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
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs and Respondents v. D. B., Defendant and Appellant	

THIRD APPELLATE DISTRICT CASE NO: C067353
SACRAMENTO COUNTY SUPERIOR COURT CASE NO: JV125361
THE HONORABLE STACY BOULWARE EURIE, JUDGE

APPELLANT'S ANSWER BRIEF ON THE MERITS

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By Appointment of the Supreme Court of the State of California
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APPELLANT'S ANSWER BRIEF ON THE MERITS

ISSUE PRESENTED

Does Welfare and Institutions Code[1] section 733, subdivision (c), preclude committing a juvenile ward to the Division of Juvenile Justice ("DJJ") if the wardship petition includes both qualifying and non-qualifying offenses and the most recent offense is a non-qualifying one?

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

INTRODUCTION

On August 30, 2010, Plaintiff and Respondent, the People of the State of California (hereafter "respondent") filed an amended nine-count juvenile wardship petition against Defendant and Appellant, D. B. (hereafter "Donnie").

The first seven offenses, alleged in the petition, occurred on May 23, 2010. One of those offenses (Penal Code section 211 – second degree robbery), is described in section 707, subdivision (b). The remaining two offenses, alleged in the petition, occurred on May 30, 2010. Those offenses are not described in either section 707, subdivision (b) or Penal Code section 290.008. On October 13, 2010, the juvenile court sustained all nine counts of the petition. On February 2, 2011, the juvenile court committed Donnie to DJJ.

Donnie appealed the juvenile court's disposition order and argued a ward can be committed to DJJ only if:

> ....*the most recent offense* alleged in any petition and admitted or found to be true by the court is . . . described in Code section 707, subdivision (b), or Penal Code section 290.008, subdivision (c).

(emphasis added)(§ 733, subd. (c).) Donnie's "most recent offenses", alleged and found true by the juvenile court, are not described in either section 707, subdivision (b), or Penal Code section 290.008. Therefore, Donnie asserted, the juvenile court had no legal authority to commit him to DJJ, pursuant to section 733, subdivision (c).

The Court of Appeal in and for the Third Appellate District agreed and, in a published opinion dated October 31, 2012, reversed the juvenile court's disposition order, holding:

> 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.

(See attached hereto as Exhibit "A" the Third Appellate District Opinion in case number C067353, hereafter "Opinion"[2].)

Respondent now asserts the Third Appellate District "erred" when it reversed the juvenile court's dispositional order committing Donnie to DJJ. (Respondent's Opening Brief on the Merits, hereafter "ROB", p. 4.) Respondent claims the Third Appellate District "misinterpreted and misapplied section 733, subdivision (c)." (ROB, p. 5.) Rather than narrowly interpreting section 733, subdivision (c), respondent argues:

> ...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).

(ROB, p. 2.)

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[2] Respondent also attached the Third Appellate District's Opinion to its brief. However, respondent omitted page five of the Opinion. The entire Opinion, along with the Third Appellate District's November 7, 2012, "Order Modifying Opinion" is included here for clarity.

Respondent further contends the Third Appellate District's "interpretation of section 733, subdivision (c), will result in absurd consequences." (ROB, p. 5.) Specifically, respondent postulates the:

> ...opinion essentially creates a 'Get out of Jail Free' [(DJJ)] card for juveniles who commit violent and serious crimes...the appellate court's opinion allows a juvenile who commits such crimes to avoid incarceration at [DJJ] merely by committing a non-qualifying offense as his or her last criminal act.

(ROB, p. 5.) Respectfully, respondent is incorrect on both counts.

The plain meaning of section 733, subdivision (c), is clear and unambiguous. As the Third Appellate District noted, the statute is "susceptible" to only one reasonable interpretation: a ward can only be committed to DJJ 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.)

The statute means what it says. Respondent is, in effect, asking this Court to ignore its plain meaning and rewrite section 733, subdivision (c). Even worse, respondent's proposed interpretation is entirely inconsistent with the statute's legislative intent to reduce the population at DJJ by limiting commitments to currently violent or serious juvenile offenders.

