

COPY

In the Supreme Court of the State of California

<p>In re D.B., a Person Coming Under the Juvenile Court Law.</p> <hr/> <p>THE PEOPLE OF THE STATE OF CALIFORNIA,</p> <p style="text-align: center;">Plaintiff and Respondent,</p> <p style="text-align: center;">v.</p> <p>D.B.,</p> <p style="text-align: center;">Defendant and Appellant.</p>

S207165

**SUPREME COURT
FILED**

JUN - 5 2013

Frank A. McGuire Clerk

Deputy

Third Appellate District, Case No. C067353
Sacramento County Superior Court, Case No. JV125361
The Honorable Stacy Boulware Eurie, Judge

**RESPONDENT'S OPENING BRIEF ON THE
MERITS**

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ISSUE PRESENTED

Does Welfare and Institutions Code¹ section 733, subdivision (c), preclude committing a juvenile ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (“DJF”)² if the wardship petition includes both qualifying and non-qualifying offenses and the most recent offense is a non-qualifying one?

INTRODUCTION

As noted above, this case involves a single disposition issue in the context of a juvenile proceeding: specifically, when a juvenile wardship petition contains both qualifying and non-qualifying offenses and the last committed offense, temporally speaking, is a non-qualifying one, does section 733, subdivision (c), preclude a court from committing the juvenile ward to DJF? The California Court of Appeal, Third Appellate District (“Third District”) has interpreted this statute very narrowly and held that a juvenile court is precluded under such circumstances from committing a ward to DJF.³ However, the Third District’s decision is incorrect and must be reversed.

Specifically, appellant argued that he was ineligible for DJF commitment because under the plain meaning of section 733, subdivision (c), a juvenile can be committed to DJF only if “the most recent offense alleged in any petition and admitted or found to be true by the court” is a qualifying offense (i.e., a violent or serious offense such as robbery or carjacking) under section 707, subdivision (b), or Penal Code section

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

² The DJF is part of the Division of Juvenile Justice. (Welf. & Inst. Code, § 1703.)

³ A copy of the appellate court’s decision, which was certified for publication, is attached hereto as Exhibit A.

290.008, subdivision (c). The Third District agreed with appellant's reading of the statute, holding that section 733's reference to "the most recent offense alleged in any petition" means the most recently occurring offense" in a temporal sense. (Ex. A at p. 2.) In other words, under the Third District's reading of the statute, as long as the last offense committed by a juvenile, chronologically 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.

Respondent disagrees with the Third District's narrow interpretation of section 733, subdivision (c), and contends that the statute must be interpreted more broadly. Specifically, to avoid absurd consequences and to comport with the stated purpose for enacting section 733, the phrase "the most recent offense alleged in any petition and admitted or found to be true by the court" is more reasonably interpreted as referring to both the date the allegations occur (i.e., when the petition is filed) and the date of adjudication (i.e., when the charges are admitted by the juvenile or found true by the court). This interpretation is consistent with the views expressed by this Court in *In re Greg F.* (2012) 55 Cal.4th 393.

STATEMENT OF THE CASE

On August 30, 2010, the Sacramento County District Attorney's Office filed an amended juvenile wardship petition alleging that appellant committed the following offenses: carjacking, in violation of Penal Code section 215, a felony (count one); robbery, in violation of Penal Code section 211, a felony (count two); battery with great bodily injury, in violation of Penal Code section 243, subdivision (d), a felony (count three); car theft, in violation of Vehicle Code section 10851, subdivision (a), a felony (count four); possession of stolen property, in violation of Penal Code section 496d, subdivision (a), a felony (count five); evading police, in

violation of Vehicle Code section 2800.2, subdivision (a), a felony (count six); two counts of resisting arrest, in violation of Penal Code section 148, subdivision (a)(1), misdemeanors (counts seven and eight); and false identification to a police officer, in violation of Penal Code section 148.9, subdivision (a), a misdemeanor (count nine). (2 CT 566-574.)

On August 31 and October 13, 2010, a contested jurisdictional hearing occurred regarding the aforementioned charges. (3 CT 577-578, 588.) After hearing the evidence, the juvenile court sustained the amended petition and found that all of the charges were true. (3 CT 588.)

