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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re T.M., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

A171624

(San Francisco City & County
Super. Ct. No. JW236006)

Over the course of 18 months, the San Francisco District Attorney filed six petitions (Welf. & Inst. Code, § 602) against T.M. with a combined 39 allegations ranging from misdemeanor battery to attempted murder. This appeal arises from the disposition hearing on the fifth and sixth petitions wherein the juvenile court committed T.M. to a secure youth treatment facility. T.M. maintains no substantial evidence supports the court's findings that the facility's treatment and programming would be appropriate for him and that a less restrictive alternative is inappropriate. We agree and therefore reverse the judgment and remand for further proceedings.

BACKGROUND¹

The First Four Wardship Petitions

In January 2023, San Francisco Police officers observed a vehicle drive through two stop signs and collide with another vehicle. Sixteen-year-old T.M. exited the driver's seat and attempted to enter a nearby business. The officers arrested T.M. and found a large knife sheathed to his lower left leg. The vehicle was stolen.

The San Francisco District Attorney filed a Welfare and Institutions Code section 602 petition, alleging felony unlawful taking or driving a vehicle (Veh. Code, § 10851, subd. (a)—count 1), receiving stolen property (Pen. Code, § 496d, subd. (a)—count 2),² hit and run (Veh. Code, § 20001, subd. (a)—count 3), carrying a dirk or dagger (§ 21310—count 4), and misdemeanor resisting arrest (§ 148, subd. (a)(1)—count 5). The juvenile court placed him on informal probation.

Three weeks later, at the end of January, T.M. was arrested after he was observed driving another stolen vehicle. The district attorney filed a second petition alleging felony unlawful taking or driving a vehicle (Veh. Code, § 10851, subd. (a)—count 1) and receiving stolen property (Pen. Code, § 496d, subd. (a)—count 2). The court granted T.M.'s motion for informal probation.

Five months later, in May, while investigating a stolen vehicle report, officers entered a liquor store. T.M. was present and fled the scene. Officers

¹ The parties stipulated to police reports as providing a factual basis for T.M.'s admissions in wardship proceedings prior to those at issue here. While those reports are not a part of the record in this appeal, they are summarized in the relevant probation reports.

² All further statutory references are to the Penal Code unless otherwise indicated.

pursued, arrested T.M., and found a firearm with a high-capacity magazine on his left ankle.³

A third petition alleged felony unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)—count 1), receiving stolen property, motor vehicle (§ 496d, subd. (a)—count 2), carrying a concealed firearm (§ 25400, subd. (a)(2)—count 3), carrying a loaded firearm (§ 25850, subd. (a)—count 4), and possession of a firearm by a minor (§ 29610—count 5), and one count of misdemeanor resisting a peace officer (§ 148, subd. (a)(1)—count 6).

At an October 2023 jurisdiction hearing on these three petitions, T.M. admitted count 1 (felony taking and driving) of the first petition and count 5 (felony minor in possession of a firearm) of the third petition. The court dismissed all the remaining counts in the first and third petitions and dismissed the second petition. A month later, at a disposition hearing, T.M. was declared a ward of the court and ordered to reside in his parent’s home under probation supervision.

In January 2024, police responded to a 9-1-1 call from a gas station employee who discovered a firearm in the bathroom trashcan after T.M. nervously exited. When T.M. returned to the gas station, the employee attempted to prevent entry, resulting in a physical altercation. T.M. fled upon hearing approaching sirens but was later arrested.⁴

³ At this point, T.M. was on informal probation subject to numerous conditions, including that he “obey all laws,” and not “knowingly own, possess, or have under [his] control [¶] . . . [¶] any deadly or dangerous weapons.”

⁴ At this point, T.M.’s probation conditions provided in part that he “[o]bey all laws” and not “knowingly own, possess, or have under [his] control . . . any firearms. The corresponding probation report noted T.M. “has struggled to comply with his terms and conditions of probation including

The district attorney filed an amended fourth petition alleging felony assault with force likely to cause great bodily harm (§ 245, subd. (a)(4)—count 1), carrying a loaded firearm (§ 25850, subd. (a)—count 2), carrying a concealed firearm (§ 25400, subd. (a)(2)—count 3), and possession of firearm by a minor (§ 29610—count 4), and one count of misdemeanor battery (§ 242—count 5).

After T.M. admitted count 3 (felony concealed firearm on person) and pleaded no contest to count 5 (misdemeanor battery), the court dismissed the remaining counts, declared T.M. a ward of the court, and maintained his placement in his parent’s home subject to probation supervision.