Furthermore, contrary to respondent's conjecture, the Third Appellate District's interpretation of section 733, subdivision (c), will not lead to "absurd consequences." (ROB, p. 2.) Respondent paints the picture of an incredibly sophisticated, violent youth offender who hamstrings the entire juvenile justice system by strategically committing a non-qualifying offense, after committing a

"707(b)" offense - solely to render him ineligible for a DJJ commitment. Any concerns arising from this extraordinarily unlikely scenario do not justify an interpretation of section 733, subdivision (c), which deviates from its plain meaning and legislative intent.

Prosecuting agencies retain the discretion to either refrain from filing or dismiss a section 602 wardship petition, or any count within a petition, alleging a subsequent non-qualifying offense. Alternatively, if the ward is on probation, prosecutors can avoid the consequences of section 733, subdivision (c), by charging the new offenses in the context of a notice of probation violation, pursuant to section 777. Moreover, in *In re Greg F.* (2012) 55 Cal. 4th 393, 400, this Court gave juvenile courts the discretion, afforded to it by section 782, to dismiss a "non 707(b)" petition when a ward on probation for a "707(b)" offense commits a subsequent non-qualifying offense. Pursuant to the holding and reasoning in *Greg F.,* a juvenile court wields the power to dismiss a subsequent non-qualifying petition and/or any non-qualifying offense therein, and commit a minor to DJJ, in the interests of justice. This Court should not disregard the plain meaning of section 733, subdivision (c), and rewrite the statute to address a concern which does not exist.

Based upon the foregoing, and as discussed in more detail below, this Court should affirm the Third Appellate District's judgment.

STATEMENT OF THE CASE

On June 2, 2010, respondent filed a nine-count juvenile wardship petition alleging Donnie, on May 23, 2010[3], violated Penal Code section 215, subdivision (a) (felony carjacking) (Count I); Penal Code section 211 (felony robbery) (Count II); and Penal Code section 243, subdivision (d) (felony battery with great bodily injury) (Count III). The petition further alleged Donnie, on May 30, 2010, violated Vehicle Code section 10851, subdivision (a) (felony vehicle theft) (Count IV); Penal Code section 496d, subdivision (a) (felony possession of stolen property) (Count V); Vehicle Code section 2800.2, subdivision (a) (felony evading police) (Count VI) ; Penal Code section 148, subdivision (a)(1) (misdemeanor resisting arrest - two counts) (Counts VII & VIII); and Penal Code section 148.9, subdivision (a) (misdemeanor false identification to police officer) (Count IX). (CT, pp. 507 - 513.)

On August 30, 2010, respondent filed an amended wardship petition correcting "the dates of the original petition". (RT, pp. 76, 79.) The amended petition alleged Donnie committed the offenses identified in Counts IV, V, VI and VII on May 23, 2010 - not May 30, 2010. (CT, pp. 569 – 571; RT, p. 79.)

On October 13, 2010, the juvenile court sustained the amended petition. (CT, p. 588.)

At the subsequent disposition hearing, Donnie argued he did not qualify for a DJJ commitment because the most recent offense alleged in the wardship

[3] Donnie was 16-years-old in May 2010.

petition was not an offense described in either section 707, subdivision (b), or Penal Code section 290.008. (CT, pp. 756 – 763.) The juvenile court disagreed and determined the phrase "most recent offense", as used in section 733, subdivision (c), referred to the date the petition was filed - not the date the offense was committed. (RT, pp. 263 – 264.)

On February 2, 2011, the juvenile court continued Donnie as a ward of the court and committed him to DJJ for the maximum confinement term of 11 years and eight months. (CT, pp. 825, 833 - 837.)

STATEMENT OF THE FACTS

The first seven counts of respondent's amended juvenile wardship petition were alleged to have occurred on May 23, 2010. (CT, pp. 566 - 571.) On that date, Donnie and another person assaulted a man named Marcus Robinson while he sat in his car. (RT, pp. 90 – 94.) Donnie punched Mr. Robinson and took his car keys and wallet. (RT, pp. 90 – 94.) Donnie then drove away in Mr. Robinson's car. (RT, p. 108.) Mr. Robinson suffered a fractured jaw in connection with the incident. (RT, pp. 95 – 96.)

The last two counts of Donnie's juvenile wardship petition were alleged to have occurred one week later, on May 30, 2010. (CT, p. 571.) On that date, a police officer stopped Donnie and asked for his name. (RT, pp. 166 – 168.) Donnie gave a false name and the officer attempted to detain him. (RT, p. 168.) Donnie ran away but was soon caught by other officers. (RT, pp. 169 – 170, 177.)