Beginning on November 17, 2010, and concluding on February 2, 2011, a contested dispositional hearing occurred. At the end of the hearing, the juvenile court ordered that appellant remain a ward of the court and committed him to DJF for a maximum confinement term of eleven years, eight months. (3 CT 825.)

Appellant appealed the juvenile court's disposition order, and, on October 31, 2012, the Third District issued its published opinion reversing the lower court's order. (Ex. A.)

STATEMENT OF FACTS

In its October 31, 2012, opinion, the Third District summarized the pertinent facts and procedural history in this matter as follows:

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, 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 [Welfare and Institutions Code] 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 [Welfare and Institutions Code] 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.

(Ex. A at pp. 2-3.)

ARGUMENT

I. THE THIRD DISTRICT ERRED WHEN IT REVERSED THE JUVENILE COURT AND HELD THAT APPELLANT WAS INELIGIBLE FOR DJF COMMITMENT PURSUANT TO SECTION 733, SUBDIVISION (C)

Section 733, which restricts eligibility of juvenile offenders for commitment to DJF, provides in pertinent part:

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:

[¶ . . . ¶]

(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.

(§ 733, subd. (c).)

This statute was enacted by the Legislature ““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.]” (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469, disapproved on other grounds by *In re Greg F.*, *supra*, 55 Cal.4th 393.)

Unfortunately, the Third District has misinterpreted and misapplied section 733, subdivision (c), with respect to this matter. In short, the Third District has erroneously concluded that the phrase “the most recent offense alleged in any petition and admitted or found to be true by the court” refers to the very last offense, chronologically speaking, committed by the juvenile without regard to the nature of any other offenses alleged in the petition.

If left standing, the Third District’s interpretation of section 733, subdivision (c), will result in dire and absurd consequences. Specifically, the Third District’s published opinion essentially creates a “Get Out of Jail (DJF) Free” card for juveniles who commit violent and serious crimes. As discussed above, the appellate court’s opinion allows a juvenile who commits such crimes to avoid incarceration at DJF merely by committing a non-qualifying offense as his or her last criminal act. In other words, a juvenile who commits a qualifying crime (i.e., car-jacking, robbery, assault with a deadly weapon, or even murder) can avoid a DJF commitment simply by committing a subsequent non-qualifying offense (i.e., resisting arrest or providing false identification to a police officer). Thus, the Third

District's interpretation of the law has the illogical and unwarranted effect of removing sentencing discretion from the juvenile courts and placing it in the hands of the juvenile offenders. Indeed, the decision below actually creates a perverse incentive for juveniles who have committed qualifying offenses to commit subsequent non-qualifying offenses in order to insulate themselves from possible DJF commitment.

Additionally, the Third District's interpretation also creates the likely scenario where a prosecutor is stuck with the unenviable dilemma of having to either forgo prosecution of valid non-qualifying offenses or lose the potential remedy of a DJF disposition. Neither option is fair or just. If the prosecutor chooses not to charge the non-qualifying offenses, the victims of the crimes are left with no redress for the wrongs committed against them, and the juvenile is not held accountable for all of his or her actions. Meanwhile, if the prosecutor charges the non-qualifying offenses, the court loses its discretion to impose a DJF commitment and the juvenile again avoids full accountability for his or her actions. Thus, society as a whole loses under either scenario.

Instead, in order to avoid such absurd results, section 733, subdivision (c), must be interpreted more broadly. As the People argued on appeal, the phrase "the most recent offense alleged in any petition and admitted or found to be true by the court" is more reasonably interpreted as referring to both the date the allegations occur (i.e., when the petition is filed) and the date of adjudication (i.e., when the charges are admitted by the juvenile or found true by the court). This interpretation is supported by the use of the conjunctive "and" between the phrases "alleged in any petition" and "admitted or found to be true by the court." More importantly, this reading of section 733 comports with the stated legislative purpose for enacting the statute, which is ensuring that "only currently violent or serious juvenile offenders be sent to DJF." (*V.C. v. Superior Court, supra*, 173 Cal.App.4th

at pp. 1467-1468 [“The import of the [Senate Floor and Assembly Floor Analyses] seems clear; the Legislature intended only currently violent or serious juvenile offenders be sent to DJF”].)

