IN THE SUPREME COURT OF CALIFORNIA

In re A. N.,

THE PEOPLE,

Plaintiff and Respondent,

v.

A. N.,

Defendant and Appellant.

S242494

Ct. App. 2/6 B275914
(Ventura County
Super. Ct. No. 2015040294)

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

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

The Attorney General filed an Answer Brief on the Merits for the People. In this pleading, appellant replies to the answer brief.

I.

A juvenile court is precluded from sustaining a juvenile petition for truancy unless the student's school presents evidence that the student did not successfully complete SARB or a similar type of truancy mediation.

The opinion held that the "SARB process is not a prerequisite to juvenile court intervention" and that Welfare and Institutions Code, section 601, subdivision (b),[1] provides a stand-alone basis of jurisdiction when the student has four or more truancies.

[1] Referred to herein as W&I 601(b) for ease of reading.

(*In re A.N.* (2017) 11 Cal.App.5th 403, 407.) In contrast, appellant argues that W&I 601(b) is not a separate basis for juvenile court jurisdiction divorced from the statutory truancy scheme set forth in Education Code section 48264.5.[2] Specifically, appellant posits that a juvenile court is vested with jurisdiction only when the pupil fails to successfully complete a truancy mediation program and a fourth truancy report is issued. (See § 48264.5, subds. (c) and (d).)

Respondent concedes that "[w]here a SARB is available, the school must show the juvenile court that it has 'undertaken' the steps contemplated by Education Code section 48264.5" before commencing a hearing. (RB: 18.) However, respondent still maintains that W&I 601(b) confers an independent basis for jurisdiction and that there is no requirement of a SARB meeting prior to the filing of a petition. (*Ibid.*) According to respondent, the prosecution may file a petition and assert jurisdiction without either affording the pupil a SARB hearing or similar truancy mediation or waiting to see if the truancy mediation is successful. (*Ibid.*) Respondent's court-intervention-first position is not only unsupported by the truancy statutory scheme, it is counterproductive to the goal of increasing school attendance.

Contrary to both the opinion and respondent's more nuanced position, W&I 601(b) does not confer a stand-alone basis to sustain a juvenile truancy petition divorced from the requirements and limitations of section 48264.5. In 2015, the Legislature modified W&I 601(b) through Welfare and Institutions Code section 258.[3] (Stats. 2014, c. 898 (A.B. 2195), § 3, eff. Jan. 1, 2015.) Welfare and Institutions Code section 258, subdivision (b), reads: "[i]f the minor is before the court on the basis of truancy, as described in subdivision (b) of Section 601, all of the following procedures and limitations shall apply:" (A) a juvenile hearing shall not proceed unless (1) the court is provided evidence that the minor's school has complied with subdivisions (a), (b), and (c) of section 48264.5; and (2) the court is provided specific evidence of the previous attempts to address the minor's truancy. (§ 258, subds. (b)(1)(A) and (b)(1)(B).)

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[2] All statutory references are to the Education Code unless otherwise specified.

[3] Referred to herein as W&I 258 for ease of reading.

In plain language, W&I 258 placed limitations on a juvenile court's ability to hear truancy petitions. Specifically, in school districts with SARBs, the student's school must present evidence that it has undertaken all of the actions specified in (a), (b), and (c) of section 48264.5. (*People v. Canty* (2004) 32 Cal.4th 1266, 1276 ["If the language of a statute is clear and unambiguous, the court must follow the plain meaning."])

With respect to section 48264.5, subdivision (c), the district must present evidence that the pupil was issued a third truancy report indicating that he or she has been classified as a habitual truant and referred to a SARB or other similar type of truancy mediation. Importantly, subdivision (c) concludes with this mandatory, concise, and plain language: "If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d)." Subdivision (d) next provides that upon the issuance of a fourth truancy report,[4] a juvenile court may "adjudge the pupil to be a ward of the court pursuant to section 601 of the Welfare and Institutions Code."

Taken together, the truancy scheme set forth in section 48264.5 and Welfare and Institutions Code sections 601(b) and 258, require that before a juvenile court can sustain a juvenile truancy petition there must be evidence that: (1) the minor pupil was referred to SARB or a similar type of truancy mediation upon being classified as an habitual truant with the issuance of a third truancy report; and (2) he or she did not successfully complete the truancy mediation program and thereafter was issued a fourth truancy report indicating that he or she may now be within the jurisdiction of the juvenile court.