THE THIRD APPELLATE DISTRICT'S OPINION

On February 7, 2011, Donnie filed a timely notice of appeal challenging the juvenile court's jurisdictional and dispositional orders. (CT, pp. 839 – 840.) The case was designated as Third Appellate District Case number C067353.

On October 31, 2012, in a published opinion, the Third Appellate District relied upon the plain meaning of section 733, subdivision (c), and reversed the juvenile court's order committing Donnie to DJJ:

> 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.

(Opinion p. 2.) The Court specifically addressed respondent's concern that construing section 733, subdivision (c), based upon its plain meaning, could yield absurd results:

> We may ignore the plain meaning of an unambiguous statute only when a literal interpretation would yield absurd results. [Citation] A literal interpretation of the statute does not produce absurd results. The purpose of section 733, subdivision (c), was to reduce the number of youth offenders housed in the [DJJ] [Citation] The Legislature chose to do this by targeting currently violent or serious juvenile offenders to be sent to the [DJJ]. [Citation] The Legislature chose to determine those who were currently violent or serious offenders by looking to their 'most recent offense.' The Legislature could have chosen any 707(b) qualified offense committed in the past year or 6 months. This, arguably, would have insured that every currently violent or serious offender was sent to the [DJJ]. However, the Legislature chose to consider only the 'most recent offense.'

(Opinion, p. 5.) The Court then explained how respondent's proposed construction would thwart the statute's legislative intent:

> The [respondent's] proposed interpretation could result in consequences inimical to the statute's purposes under different circumstances. As [Donnie] notes, such an interpretation would allow the court to send a juvenile to the [DJJ] for a 707(b) offense committed years before the most recent non-707(b) offense, as long as the 707(b) offense is filed in the most recent wardship petition. Such a result would not further the legislative intent of sending only currently violent or serious juvenile offenders to the [DJJ]. [Citation]

(Opinion, pp. 5 – 6.)

On December 7, 2012, respondent filed its Petition for Review. Donnie filed his Answer to respondent's Petition on December 26, 2012. On February 20, 2013, this Court granted review.

I.

THE THIRD APPELLATE DISTRICT DID NOT ERR WHEN IT REVERSED THE JUVENILE COURT AND HELD DONNIE WAS INELIGIBLE FOR A DJJ COMMITMENT, PURSUANT TO SECTION 733, SUBDIVISION (C)

A.

STANDARD OF REVIEW

A pure question of law is reviewed de novo. (see *People v. Harrison* (1989) 48 Cal. 3d 321, 335 [application of statute to conceded facts is a question of law reviewed independently].) Where the question implicates constitutional rights, necessitating consideration of legal concepts in the mix of fact and law and an exercise of judgment about the values that animate legal principles, the factors favoring de novo review predominate. (*Smith v. Fresno Irrigation Dist.* (1999) 72

Cal. App. 4th 147, 156 citing *Ghirardo v. Antonioli* (1994) 8 Cal. 4th 791, 800-801; *People v. Louis* (1986) 42 Cal. 3d 969, 987.) De novo review is appropriate in this case.

B.

THIS COURT SHOULD FOLLOW THE PLAIN MEANING OF "MOST RECENT OFFENSE" IN CONSTRUING SECTION 733, SUBDIVISION (C)

In its Opening Brief on the Merits, respondent disagrees with the Third Appellate District's "narrow" interpretation of section 733, subdivision (c) and claims:

> ...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).

(ROB, p. 2.) Respectfully, respondent is incorrect. The Third Appellate District's construction of section 733, subdivision (c), is denoted by its plain meaning.

When construing a statute, a reviewing court's goal is "to ascertain the intent of the enacting legislative body" and "adopt the construction that best effectuates the purpose of the law." (*People v. Albillar* (2010) 51 Cal. 4th 47, 54-55.) This process begins with an analysis of the language of the governing statute (*Beal Bank SSB v. Arter & Hadden, LLP* (2007) 42 Cal. 4th 503, 507; see also, *People v. Woodhead* (1987) 43 Cal. 3d 1002, 1007.) Words are afforded their ordinary and usual meaning, as the words the Legislature chose to enact are the

most reliable indicator of its intent. (*Vasquez v. California* (2008) 45 Cal. 4th 243, 251.) If the text evinces an unmistakable plain meaning, an appellate court need go no further. (*Beal Bank SSB v. Arter & Hadden LLP, supra*, 42 Cal. 4th at p. 508; *Microsoft Corp. v. Franchise Tax Board* (2006) 39 Cal. 4th 750, 758; *People v. Traylor* (2009) 46 Cal. 4th 1205, 1212. As the California Supreme Court stated in *People v. Albillar, supra,* 51 Cal. 4th at p. 55:

> We first examine the words of the statute, 'giving them their ordinary and usual meaning and viewing them in their statutory context, because the statutory language is usually the most reliable indicator of legislative intent. [citation] If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.'

