

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Supreme Court Case No. S207165

PEOPLE OF THE STATE OF
CALIFORNIA,

Third Appellate District Case No. C067353
Superior Court Case No.: JV125361

Plaintiffs and Respondents

v.

**SUPREME COURT
FILED**

DEC 26 2012

D. B.,

Frank A. McGuire Clerk

Defendant and Appellant

Deputy

ANSWER TO PETITION FOR REVIEW

**APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
HONORABLE STACY BOULWARE EURIE, JUDGE PRESIDING**

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By appointment of the Court of Appeal under the
Central California Appellate Program's Independent
Case System

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ANSWER TO PETITION FOR REVIEW

TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE, CHIEF JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:

Defendant and Appellant, D. B. (hereafter “Donnie”) respectfully submits his Answer to the Petition for Review (hereafter “petition”) filed by the People of the State of California, (hereafter “the petitioner”) pursuant to California Rules of Court rule 8.500(a)(2). As set forth more fully below, the Third District Court of Appeal correctly resolved the issue presented in the petition and review is inappropriate in this case.

STATEMENT OF THE CASE AND FACTS

The proceedings and facts are set forth in the Third Appellate District Court of Appeal's October 31, 2012, opinion (hereafter "opinion") attached to the petition as Exhibit "A."

REASONS FOR DENYING REVIEW

Petitioner argues review is necessary, pursuant to California Rules of Court, rule 8.500(b)(1), to settle an important issue of law. (Petition, p. 4.) Petitioner claims the Third District Court of Appeal "misinterpreted and misapplied section 733, subdivision (c)" and its decision will "cause absurd consequences in this case and others." (Petition, p. 4.) Respectfully, petitioner is incorrect.

I.

THE THIRD DISTRICT DID NOT MISINTERPRET SECTION 733, SUBDIVISION (C)

Petitioner is, in effect, asking this Court to rewrite Welfare and Institutions Code¹ section 733, subdivision (c). As the Third District noted, the plain language of the statute is "susceptible" to only one reasonable interpretation: a ward can only be committed to DJF if his most recent offense alleged and adjudicated in any petition is enumerated in either section 707, subdivision (b) or Penal Code section 290.008. (Opinion, p. 5.)

Donnie's most recent criminal offenses (Pen Code §§148, subdivision (a))

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and 148.9, subdivision (a)), as alleged in the August 30, 2010, amended section 602 wardship petition, and found true by the juvenile court on October 13, 2010, occurred on May 30, 2010 – one week after his only “707(b)” offense. The presence of the robbery charge in Donnie’s most recent *petition* does not transform the May 23, 2010, robbery into his most recent *offense*. If the Legislature meant to say “*any* offense alleged in the *most recent petition*” it would have done so. Instead, the Legislature specifically stated: “*the most recent offense* alleged in *any* petition.”² (§733, subd. (c).)

The Third District’s construction of section 733, subdivision is not only denoted by its plain meaning, it is also consistent with the statute’s Legislative intent to reduce the number of youth offenders housed in State facilities. (Opinion, p. 5; *In re N. D.* (2008) 167 Cal. App. 4th 885, 891- 892; *V. C. v. Superior Court* (2009) 173 Cal. App. 4th 1455, 1468 – 1469.)

Furthermore, Petitioner’s interpretation of section 733 would allow a court to send a juvenile to DJJ for an offense committed months or even years before his most recent non-DJJ eligible offense. The prosecuting agency would only need to file the offenses together in the same wardship petition. This possibility would stand in direct conflict with the plain meaning of section 733 and “result in consequences inimical to the statute’s purposes.” (Opinion, pp. 5 – 6.)

² It is significant to note the adjective “most recent” modifies the word “offense” while the adjective “any” modifies the word “petition.”

The Third District correctly interpreted section 733, subdivision (c). Any contrary interpretation would conflict with the statute's plain meaning and Legislative intent.

II.

THE THIRD DISTRICT'S DECISION WILL NOT CAUSE ABSURD CONSEQUENCES

Petitioner claims the Third District's decision will lead to absurd consequences:

...under the Third District's reading of the statute, as long as the *last offense committed by a juvenile*, temporally speaking, is a non-qualifying crime, he or she is statutorily ineligible for a DJF commitment even if all or some of the other crimes alleged in the petition and found to be true are qualifying offenses.

(emphasis added)(Petition, p. 4.) Petitioner's argument is based upon a fundamental misunderstanding of section 733, subdivision (c) and the Third District's holding

It is not enough for a juvenile to *commit* an offense to invoke the provisions of section 733, subdivision (c). The "most recent offense" must be also "alleged in any petition" and "admitted or found to be true by the court." (§733, subd. (c).) Thus, before a ward can receive his "Get Out of Jail Free" card, the prosecution must allege the non-707(b) offense in a wardship petition and the juvenile court must find the allegation true. (Petition, p. 4.) Petitioner's scenario of an incredibly sophisticated juvenile offender precluding a DJF disposition by committing a minor offense at the conclusion of a violent crime spree, while the prosecution and

juvenile courts look on helplessly, is simply not consistent with reality. (Petition, pp. 4 – 5.)