Against this plain and common-sense reading of the relevant statutes, respondent argues that at the sixth absence, "a student may be within the jurisdiction of the juvenile court" and that there are no preconditions for this consequence. (RB: 19.) It

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[4] Whether section 48264.5, subdivision (d), requires the issuance of a fourth truancy report is an issue in this appeal. For ease of argument in this heading, appellant presumes that a fourth truancy report is required before a juvenile court obtains jurisdiction.

is unclear if respondent fully embraces that position, because respondent later concedes that there is one precondition after the filing of a petition. According to respondent, the school's one precondition is to refer the pupil to a SARB *after* a truancy petition has been filed. However, as long as the pupil has been referred to a SARB, a juvenile court could sustain a petition after the sixth absence regardless of how the SARB process played out. (RB: 19-20.) Respondent advances two arguments for this position. First, W&I 601(b), as modified in 1994, states that a juvenile court acquires jurisdiction after the fourth truancy. Second, section 48264.5 does not mandate the use of either SARB or a similar type of truancy mediation prior to the filing of the petition. (RB: 20.) Respondent's arguments are misplaced.

While it is accurate that W&I 601(b) was modified in 1994, the same legislation amended sections 48260, 48260.5, and 48264, and added section 48264.5. (SB 1728, 1994.) W&I 601(b), as modified, was therefore part of the overall statutory truancy scheme and was not intended to be interpreted in isolation. Instead, a proper interpretation must consider the statutory scheme of which the statute is a part. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.)

Further, and perhaps most significantly, the Legislature has revisited and modified the truancy statutory scheme since 1994. In 2012 and 2015, the Legislature amended section 48264.5 and W&I 258 respectively, which in turn modified W&I 601(b). As amended, section 48264.5 set forth a truancy scheme of graduated consequences for continual truancy, however, the graduated consequences were triggered by corresponding obligations on behalf of the school district to try to resolve the student's truancy without referring the pupil to the juvenile court. W&I 258 made it explicit that before a court could adjudge a pupil a ward of the court based on truancy, there must be evidence that the school district complied with the "procedures and limitations" of section 48264.5, including subdivision (c). Respondent's contention that W&I 601(b) confers jurisdiction divorced from the procedures and limitations of section 48264.5 is wrong.

Respondent next posits that the permissive language in section 48264.5 is evidence that the use of SARB is not a precondition to juvenile court jurisdiction. (RB: 19-20.) Such a position is contrary to the stated purpose of Assembly Bill 2616, the enabling legislation for the 2012 modifications to section 48264.5. Section 48264.5 was modified to "eliminate the mandate that a pupil found truant for the fourth time in a school year be referred to the juvenile court." (2011 Legis. Bill Hist. CA A.B., 2616, p. 2.) The whole point behind the 2012 modifications was to make it less, not more, likely that a school refer a student to juvenile court. The reason for this is that, according to A.B. 2616's author, "juvenile court involvement could further exacerbate the attendance issues, particularly given the time required for the young person and his or her family to go to Court and the lack of resources that the Courts often have to assist with any underlying problems related to mental health, special education, disability, and poverty." (*Ibid.*) This interpretation is bolstered by the plain language of the last sentence in section 48264.5 that requires a pupil to fail truancy mediation before being subject to subdivision (d) and, hence, the juvenile court's jurisdiction. In sum, the permissive language in section 48264.5 was inserted to remove the previous mandate of referring students to juvenile court after truancy mediation failed rather than to eliminate the school obligations of providing SARB or a similar type of truancy mediation.

Respondent's creative interpretation of the truancy statutory scheme allows for the following misleading statement. "[A]fter well more than four truancies, the juvenile court petition was filed, and the SARB process was completed before the juvenile court hearing began." (RB: 21.) That statement is highly misleading because it either fails to take into account or purposely disregards the petition's false allegations. The petition alleged that on December 12, 2015, A. N. committed the crime of "Habitually Truant" because she was absent three or more times from school "*and failed to respond to directives of a school attendance review board or to services provided.*" [emphasis added] (CT: 1.) The petition was filed December 31, 2015 – 12 days prior to A. N.'s appearance before SARB on January 12, 2016. (CT: 1, 90.) A. N. therefore could not have failed to respond to SARB directives or to services provided on December 12, 2016.

Respondent's claim that the SARB process was completed before the juvenile court hearing began is also misleading. (RB: 21.) Appellant A. N. attended a SARB hearing with her mother on January 12, 2016. At the conclusion of the hearing, she and her mother signed a contract. No services were offered or provided. (CT: 90.) At the hearing four months later on May 6, 2016, the prosecution did not present any evidence that A. N. had failed to respond to either SARB directives or to services provided. There was no evidence that SARB requested the filing of a petition. (RT: 132-133.)[5] Further, no evidence was presented that A. N. failed to successfully complete a SARB mediation program and as a result was thereafter issued a fourth truancy report. (*Ibid.*) There was simply no evidence presented to the trial court that the SARB process was either successful or unsuccessful, much less completed.