(*Ibid*; quoting *People v. Traylor, supra,* 46 Cal. 4th at p. 1212.)

However, appellate courts do not:

> ...consider the statutory language 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the statute ... in order to determine the scope and purpose of the provision.... [Citation.]' [Citation.] That is, we construe the words in question 'in context, keeping in mind the nature and obvious purpose of the statute....[Citation.]' [Citation.] We must harmonize 'the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole' .....and avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. [Citations.]

(*In re Greg F., supra,* 55 Cal. 4th at p. 406, quoting *People v. Mendoza* (2000) 23 Cal. 4th 896, 907 – 908.)

The absence of ambiguity dispenses with the need to review the statute's legislative history. (*People v. Albillar, supra.* 51 Cal. 4th at pp. 56, 67.) Where there is no ambiguity in the statutory text, the Legislature is presumed to have

meant what it said, and the plain meaning of the language governs. (*Id.* at p. 55; *Lennane v. Franchise Tax Bd.* (1994) 9 Cal. 4th 263, 268.)

Under the current section 731, subdivision (a)(4), a minor can only be sent to DJJ if he committed an offense enumerated in section 707, subdivision (b), or Penal Code section 290.008 and is not otherwise ineligible under section 733. Section 731, subdivision (a)(4) is an eligibility statute. This section provides the exclusive way for a court to lawfully commit a minor to DJJ.

Donnie violated Penal Code section 211 (second degree robbery), an offense enumerated in section 707, subdivision (b)[4](§707, subd. (b)(3)).[5] Accordingly, Donnie was eligible for DJJ, so long as he was not rendered otherwise ineligible under section 733.

Section 733 is an exclusionary statute. Even if a minor meets the minimum eligibility threshold under section 731, subdivision (a)(4), he still may not be properly committed to DJJ - if one of the three exclusions contained in section 733 applies.

Under the current section 733, a ward who committed a "707(b)" offense remains ineligible for a DJJ commitment if he: is under 11 years of age (§733, subd. (a)), has an infectious or contagious disease that endangers others (§733, subd. (b)), or:

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[4] The court also found Donnie violated Penal Code section 215 (carjacking). However, he was not "armed with a dangerous or deadly weapon". (§707, subd. (b)(25).) Thus, it was not an offense enumerated in section 707, subdivision (b).

[5] Donnie had no other "707(b)" offenses. (CT, pp. 833 – 836.)

> (c)....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...

(emphasis added)(§733, subd. (c).)

The plain meaning of section 733, subdivision (c), is "clear". (see *In re Greg F., supra,* 55 Cal. 4th at p. 408 ["Construed in light of standard principles of interpretation the meaning of section 733(c) is clear and there is no need to resort to legislative history"].) A ward remains ineligible for DJJ unless his "most recent offense" is enumerated in either section 707, subdivision (b) or Penal Code section 290.008. (§733, subd. (c).)

Donnie committed his most recent offenses - violations of Penal Code sections 148, subdivision (a), and 148.9, subdivision (a), - on May 30, 2010. Neither of these offenses is enumerated in section 707, subdivision (b), or Penal Code section 290.008. His only "707(b)" offense - second degree robbery - occurred seven days earlier on May, 23, 2010.

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."[6] (§733, subd. (c).)

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[6] It is significant to note the adjective "most recent" modifies the word "offense" while the adjective "any" modifies the word "petition."

Accordingly, pursuant to the plain meaning of section 733, subdivision (c), Donnie was ineligible for a DJJ commitment.

C.

THE THIRD APPELLATE DISTRICT'S CONSTRUCTION OF SECTION 733, SUBDIVISION (C) IS CONSISTENT WITH ITS LEGISLATIVE INTENT

Because section 733 is not ambiguous, there is no need to resort to an analysis of the statute's legislative history to discern a meaning different from what is obvious from its express language.