The Fifth and Sixth Wardship Petitions

Six months later, in June 2024, T.M. participated in a robbery where a person was shot once in the arm and once in the hip. Police officers recognized one of the shooters, T.M., from the store surveillance footage. T.M. was arrested, and officers found a loaded firearm on his person.⁵

An amended fifth petition was filed alleging felony attempted murder (§§ 664, 187, subd. (a)—count 1), assault with a semiautomatic weapon (§ 245, subd. (b)—count 2), second degree robbery (§ 211—count 3), carrying a loaded firearm (§ 25850, subd. (a)—count 4), carrying a concealed firearm

curfew, school attendance, probation meeting, and service provider engagement.”

⁵ At this point, T.M.’s probation conditions ordered him, in part, to “[o]bey all laws,” to not “knowingly own, possess, or have under [his] control [¶] . . . [¶] any firearms,” to “not remain in any building, vehicle, or in the presence of any person [he knows] that one or more dangerous or deadly weapons or firearms or ammunition exists,” and to “not knowingly possess any items that [he would] know or have reason to believe are stolen.” T.M. was placed on GPS tracking, but it had been removed by the court the day before this incident took place.

(§ 25400, subd. (a)(2)—counts 5 & 8), possession of a handgun by a minor (§ 29610, subd. (a)—counts 6 & 10), carrying an unregistered loaded firearm not registered to owner (§ 25850, subd. (a)—count 7), passenger with a concealed firearm (§ 25400, subd. (a)(3)—count 9), possession of an assault weapon (§ 30605, subd. (a)—count 11), assault with force likely to cause great bodily injury (§ 245, subd. (a)(4)—count 13), and grand theft of person (§ 487, subd. (c)—count 14) and one count of misdemeanor possession of a firearm (§ 23920, subd. (b)—count 12).

One week later, police responded to another shooting. Upon arrival at the scene, police found the victim—who had tried to fight back during a robbery—bleeding on the ground from a chest wound. From surveillance footage, officers identified T.M. as among the group of assailants. A search of T.M.’s bedroom revealed unfired cartridges, and “firearm parts.”⁶

A sixth wardship petition was filed alleging felony attempted murder (§§ 664, 187, subd. (a)—count 1), second degree robbery (§ 211—count 2), assault with a semiautomatic weapon (§ 245, subd. (b)—count 3), assault with force likely to cause great bodily injury (§ 245, subd. (a)(4)—count 4), carrying a concealed firearm (§ 25400, subd. (a)(2)—count 5), carrying a loaded firearm (§ 25850, subd. (a)—count 6), and possession of a handgun by a minor (§ 29610, subd. (a)—count 7).

At a jurisdiction hearing on the fifth and sixth petitions, T.M. admitted count 4 (carrying a loaded firearm), count 13 (assault with force likely to cause great bodily injury) and count 14 (grand theft of person) from the fifth petition and count 3 (assault with a semi-automatic weapon) along with an

⁶ At the time of these events, T.M. was subject to the three probation orders previously noted.

enhancement for personal infliction of great bodily injury (§ 12022.7, subd. (a)) from the sixth petition. The remaining counts were dismissed.

Disposition Recommendations

Prior to the disposition hearing on the fifth and sixth petitions, a clinical social worker prepared a social history and mitigation report on behalf, and at the request, of T.M. Although T.M. had “taken advantage of his time in juvenile hall” by graduating from high school and regularly engaging in therapy sessions, the social worker opined T.M. now needed “a change in environment that opens doors outside of his neighborhood and juvenile hall.” Specifically, “[b]eing committed to a program” where he can access therapy—both “group and individual therapy to address his depression, trauma, and to gain insight into the consequences of his actions” and victim awareness, vocational skills or continuing education, programming on “life skills such as critical thinking, decision making, planning, problem solving and healthy relationships,” and help obtaining his own housing outside of San Francisco, which would all “be best both for [T.M.’s] personal growth and for community safety.”

The probation report prepared in advance of the hearing contained the recommendations of both T.M.’s multi-disciplinary team and his probation officer. The multi-disciplinary team recommended a “stayed Secure Track Commitment.” The team wanted “to afford [T.M.] an opportunity to be committed” to an out-of-home placement while placed at a short-term residential treatment program. The report noted T.M. had not yet had an opportunity to complete such a program, and “should he fail,” the team would then consider a secure track program. Having graduated from high school, the team opined T.M. would be “best . . . served in a stable and structured environment” and a short-term residential program would offer T.M. “mental

health services (individual, group and family therapies) using a trauma informed approach,” provide “anger management, cognitive behavioral therapies, victim awareness and empathy, transition planning for reentry as well as independent living skills and career development,” all of which would be of benefit to T.M. T.M.’s probation officer agreed with the team’s assessment and plan. Besides being a fallback should T.M. “fail” at the short-term residential program, nothing more was said about a secure track placement.