To the extent 733, subdivision (c) may have previously limited a juvenile court's discretion and led to absurd consequences, this Court's decision in *In re Greg F.* (2012) 55 Cal. 4th 393, negated the problem. In *Greg F.*, *supra*, this Court found a juvenile court may, within the discretion afforded to it by section 782, dismiss a non-707(b) petition when a ward on probation for a DJF-eligible offense commits a new offense that is not listed in section 707(b). (*Id.* at p. 400.)

Pursuant to the reasoning in *Greg F.*, the juvenile court in this case could have dismissed the May 30, 2010, misdemeanor allegations, in the interests of justice, and committed Donnie to DJF, based on the May 23, 2010, robbery. However, it did not do so. Instead, it chose to sustain the May 30, 2010, allegations. Now, and in the future, a juvenile court will be able to rely upon the *Greg F.* holding and exercise its discretion to fashion an appropriate disposition for each ward. It is not necessary for this Court to re-write section 733 to give juvenile courts the discretion they already have. (see Petition, pp. 4 – 5.)

Finally, this Court should be guided by the approach it followed in *In re C. H.* (2011) 53 Cal. 4th 94. In *C. H.*, this Court addressed the interplay of sections 731 and 733 and held:

...a juvenile court lacks authority to commit a ward to the DJF under section 731(a)(4) if that ward has never been adjudged to have committed an offense described in section 707(b), even if his or her most recent offense alleged in a petition and admitted or found true by the juvenile

court is a sex offense set forth in section 290.008(c) as referenced in section 733(c).

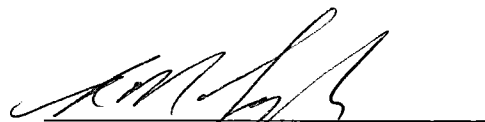
(*Id.* at pp. 97 – 98.) Rather than attempt to rewrite the statutes, this Court simply applied basic rules of statutory construction to properly resolve the matter. (*Id.* at pp. 100 – 109.) On February 29, 2012, the Legislature responded to the *C. H.* decision and amended sections 731 and 733 to allow a ward to be committed to DJF if his most recent offense is described in either section 707 subdivision (b) or subdivision (c) of Penal Code section 290.008. To the extent any modifications to section 733 may be appropriate; the issue should be taken up with the Legislature - not this Court.

CONCLUSION

WHEREFORE, Donnie respectfully requests this Court to deny the Petition.

Dated: December 23, 2012

Respectfully submitted,



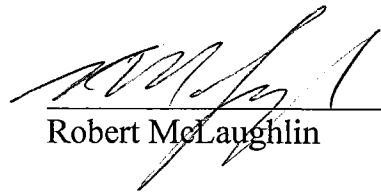
Robert McLaughlin, Esq.
Attorney for Appellant, D. B.

WORD COUNT CERTIFICATION

I, Robert McLaughlin, certify that, based on the word count of the computer program used to prepare this document, there are 1,238 words in Appellant's Answer to Petition for Review in the case In re D. B. case number S207165, excluding the tables.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Newport Beach, California.

Dated: December 23, 2012



Robert McLaughlin

Case Name: In re D. B.

No: S207165

DECLARATION OF SERVICE

I, the undersigned say: I am over 18 years of age, employed in the County of Orange, California, in which county the within mentioned delivery occurred, and am not a party to the subject cause. My business address is 4695 MacArthur Court, Suite 1100, Newport Beach, California 92660. I served Appellant's Answer to Petition for Review of which a true and correct copy is affixed, by placing a copy thereof in a separate envelope for the addressee named hereafter by regular U. S. mail addressed and mailed as follows:

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816

D. B. [appellant]
(address confidential)

Sacramento County Superior Court
9605 Kiefer Boulevard
Sacramento, CA 95627

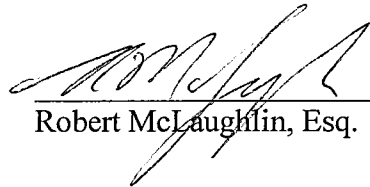
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(continued on next page)

The envelope was then sealed and, with the postage thereon fully prepaid, deposited in the United States mail by me at Newport Beach, California on December 24, 2012. I declare under penalty of perjury that the foregoing is true and correct. Executed by me on December 24, 2012, at Newport Beach, California.



Robert McLaughlin, Esq.