In any case, the legislative history of section 733, subdivision (c), reveals the Third Appellate District's construction was consistent with the statute's intent to reduce the number of youth offenders housed in State facilities. (Opinion, p. 5.)

> [t]he purpose of the enactment that became section 733 was to reduce the cost and increase the effectiveness of juvenile confinement by shifting all but the most serious juvenile offenders to county facilities.

(*In re M. B.* (2009) 174 Cal. App. 4th 1472, 1477; *In re D. J.* (2010) 185 Cal. App. 4th 278, 286; *In re N. D.* (2008) 167 Cal. App. 4th 885, 891 – 892.)

As the Senate Floor Analysis for section 733, subdivision (c) explains: "[t]his bill will stop the intake of youthful offenders adjudicated for non-violent, non-serious offenses (non-707b offenses) to the [DJJ] on September 1, 2007." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 81 (2007 – 2008 Reg. Sess.), as amended July 19, 2007, p. 3.) The Assembly Floor Analysis of Senate Bill No. 81 similarly states the legislation: "[p]rohibits

the intake of youthful offenders adjudicated for non-violent, non-serious offenses (non-707(b) offenses) to the [DJJ] on September 1, 2007." (Assembly Floor Analysis on Sen. 3d reading of Sen. Bill No. 81 (2007 – 2008 Reg. Sess.) as amended July 19, 2007, p. 1.)

The Court of Appeal in *In re N. D., supra,* 167 Cal. App. 4th at pp. 891 – 892, noted section 733, subdivision (c), was enacted as part of chapter 175 of the Statutes of 2007 to make:

> '...necessary statutory changes to implement the Budget Act of 2007....' (Stats. 2007, ch. 175, § 38.)....A report of the California Little Hoover Commission explains the budget impact. To settle a lawsuit brought on behalf of inmates of state juvenile facilities, the state entered into a consent decree in November of 2004. The cost of compliance with the consent decree proved to be high: 'Realizing the state could not afford to comply with the ... consent decree, in 2007, policy-makers acted 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.]

(*In re N.D., supra,* at pp. 891 – 892.)

The history of section 733, subdivision (c), consistently expresses the Legislature's intent to limit DJJ commitments to *currently* violent or serious juvenile offenders. Any construction of the statute which would expand the scope of DJJ-eligible wards beyond these parameters is inconsistent with its legislative intent.

Respondent's interpretation of section 733, subdivision (c), would allow a juvenile court to send a ward 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 type of prosecutorial gamesmanship would stand in direct conflict with the plain meaning of section 733, subdivision (c) and "result in consequences inimical to the statute's purposes." (Opinion, pp. 5 – 6.)

If Donnie committed the robbery months or years before the May 30, 2010, misdemeanors, the weakness of respondent's position would be more apparent. However, the fact only one week separated the qualifying offense from the non-qualifying offenses should not change the result: Donnie was ineligible for DJJ commitment under section 733, subdivision (c). This is a hard case. It should not result in bad law.

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 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 DJJ 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 matter should be addressed to the Legislature - not this Court.

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

D.

THE THIRD APPELLATE DISTRICT'S DECISION WILL NOT RESULT IN "ABSURD CONSEQUENCES"

Respondent claims this Court should ignore the plain meaning of section 733, subdivision (c), because the Third Appellate District's decision will "result in dire and absurd consequences":

> Specifically, the Third District's published opinion essentially creates a 'Get out of Jail Free' [(DJJ)] card for juveniles who commit violent and serious crimes...the appellate court's opinion allows a juvenile who commits such crimes to avoid incarceration at [DJJ] merely by committing a non-qualifying offense as his or her last criminal act.

(ROB, p. 5.)

Respondent's argument lacks merit. It is not enough for a minor to merely *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.

Respondent's scenario of an incredibly sophisticated juvenile offender, precluding a DJJ disposition by strategically committing a minor offense at the conclusion of a violent crime spree, while the prosecution and juvenile courts look on helplessly, is simply not based in reality.