Recently, this Court commented on this same issue in *In re Greg F.*, *supra*, 55 Cal. 4th 393. In *Greg F.*, this Court was concerned with the situation in which a juvenile ward on probation for a DJF-eligible offense commits a new offense that is not listed in section 707, subdivision (b). As this Court explained, if the prosecution files a notice of a probation violation for the new offense, the juvenile court has the power to revoke the ward’s probation and commit the ward to DJF. However, if the prosecution instead files a new petition, section 733, subdivision (c), prohibits the court from ordering a DJF commitment if the allegation is admitted or found true because the new offense is the “most recent offense alleged in any petition” and is not DJF eligible. The question before this Court was whether, under such circumstances, a juvenile court has discretion to dismiss the second petition so that the matter can be treated as a probation violation, thereby allowing the ward to be committed to DJF. Relying on the plain language of the statutes at issue, the relevant legislative history, and the policies served by the juvenile court law, the Supreme Court concluded that such discretion exists.

While addressing arguments raised by the dissent in *Greg F.*, a majority of this Court offered the following analysis which pertains directly to the issue in this matter:

The dissent’s interpretation could also reward gamesmanship in the context of multicount petitions. If a minor commits a series of criminal offenses and all are alleged in the same 602 petition, there is an argument that section 733(c) prohibits commitment to DJF unless the last offense committed is one listed in section 707(b) or Penal Code section 290.008, subdivision (c). *Although section 733(c) premises eligibility for DJF on the nature of “the most recent offense alleged in any*

petition,” focusing on the most recently committed offense could lead to arbitrary and potentially absurd results in a multicount case. A minor who commits a string of violent acts would be immunized from a DJF commitment if the crime spree happened to end with a nonqualifying offense. An arguably more sensible interpretation of section 733(c) would require simply that an offense alleged in the most recent petition, and admitted or found true, be listed in section 707(b) or Penal Code section 290.008, subdivision (c).[fn. 3]

(In re Greg F., supra, 55 Cal.4th at p. 412, italics added.)

At the end of the foregoing paragraph, this Court added the following footnote, which succinctly sums up the reasons why section 733, subdivision (c), must be interpreted more broadly than done so by the Third District: “We need not, and do not, resolve this controversy here. We note, however, that focusing on the most recent petition, and not the most recent offense described in a multicount petition, would appear to avoid absurd consequences and remain consistent with the Legislature’s intent to reserve DJF commitments for specific recent offenses.” *(In re Greg F., supra, 55 Cal.4th at p. 412, fn. 3.)*

This case, if not reversed, provides a vivid example of the absurd consequences envisioned by this Court in *Greg F.* Specifically, appellant, who committed a robbery and a carjacking and participated in a brutal attack that left the victim with a broken jaw, will avoid a lengthy DJF commitment and disposition that holds him properly accountable for his conduct (see Welf. & Inst. Code § 202, subd. (b)) simply because a week after committing the foregoing crimes, he resisted arrest and provided false identification to a police officer. Such an arbitrary result certainly flies in the face of all reason and fails to comport with the stated legislative purpose for enacting section 733, which is ensuring that “only currently violent or serious juvenile offenders be sent to DJF.” *(V.C. v. Superior*

Court, supra, 173 Cal.App.4th at pp. 1467-1468.) Thus, the Third District's opinion in this case must be reversed.

CONCLUSION

Accordingly, plaintiff and respondent respectfully requests that the decision of the Third District be reversed.

Dated: May 29, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 2,526 words.

Dated: May 29, 2013

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read "Michael Dolida". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Dolida".

MICHAEL DOLIDA
Deputy Attorney General
Attorneys for Plaintiff and Respondent

EXHIBIT "A"

FILED

OCT 31 2012

CERTIFIED FOR PUBLICATION

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

COPY

BY _____ Deputy

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

DOLIDA
BUCKETED
OCT 31 2012
By *R. FELAS*
No. *20121301302*

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.B., *Debbie Booker*

Defendant and Appellant.

C067353

(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

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.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. D.B.**

No.: **C067353 / S207165**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 31, 2013, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 31, 2013, at Sacramento, California.

Declarant