circumscribed a judge's responsibilities as they pertain to juvenile adjudications. G. L. c. 119, § 58, second and third pars. For these reasons, G. L. c. 218, § 59, does not authorize a Juvenile Court judge to order preadjudication detention credit for youthful offenders pursuant to G. L. c. 279, § 33A, which applies to criminal defendants. Just as a judge has no power to determine whether a juvenile is to be confined once he or she is committed to DYS custody, a judge similarly has no power to determine the length of any such confinement by ordering credit for preadjudication confinement. See Samuel S., 476 Mass. at 504 ("We have located no part of the law . . . giving a judge the power to order DYS to place the juvenile in . . . a secure

facility as opposed to placing him or her on supervised release, or vice versa").[10]

2. Constitutional analysis. The defendants argue that the judge properly ordered credit for the time spent detained prior to adjudication because a denial of such credit violates their constitutional rights to substantive due process and equal protection. See Commonwealth v. Weston W., 455 Mass. 24, 30 & n.9 (2009); Dutil, petitioner, 437 Mass. 9, 13 (2002); Boston v. Keene Corp., 406 Mass. 301, 308 n.8 (1989).

Taking the latter claim first, the defendants assert they are treated differently from two similarly situated groups -- incarcerated adults who received credit for pretrial detention, and juveniles committed to DYS who were not subject to preadjudication detention. We are not convinced. The defendants were committed to DYS; they were not incarcerated. Nor are the defendants similarly situated to juveniles who were not detained prior to adjudication. Both Terrell and Lopez were held prior to adjudication on dangerousness grounds, a finding that sets them apart from juveniles not so found. "The dissimilar treatment of dissimilarly situated persons does not

[10] The defendants contend that, to the extent that the relevant statutes are ambiguous, the rule of lenity applies. However, as discussed supra, the statutory scheme is clear with regard to a judge's authority to order credit for confinement prior to adjudication -- in short, it does not exist.

violate equal protection" (quotation and citation omitted). DuPont v. Commissioner of Correction, 448 Mass. 389, 400 (2007).

The defendants also argue that the failure to receive credit for time spent in confinement prior to adjudication violates their right to substantive due process. They contend that the denial of such credit significantly burdens their fundamental right to be free from physical restraint, and thus requires a strict scrutiny analysis. This argument misses the mark because it is not the right to be free from physical restraint that is at issue. The defendants do not argue the constitutionality of G. L. c. 276, § 58A, the dangerousness statute, pursuant to which they were held prior to adjudication, nor do they contest the judge's findings of dangerousness. Instead, it is the denial of credit for preadjudication detention to which the defendants object on constitutional grounds.

We never have held that credit for pretrial detention is a fundamental right requiring strict scrutiny analysis. Chalifoux v. Commissioner of Correction, 375 Mass. 424, 427-428 (1978) (where no statute controls, "our decisions in this area [of credit and adult sentencing] have not rested on constitutional requirements" but on considerations of fairness). We therefore review the claim under the rational basis test. See Goodridge v. Department of Pub. Health, 440 Mass. 309, 330 (2003).

A "rational basis analysis requires that statutes bear[] a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare" (quotation and citation omitted). Id. For the reasons explained supra, there is a rational basis for the juvenile justice statutory scheme generally, and a rational basis for not providing credit for preadjudication confinement. The defendants' constitutional claims therefore fail.

3. Fundamental fairness. Finally, the defendants allege that the way in which DYS exercises its discretion with regard to placement decisions for juveniles in its custody routinely violates its statutory mandate and principles of fundamental fairness. The department is required by statute to make individualized determinations regarding placement and treatment of committed youthful offenders "after an objective consideration of all available information." G. L. c. 120, § 6. See G. L. c. 18A, § 2; G. L. c. 120, §§ 4-5.[11] However, the defendants assert that the department's policies and practices have resulted in the de facto imposition of mandatory minimum periods of confinement. More specifically, the defendants

[11] We note, however, that the Legislature has made an exception for juveniles adjudicated delinquent on complaints for certain firearm offenses. DYS must place those juveniles in confinement for prescribed periods. G. L. c. 119, § 58, seventh & eighth pars.

allege that the department makes confinement decisions based entirely on the offense committed, without a meaningful consideration of other relevant factors.[12]

The defendants contend that, because the length of confinement does not reflect treatment needs, DYS confinement is essentially punishment. Thus, they argue that they are entitled to credit for their preadjudication detention, just as prisoners, and that denial of such credit fundamentally is unfair. See, e.g., Matter of the Personal Restraint of Trambitas, 96 Wash. 2d 329, 332-333 (1981).

The defendants' allegations are concerning; however, the question whether DYS properly is assessing and providing treatment and rehabilitative services to those committed to its care is not directly before us. These cases came to the full court following the department's challenge of the Juvenile Court judge's orders. Given the procedural posture and the record provided, we assume without deciding that the department is meeting its statutory obligations. We therefore cannot conclude that, as a matter of fairness, the defendants are entitled to

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[12] In making placement decisions, the department uses a "Classification Grid," which recommends periods of confinement based on a juvenile's most serious commitment offense. 109 Code Mass. Regs. §§ 4.03, 4.06(1) (2017). The defendants contend that rather than the department using the grid as one of a number of factors, in practice the grid is the sole determinant of a juvenile's length of confinement.

preadjudication detention credit like prisoners. By statute and regulation, as far as practicable, DYS is required to treat youthful offenders like juveniles, not prisoners.[13] See, e.g., G. L. c. 18A, § 2; G. L. c. 120, §§ 4-6; 109 Code Mass. Regs. § 4.01 (2017). If DYS is failing to discharge its rehabilitative duty, that matter must be put squarely before the court.

Conclusion. The cases are remanded to the Juvenile Court for entry of orders consistent with this opinion.

So ordered.

[13] It is true that DYS commitment and possible confinement "necessarily include[] an element of punishment." Lazlo L. v. Commonwealth, 482 Mass. 325, 330 (2019). And the department must concern itself with not only rehabilitation but also public safety. See, e.g., G. L. c. 120, § 6 (b). Nonetheless, the juvenile justice system "is primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders, and geared toward the correction and redemption to society of delinquent children" (quotation and citation omitted). Commonwealth v. Magnus M., 461 Mass. 459, 461 (2012).