Regardless of the provisions of section 733, subdivision (c), prosecuting agencies retain the discretion to file - or not file – a wardship petition alleging a subsequent non-qualifying offense. Prior to filing a felony wardship petition under section 602, the prosecuting agency and the probation department have statutory duties to investigate the minor's offense, personal circumstances and juvenile history. (§§ 628, subd. (a); 652; 653.5; and 790, subd. (b).) During the course of this investigation, the prosecuting agency can determine whether a DJJ disposition is appropriate for the minor and draft its wardship petition accordingly.

Furthermore, respondent's concern prosecutors may face an "unenviable dilemma of having to either forgo prosecution of valid non qualifying offenses or lose the potential remedy of a [DJJ] disposition" is unfounded. (ROB, p. 6.) If the minor is on probation - like Donnie – a prosecutor can escape the consequences of section 733, subdivision (c), simply by filing the new offenses as probation violations. (see *In re Greg F., supra,* 55 Cal. 4th at pp. 404 – 405, 423.)

The statute's "[DJJ] commitment limitation depends on the nature of 'the most recent offense alleged in any *petition*'". (emphasis in original)(*Id.* at p. 404.) Accordingly, section 733, subdivision (c), does not bar DJJ commitments when the minor's most recent non-qualifying offense forms the basis for a *notice* of

probation violation. (*Id.* at pp. 404 – 405; *In re D. J., supra,* 185 Cal. App. 4th at p. 286; *In re M. B., supra,* 174 Cal. App. 4th 1472, 1476; *In re J. L.* (2008) 168 Cal. App. 4th 43, 58.)

As Justice Cantil-Sakauye noted in her dissenting opinion in *In re Greg F, supra,* 55 Cal. 4th at p. 423:

> In situations where the prosecutor views the juvenile's most recent offense not to demonstrate rehabilitative progress, but a continuation of prior serious behavioral problems for which the juvenile is on probation under a [DJJ]-eligible sustained petition, the prosecutor can file a notice of probation violation under section 777. A notice of probation violation does not trigger the terms of section 733(c)...The prosecutorial discretion to proceed by either section 777 notice or the filing of a new section 602 petition permits a flexible approach to the individual juvenile's situation and preserves the incentive for a juvenile on probation for a [DJJ]-qualifying offense to reform.

(*Id.* at p. 423.) At disposition, the juvenile court can fashion an appropriate order, addressing the new non-qualifying criminal conduct which triggered the probation violation, while still committing an eligible ward to DJJ.

Furthermore, 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., supra,* 55 Cal. 4th 393 (*Greg F.*) negated the problem. In *Greg F.*, this Court held a juvenile court may, within the discretion afforded to it by section 782[7], dismiss a non-707(b) wardship petition when a ward on probation

[7] Section 782 provides: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall

for a DJJ-eligible offense commits a new offense that is not listed in section 707(b). (*Id.* at p. 400.) Thus, despite the exclusionary provisions of section 733, subdivision (c), juvenile courts retain the discretion, under section 782, to dismiss a more recent non-qualifying petition (and/or any sustained offense therein) and commit a ward to DJJ, in the interests of justice.

Although *Greg F.* specifically addressed the "interplay between" sections 733 and 782, this Court's reasoning is pertinent here and bears careful examination. (see *Ibid.*) In *Greg F.,* the minor was already on probation for a "707(b)" offense when he committed a battery in juvenile hall. (*Id.* at pp. 400 – 401.) The prosecution filed a new wardship petition alleging two "non-707(b)" offenses. (*Id.* at p. 401.) The minor admitted the battery charge at the detention hearing. (*Ibid.*) The juvenile court accepted the admission[8]. (*Ibid.*)

The prosecution acknowledged it erroneously filed a new section 602 wardship petition, rather than proceeding with a notice of probation violation under section 777, and filed an ex-parte request "to calendar a motion to 'withdraw' the minor's plea. (*Id.* at pp. 401 – 402.) The juvenile court granted the prosecution's motion and dismissed the new section 602 wardship petition in the interests of justice pursuant to section 782. (*Id.* at p. 402.) After the minor

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have jurisdiction to order such dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court." (§ 782.)

[8] It is important to note that while a minor may admit the allegations of a 602 wardship petition at the detention hearing, a juvenile court is not compelled to accept his or her admission. (see *In re Greg F., supra,* 55 Cal. 4th at p. 426.)

admitted the allegations of the section 777 petition, the court committed him to DJJ. (*Ibid.*)

The Court of Appeal reversed the disposition order, finding section 733, subdivision (c), "limits a juvenile court's authority to dismiss a petition under section 782." (*Ibid.*) This Court granted review to "resolve conflicting case law" and held:

> [section 733, subdivision (c)] does not deprive the juvenile court of its discretion to dismiss a 602 petition and commit a ward to [DJJ] when, in compliance with section 782, such a dismissal is in the interests of justice and for the benefit of the minor.