Disposition Ruling

At the contested disposition hearing, the juvenile court heard from counsel on “where [T.M.] is going to go . . . whether it’s going to be some sort of unsecure treatment facility, whether he is going to remain in an intensive treatment program in Juvenile Hall and Secure Track portion of it.”

The prosecutor argued T.M. should be placed in a secure youth treatment facility (secure facility) for a four-year term, asserting this provided “the flexibility and the greater opportunity to [e]nsure [T.M.] is rehabilitated” and that the “severity of conduct . . . [and] type of history demonstrate[d] that the longer term of four years is necessary.”

Defense counsel urged T.M. be placed in an out-of-home, short-term residential treatment facility (out-of-home placement), noting that it was the recommendation of both the multi-disciplinary team and the probation officer. T.M.’s counsel pointed out T.M. had not previously been placed in an out-of-home placement, so the court would be “skipping a huge step by going from home detention to Secure Track.” Counsel further argued out-of-home placement at a short-term residential program “accomplishes both the concern regarding public safety as well as rehabilitation. . . . [T.M.] is going

to be outside the city which I think addresses public safety concerns of San Francisco.”

Ultimately, the court ruled T.M.’s offenses to be felonies and committed him to a secure facility for a baseline three-year term and a maximum term of 13 years six months. The court agreed the placement “is a big jump, but from prior probations, the reason for that though is I think there was a very big jump in the severity of this crime.” The court acknowledged out-of-home placement “provides a lot of good—if it’s a program like [a short term secure facility], which is what it could be, [it has] a lot of useful services that some minors find helpful, many don’t. . . . But it’s not secured. The reality is [if] minors don’t like it there or at any point decide they don’t like the program, they could walk out, and they do all the time. And I don’t have confidence that [T.M.] would comply with this Court’s order[.]” The court observed T.M. had been under court orders since early 2023 and had repeatedly violated those orders, and his offenses were “getting more and more severe and more and more violent.”

The court acknowledged it had “read and considered the social study,” the disposition report and recommendation, “and all other relevant and material evidence that the Court has entered into evidence.” The court considered “the severity of the offense, [T.M.’s] role in the offense, and particularly, the shooting of—in the shooting of the victim,” the “harm done to the victim[,] . . . his previous delinquent history which was substantial, the adequacy of success of previous attempts to—by the Juvenile Court to rehabilitate him in which there was no success,” whether “programming, treatment, and education is offered and provided in a secure treatment facility is appropriate to meet the treatment and security needs of [T.M.,] . . . [w]hether the goals of rehabilitation and community safety can be met by

assigning [him] to an . . . alternative less restrictive disposition,” T.M.’s age, developmental maturity, and his mental and emotional health needs. The court found a less restrictive placement unsuitable, ordered a baseline commitment of three years and a maximum period of confinement of 13 years six months with 479 days’ credit for time served. The court also ordered an individual rehabilitation plan and set a six-month progress review hearing date, stating if T.M. did well, the court was open to a stepdown to an out-of-home placement.

DISCUSSION

In reviewing the juvenile court’s disposition, we are mindful of the twofold purposes of the juvenile delinquency laws: “(1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public.’” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615.)

Delinquent minors “shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter.” (Welf. & Inst. Code, § 202, subd. (b); *In re Eddie M.* (2003) 31 Cal.4th 480, 507 [court may choose custodial disposition “to hold juveniles accountable for their behavior, and to protect the public”].)

In recent years, the Legislature has overhauled juvenile wardship law by closing the Division of Juvenile Justice and transferring jurisdiction over youthful offenders to counties, with the stated purpose of ensuring minors are

closer to their families and communities and receive age-appropriate treatment. (*In re T.O.* (2022) 84 Cal.App.5th 252, 262–263; *In re Miguel C.* (2021) 69 Cal.App.5th 899, 907; Welf. & Inst. Code, § 736.5; Sen. Bill No. 823 (2019–2020 Reg. Sess.); Stats. 2020, ch. 337, § 1.) The county-level equivalent of DJJ is a secure track commitment, also known as a “secure youth treatment facility.” (Welf. & Inst. Code, § 875; *In re Tony R.* (2023) 98 Cal.App.5th 395, 406.)

