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In the Supreme Court of the State of California

In re D.B., a Person Coming Under the Juvenile Court Law.
THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **D.B.,** **Defendant and Appellant.**

S207165

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

REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

INTRODUCTION

As discussed in respondent's opening brief, this case concerns the following issue: 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 Welfare and Institutions Code[1] section 733, subdivision (c), preclude a court from committing the juvenile ward to DJF? Interpreting this statute very narrowly, the California Court of Appeal, Third Appellate District ("Third District") held that a juvenile court is precluded under such circumstances from committing a ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities ("DJF"). However, the Third District's decision is incorrect and must be reversed in order to avoid absurd consequences in this case and in others.

ARGUMENT

I. THE THIRD DISTRICT HAS MISINTERPRETED SECTION 733, SUBDIVISION (C), AND ITS RULING IN THIS MATTER MUST BE REVERSED IN ORDER TO AVOID ABSURD CONSEQUENCES

Consider the following factual scenario:

> At 2:00 a.m. one night, a juvenile and a friend are hanging out outside on a neighborhood street. Another person, a stranger, is sitting in a car across the street talking on his cell phone. The juvenile and his friend ask to borrow the stranger's cell phone to make a call, and the stranger complies. While the friend is returning the phone, the juvenile punches the stranger in the face, breaking the stranger's left jaw.

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

> The juvenile and his friend try to pull the stranger out of the driver's side of the car, but the stranger breaks free and escapes out the passenger door. The juvenile and his friend chase after the stranger, tackle him to the ground, punch him several times, choke him, bite him, and threaten to shoot him if he does not stop resisting. At that point, the juvenile and his friend take the stranger's car keys, wallet, and necklace and then drive away in the stranger's car.
>
> Later the same day around 5:30 p.m., a police officer attempts to make a traffic stop after noticing that a car driven by the juvenile did not come to a complete stop at an intersection. Instead of stopping, the juvenile makes a sharp turn down an alley and speeds away. He then abandons what turns out to be a stolen car after crashing it into a curb and flees on foot.
>
> One week later, the juvenile is stopped by the police while driving. When the officer asks the juvenile for his name, the juvenile lies and gives a false name. Then, when the officer tries to detain him, the juvenile runs away. However, other officers are able to catch the juvenile a short time later.

Given these facts, the pertinent question is whether appellant should be eligible for DJF commitment. To be clear, the question is not whether appellant should be *placed at DJF*. Instead, the issue is simply one of *eligibility*, i.e., whether appellant should be eligible for placement at DJF if the juvenile court determines that it is an appropriate placement based on

all of the surrounding facts and circumstances. Under the Third District's decision, the answer is "no." Thus, this case serves as a great example of the absurd consequences that will occur as a result of the Third District's erroneous interpretation of section 733, subdivision (c).

Both parties agree that the Legislature enacted section 733, subdivision (c), in order "'"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.* (2012) 55 Cal.4th 393.) More specifically, this statute was passed to ensure that "*only currently violent or serious juvenile offenders be sent to DJF.*" (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 1468, italics added ["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 . . ."].)

While asserting that "[t]his is a hard case," appellant contends that the legislative intent for section 733, subdivision (c), has been met. (AB 14-17.) In other words, he argues that based on the facts of this case, he should not be considered a "currently violent or serious juvenile offender," and thus should not even be eligible for DJF commitment. Appellant's sole justification for that argument is the fact that his last crime, which occurred one week after the carjacking and robbery crimes, was a non-qualifying offense, thereby making him ineligible for DJF commitment under section 733, subdivision (c).

Appellant's contention defies logic and is absurd. It is simply not reasonable to conclude that the Legislature intended for such a result to occur. Stated another way, when the Legislature enacted section 733, subdivision (c), it certainly did not intend for a "currently violent or serious

juvenile offender" to lose such status and eligibility for DJF commitment simply because he or she committed another crime, albeit a non-qualifying one, a week later.