(*Ibid.*)

In reaching its decision, this Court analyzed the plain meaning of section 733, subdivision (c), and determined it was "clear." (*Id.* at p. 408.) Furthermore, this Court:

> ....examined the legislative history underlying section 733(c)....and found nothing to suggest that the Legislature intended to deprive juvenile courts of their long-standing discretion to dismiss delinquency petitions when appropriate.

(*Id.* at pp. 408 – 409.) Rather than construing section 733, subdivision (c), in a manner not denoted by its plain meaning, this Court "harmonized" the statute with section 782:

> [Section 733, subdivision (c)] prohibits a commitment to [DJJ] unless the minor's most recent offense alleged in a petition is of a particular class. If the juvenile court exercises its discretion under section 782 to dismiss a 602 petition, its decision does not nullify or abrogate section 733(c). It simply changes the 'most recent offense alleged in any petition' to which section 733(c) applies *in that particular case*.....Section 782 gives the juvenile court a discretionary tool in such cases to control the operative petition for

> purposes of section 733(c) and, consequently, expand its dispositional options.

(emphasis in original)(*Id.* at p. 408.) In doing so, this Court rejected the assertion, posed by the minor and the dissent, that section 733, subdivision (c), deprived juvenile courts of discretion, under section 782, to dismiss a non-qualifying petition, after it sustained jurisdiction. (*Id.* at p. 413.)

This Court then considered, in dicta, what might occur if, as in this case, a section 602 wardship petition included both qualifying and non-qualifying offenses and the most recent offense was a non-qualifying one.[9] (*Id.* at p. 412.) Within the context of this hypothetical, this Court identified the potentially problematic consequences which could result if the juvenile court's discretion under section 782 was negated by section 733, subdivision (c):

> The dissent's interpretation could also reward gamesmanship in the context of multi-count 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 [DJJ] 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 [DJJ] on the nature of 'the most recent offense alleged in a 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 [DJJ] commitment if the crime spree happened to end with a non-qualifying 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).

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[9] This Court expressly noted it: "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 multi-count petition, would appear to avoid absurd consequences and remain consistent with the Legislature's intent to reserve [DJJ] commitments for specific recent offenses." (*Ibid.*, fn. 3.)

(emphasis inoriginal)(*Ibid.*)

However, with its holding in *Greg F.*, this Court obviated the potential for "gamesmanship" on the part of the minor by empowering juvenile courts to dismiss a non-qualifying petition - or any non-qualifying offense within the petition - even after it sustained jurisdiction[10]. (*Id.* at pp. 412 – 413, see also Dis. opn. of Cantil–Sakauye, C.J., at p. 421, fn. 2.):

> Thus, if a minor committed a crime spree that included [DJJ]-eligible offenses, but the offense committed last in time was a [DJJ]-ineligible offense, the juvenile court might, in an appropriate case, dismiss the allegations regarding the last offense in order to clearly preserve a [DJJ]-dispositional option.

(*Ibid.*)

The "gamesmanship" and "potentially absurd results in a multi-count case", which concerned this Court, arose from the now extinct premise that a juvenile court would lose its dismissal discretion, under section 782, after it sustained jurisdiction. (*Id.* at p. 412.) However, the majority's decision in *Greg F.* extended a juvenile court's "dismissal discretion" to the disposition hearing – thus eliminating any realistic concerns about gamesmanship and absurd results.

Pursuant to the reasoning and holding 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 DJJ, based on the May 23, 2010,

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[10] In her dissent, Justice Cantil-Sakauye noted: "Such dismissal discretion would extend to the possible striking of individual counts alleging [DJJ]-ineligible offenses." (*Id.* at p. 423, fn. 2.)

robbery. It did not do so. Instead, it chose to sustain the May 30, 2010, allegations. By taking this action, the juvenile court had no authority to commit Donnie to DJJ.