The statutory truancy scheme obligates the school district to conduct meaningful truancy mediation before sending a student into the juvenile justice system. If the prosecution short-circuits the carefully crafted scheme and instead files a petition before allowing the truancy mediation to play out, the juvenile court lacks jurisdiction to sustain a petition for truancy.

II.

A pupil must be provided notice of a fourth truancy report before a juvenile court is vested with jurisdiction.

Respondent contends that the word "report" referenced in section 48264.5 refers only to an "internal report" to the attendance supervisor or the superintendent. (RB: 22-23.) As such, an entry of absences in a computer database that is forwarded to an attendance supervisor constitutes an issued truancy report. (*Ibid.*) Respondent further

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[5] Respondent stated that A. N. has an unexcused absence on January 27, 2016. (RB: 16.) In fact, the record indicates that she had an unverified absence for one period rather than an unexcused absence. (CT: 78.) The record does not indicate whether the unverified absence was later verified in some manner. In any event, neither the prosecution, the trial court, nor the opinion contended that she had failed to comply with the SARB directives based on the January 27, 2016 school data entry.

posits that the school only has a duty to notify the pupil's parent[s] after the pupil's initial classification as a truant. (See § 48260.5.) According to respondent, the school is not obligated to provide notice of either a second, third, or fourth truancy report to the student or the student's parent. (RB: 23-24.) Respondent's contention conflicts with the statutory truancy scheme and is inconsistent with fundamental fairness.

Subdivision (a) provides that: "The first time a truancy report issued, the pupil and, as appropriate, the parent or legal guardian, may be requested to attend a meeting with a school counselor . . . to discuss the root causes of the attendance issue and develop a joint plan to improve the pupil's attendance." Subdivision (b) provides: "The second time a truancy report is issued within the same year, the pupil may be given a written warning by a peace officer . . . . A record of the written warning may be kept at the school for not less than two years. . . . The pupil may also be assigned by the school to an afterschool or weekend study program . . . . If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (c)." Subdivision (c) states: "The third time a truancy report is issued within the same school year, the pupil shall be classified as a habitual truant, as defined in Section 48262, and may be referred to, and required to attend, an attendance review board or a truancy mediation program . . . . If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d)." Subdivision (d) states: "The fourth time a truancy is issued within the same school year, the pupil may be within the jurisdiction of the juvenile court that may adjudge the pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code." (§ 48264.5, subds. (a)-(d).)

The plain language of section 48264.5 requires a truancy report to be issued four times before a pupil "may be within the jurisdiction of the juvenile court." (*Canty, supra,* 32 Cal.4th at 1276 ["If the language of a statute is clear and unambiguous, the court must follow the plain meaning."].) Section 48264.5 does not define report as "internal report." While sections 48260 and 48261 require a truancy report to be reported to either an attendance supervisor or school superintendent, section 48264.5 does not

limit the reporting requirement to only internal school reports. It is entirely reasonable, therefore, that section 48264.5 requires the student and parent to receive notice of the student's truancy issues and the steps the school is taking to resolve the issue. Such a reporting requirement also ensures that the parent[s] are involved in the process of ensuring their child attends school on a regular and timely basis.

Further, a requirement that the pupil and parents receive four truancy reports before a petition can be filed for truancy is necessary to comport with due process. A "juvenile in a delinquency matter is entitled to the same constitutional guarantees of due process as those accorded an adult criminal defendant. (*In re Gault* (1967) 387 U.S. 1, 30–31.) This includes constitutionally adequate notice of the charges." (*In re Jesse P.* (1992) 3 Cal.App.4th 1177, 1182.) As further observed by the *Jesse P.* court, "[t]he 'preeminent' due process principle is that one accused of a crime must be 'informed of the nature and cause of the accusation.' (U.S. Const., Amend. VI.) 'Due process of law requires that an accused be advised of the charges against him so that he has a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial.' (Quoting *People v. Jones* (1990) 51 Cal.3d 294, 317, 270.)" (*In re Jesse P., supra,* 3 Cal.App.4th at p. 1182.)