Furthermore, based on the Third District's "last committed crime" reasoning in its opinion, it is logical to assume that the appellate court would have reached the same conclusion even if the May 30, 2010, resisting arrest and false identification crimes had not been charged in the petition. To explain, the crimes that were committed on May 23, 3010, occurred at the two different times of the day. Specifically, the robbery, carjacking and other related crimes took place at 2:00 a.m., while the evading police and resisting arrest charges for that day occurred around 5:30 p.m. Additionally, the two latter crimes arose from an attempted traffic stop that was unrelated to the earlier crimes. Consequently, applying the Third District's "last committed crime" rationale to these two latter crimes, it is reasonable to assume that the appellate court would have reached the same conclusion and found appellant ineligible for DJF commitment under section 733, subdivision (c).

Such a result (i.e., a "currently violent or serious juvenile offender" becoming ineligible for DJF commitment fifteen hours later), although merely hypothetical in this case, further shows the absurdity that could occur if the Third District's interpretation of section 733, subdivision (c), is allowed to stand. Moreover, taken to the extreme, it is not out of the question to expect a juvenile in a future matter to assert DJF ineligibility under the Third District's interpretation of section 733, subdivision (c), for committing a non-qualifying crime (i.e. resisting arrest or simple battery) within minutes or even seconds of committing a qualifying crime. In such cases, courts will be faced with having to parse through multiple crimes, attempting to determine when the offenses began and when they ended and whether they were part a continuous course of conduct. Thus, the Third

District's interpretation of section 733, subdivision (c), is untenable and should be reversed.

In response to respondent's contention that absurd consequences will occur if the Third District's interpretation is allowed to stand, appellant claims that only "an incredibly sophisticated juvenile offender" would know to commit a non-qualifying offense at the end of violent crime spree in order to avoid DJF commitment. (AB 18.) Not so. It is somewhat naïve to think that juveniles who are part of sophisticated criminal enterprises such as gangs, as well as juveniles who have been in the system and who know how it works, cannot easily learn tactics, such as this one, that may reduce their exposure to punishment. Furthermore, even when a non-qualifying offense at the end of a violent crime spree is committed by chance and not as part of a plan to avoid DJF commitment, the result is equally absurd and unacceptable.

Appellant further argues that prosecutors can simply choose not to file charges for non-qualifying offenses in order to retain DJF eligibility. (AB 18.) However, as discussed in the opening brief, prosecutors should not be placed in the unenviable position 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.

As for appellant's suggestion that prosecutors can avoid such a dilemma by filing new, non-qualifying offenses as probation violations, this suggested remedy is woefully incomplete. Specifically, charging new

offenses as probation violations only works where the juvenile is currently on probation for a DJF-eligible offense. In all other situations, the prosecutor is stuck with the aforementioned dilemma.

Finally, appellant asserts that the juvenile courts can use their discretionary power under section 782 to dismiss non-qualifying offenses in petitions, as needed, to retain the power to commit juvenile offenders to DJF. (AB 19-24.) However, even if appropriate, dismissal of charges under section 782 has the same shortcomings and problems that exist when a prosecutor has to dismiss non-qualifying charges in order to maintain DJF commitment as a possible punishment. Under either scenario, society as a whole loses because victims of the dismissed charges are deprived of their right to redress for those crimes and the juvenile is not held fully accountable for his actions. Moreover, the court's dismissal ruling is subject to reversal on appeal.

Instead of relying on a juvenile court's discretionary dismissal power under section 782, the appropriate method to preserve a court's full sentencing discretion in juvenile matters is to correctly interpret section 733, subdivision (c). As respondent has previously argued, 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 construction of section 733 will help ensure that "only currently violent or serious juvenile offenders be sent to DJF." (*V.C. v. Superior Court, supra*, 173 Cal.App.4th at p. 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 . . ."].)

CONCLUSION

For the foregoing reasons, plaintiff and respondent respectfully requests that this Court reverse the verdict and judgment of the appellate court.

Dated: August 23, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 1,809 words.

Dated: August 23, 2013

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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 August 26, 2013, I served the attached **REPLY 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 August 26, 2013, at Sacramento, California.

_____
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