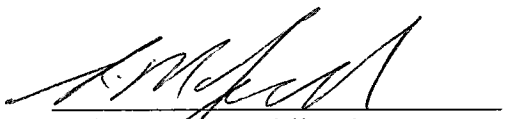
Now, and in the future, a juvenile court will be able to rely upon the *Greg F.* holding and exercise its discretion to fashion an appropriate disposition for each ward. It is not necessary for this Court to ignore the plain meaning and legislative intent of section 733, subdivision (c), and rewrite the statute to give juvenile courts the discretion they already have.

CONCLUSION

Based upon the foregoing, Donnie respectfully requests this Court affirm the Third Appellate District's decision.

Dated: July 3, 2013

Respectfully submitted,



Robert McLaughlin, Esq.
Attorney for Appellant

WORD COUNT CERTIFICATION

I, Robert McLaughlin, certify that, based on the word count of the computer program used to prepare this document, there are 5,713 words in Appellant's Answer Brief on the Merits 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: July 3, 2012

Robert McLaughlin

EXHIBIT

A

Filed 10/31/12 (unmodified version)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re D.B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.B., 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,

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[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

> whether the minor may be generally considered a serious, violent offender. The language looks to the minor's 'most recent offense.' The Legislature has specifically determined it is the minor's most recent offense that determines the minor's eligibility for DJF commitment." (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.)

The People urge us to interpret the words "most recent" as modifying the petition and adjudication, rather than the offense. According to this interpretation, the minor could be confined to the DJF if any *offense* alleged in the most recent *petition* and admitted or found to be true by the court is described in section 707(b). The language of section 733, subdivision (c), is simply not susceptible to this interpretation.

The People argue we should ignore the plain meaning of the statute because it results in an absurd consequence that the Legislature did not intend. We may ignore the plain meaning of an unambiguous statute only when a literal interpretation would yield absurd results. (*People v. Albillar* (2010) 51 Cal.4th 47, 55.) A literal interpretation of the statute does not produce absurd results.

The purpose of section 733, subdivision (c), was to reduce the number of youth offenders housed in the DJF. (*In re N.D.* (2008) 167 Cal.App.4th 885, 891-892.) The Legislature chose to do this by targeting currently violent or serious juvenile offenders to be sent to the DJF. (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468.) The Legislature chose to determine those who were currently violent or serious offenders by looking to their "most recent offense." The Legislature could have chosen any 707(b) qualified offense committed in the past year or 6 months. This, arguably, would have insured that every currently violent or serious offender was sent to the DJF. However, the Legislature chose to consider only the "most recent offense."

The People's proposed interpretation could result in consequences inimical to the statute's purposes under different circumstances. As D.B. notes, such an interpretation would allow the court to send a juvenile to the DJF for a 707(b) offense committed years before the most recent non-707(b) offense, as long as the 707(b) offense is filed in the

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.

Filed 11/7/12

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re D.B., a Person Coming Under the Juvenile Court Law.	C067353
THE PEOPLE, Plaintiff and Respondent, v. D.B., Defendant and Appellant.	(Super. Ct. No. JV125361) ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 31, 2012, be modified as follows:

1. On page 3, in the last paragraph, the citation to "*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468-1469" is amended to read:

   (V.C. v. Superior Court (2009) 173 Cal.App.4th 1455, 1468-1469, disapproved of on other grounds by *In re Greg F.* (2012) 55 Cal.4th 393.)

2. On page 4, after the sentence that begins "In *V.C. v. Superior Court*," add as footnote 2 the following footnote:

   [2] *In re Greg F., supra*, 55 Cal.4th 393, disagreed with *V.C. v. Superior Court, supra,* 173 Cal.App. 4th 1455, to the extent it held that a court did not have discretion to dismiss a minor's most recent offense in order to

make the minor eligible for commitment to the DJF under the terms of section 733, subdivision (c). (*In re Greg F., supra,* 55 Cal.4th at pp. 402, 419-420.) This case does not involve that particular issue.

There is no change in the judgment.

BLEASE, Acting P. J.

BUTZ, J.

DUARTE, J.

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 19200 Von Karman Ave, Suite 900, Irvine California 92612. I served Appellant's Answer Brief on the Merits 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:

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D. B. [appellant]
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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 Irvine, California on July 3, 2013. I declare under penalty of perjury that the foregoing is true and correct. Executed by me on July 3, 2013, at Irvine, California.

Robert McLaughlin, Esq.