In this case, the school district complied in part with the truancy report requirement. They mailed three truancy reports to A. N. and her family. (CT: 80-85.) However, prior to the third report being issued an Oxnard police officer served A. N. with a citation. A fourth report was never issued and the filed petition contained an untrue allegation. The lack of a fourth truancy report coupled with an inaccurate petition compelled both the people and the court to come up with various and different reasons to defend or justify the petition. The district attorney attempted to remain faithful to the petition's allegations and argued that the school truancy reports constituted SARB directives and that any subsequent unexcused absence violated the directives. (CT: 52-55.)

The opinion instead rejected the notion that any intervention by SARB was a prerequisite and held that the only requirement for juvenile court intervention was proof

of six unexplained absences. (*In re A.N, supra,* 11 Cal.App.5th at 408.) Respondent also does not attempt to defend the petition's allegation that A. N. failed to comply with the SARB directives but contends that since the SARB hearing occurred prior to the juvenile court hearing, the petition was properly sustained. (RB: 19.)

In effect, the evolving rationale by the people and the court to justify this case reflect that this truancy prosecution has been a moving target with ever-changing requirements. In short, the absence of the issuance of a fourth truancy report, coupled with a lack of a clear requirement that the prosecution present evidence consistent with the petition, violated appellant's due process, because she had no reasonable opportunity to prepare and present a defense.

III.

Early juvenile court involvement is counterproductive to the goal of increased attendance.

Respondent urges this Court to sanction the filing of a truancy petition before SARB or a similar type of truancy mediation, on the basis that "[p]rompt initiation of a juvenile court action may be effective as one the tools available to school districts to address truancy." (RB: 25.) Respondent provides no evidence to support this claim.

In fact, the evidence with respect to juvenile court involvement cuts the other way. "Research show[s] that children with juvenile court involvement are as much as 4 times more likely to drop out of schools. In fact juvenile court involvement could further exacerbate the attendance issues, particularly given the time required for the young person and his or her family to go to Court and the lack of resources the Courts often have to assist with any underlying problems related to mental health, special education, disability, and poverty. Generally, as the American Psychological Association and others have found, rather than serving as a 'wake-up call,' aggressive criminal justice centered policies in and around schools are more likely to cause students to feel alienated from the education system, causing further disengagement." (2011 Legis. Bill Hist. CA A.B. 2616, p. 3.)

In sum, the court-intervention-first approach used against appellant exacerbated her attendance issues. Not only did the juvenile court process require A. N. to miss class for part of five days,[6] the end result was simply punishment in the form of a fine of $50. (CT: 94.) Juvenile court intervention did not result in services being offered to A. N. or address in any manner the underlying reasons why she was not attending school.

Conclusion

Appellant A. N. respectfully requests that this Court reverse the judgment of the Court of Appeal and make clear that before the commencement of a truancy prosecution, there must be meaningful truancy mediation to try to resolve a pupil's truancy and the issuance of a fourth truancy report.

Dated: January 22, 2018

Respectfully Submitted,

TODD W. HOWETH, Public Defender

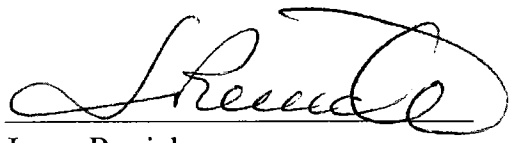
By William M. Quest, Senior Deputy
SBN 191461
Attorneys for Appellant A. N.

[6] Appellant was required to be in juvenile court on February 5, March 2, March 6, March 9, and March 10, of 2016. (CT: 5, 56, 74, 91, 93.)

CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that by utilization of MSWord word count feature there are 3,797 words in Times New Roman font in this document, excluding Declaration of Service.

Dated: January 22, 2018



Jeane Renick
Legal Mgmt. Asst. III

DECLARATION OF SERVICE

Case Name: ***In re A. N.; The People, Plaintiff and Respondent v. A. N., Defendant and Appellant.***

Case No. **S242949 from Ct. App. 2/6 B275914 [Superior Court No. 2015040294)**

On January 22, 2018, I, Jeane Renick, declare: I am over the age of 18 years and not a party to the within action or proceeding. I am employed in the Office of the Ventura County Public Defender at 800 South Victoria Ave., Ventura, California, 93009.

On this date, I *electronically served* the attached **Reply Brief on the Merits,** as indicated below:

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Hon. William Redmond, Comm.: *denise.rupp@ventura.courts.ca.gov*
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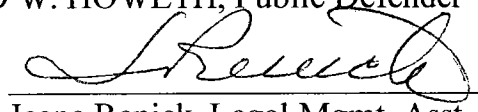
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on the above date at San Buenaventura, California.

TODD W. HOWETH, Public Defender

By 

Jeane Renick, Legal Mgmt. Asst. III