Before committing a minor to a secure facility, the court must find no less restrict alternative disposition is suitable. In making this determination, “the court shall consider all relevant and material evidence, including the recommendations of counsel, the probation department, and any other agency or individual designated by the court to advise on the appropriate disposition of the case.” (Welf. & Inst. Code, § 875, subd. (a)(3).) The statute also provides several criteria the court “shall” consider before committing minor to a secure facility, including “Whether the programming, treatment, and education offered and provided in a secure youth treatment facility is appropriate to meet the treatment and security needs of the ward.” (*Id.*, subd. (a)(3)(C).)⁷

⁷ The other criteria include: “The severity of the offense or offenses for which the ward has been most recently adjudicated, including the ward’s role in the offense, the ward’s behavior, and harm done to victims”; “The ward’s previous delinquent history, including the adequacy and success of previous attempts by the juvenile court to rehabilitate the ward”; “Whether the goals of rehabilitation and community safety can be met by assigning the ward to an alternative, less restrictive disposition that is available to the court”; and “The ward’s age, developmental maturity, mental and emotional health, sexual orientation, gender identity and expression, and any disabilities or special needs affecting the safety or suitability of committing the ward to a term of confinement in a secure youth treatment facility.” (Welf. & Inst. Code, § 875, subd. (a)(3)(A), (B), (D) & (E).)

The juvenile court has “great discretion in the disposition of juvenile matters.” (*In re Greg F.* (2012) 55 Cal.4th 393, 411.) We therefore review a commitment decision for abuse of discretion, although factual findings are reviewed for substantial evidence. (*In re Carlos J.* (2018) 22 Cal.App.5th 1, 5 (*Carlos J.*)) The court’s discretion, however, is not boundless, and a court abuses its discretion if the findings critical to its decision lack factual support in the record. (*Ibid.*; *Tire Distributors, Inc. v. Cobrae* (2005) 132 Cal.App.4th 538, 544 [On review, “[w]e defer to the trial court’s factual findings so long as they are supported by substantial evidence, and determine whether, under those facts, the court abused its discretion. If there is no evidence to support the court’s findings, then an abuse of discretion has occurred.”].)

Relying on *Carlos J.*, *supra*, 22 Cal.App.5th 1, T.M. contends the court’s finding—that the programming, treatment, and education offered by the secure facility placement is appropriate to support his needs—is not supported by substantial evidence.

In *Carlos J.*, the probation department recommended the minor, who admitted to assault with a firearm and a gang enhancement, be committed to the Division of Juvenile Facilities (DJF). (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 4.) The department concluded the minor was a threat to public safety and stated he could receive gang intervention services at DJF. (*Id.* at pp. 8–9.) No witnesses testified at the disposition hearing, and the disposition report did not provide any information about specific services offered by DJF; it simply recommended that the minor be placed “ ‘in a state facility where his educational, therapeutic, and emotional issues can be addressed in a secure facility.’ ” (*Id.* at pp. 9–10, 14.) The juvenile court agreed with the probation department and committed the minor to DJF. (*Id.* at p. 9.)

The Court of Appeal reversed, concluding there was no evidence in the record of programs at the DJF expected to benefit the minor. (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 10.) “The probation officer’s unexplained and unsupported assertion of possible benefit is not evidence of ‘reasonable, credible and solid value’ from which the juvenile court could make an informed assessment of the likelihood a DJF placement would be of benefit to appellant, in light of his specific needs.” (*Ibid.*) “Considering the significance of a decision to send a minor to the DJF and the statutory mandates of [Welfare and Institutions Code] sections 202 and 734,”⁸ said the court, “it is reasonable and appropriate to expect the probation department, in its report or testimony, to identify those programs at the DJF likely to be of benefit to the minor under consideration. Where a minor has particular needs, the probation department should also include *brief* descriptions of the relevant programs to address those needs.” (*Carlos J.*, at p. 12.)

As in *Carlos J.*, the record here does not include even “brief descriptions of the relevant programs” at the county’s secure track facility that address T.M.’s needs. (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 12, italics omitted.) True, the juvenile court recited the Welfare and Institutions Code section 875 criteria it considered in deciding to commit T.M. to the county’s secure facility, including “[w]hether programming, treatment, and education is offered and provided in a secure treatment facility is appropriate to meet the treatment and security needs of [T.M.], I find that they are.” But a

⁸ Welfare and Institutions Code section 734 states: “No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.”

conclusory finding without evidentiary support in the record is insufficient. (See *Carlos J.*, at p. 10 [probation department’s “unexplained and unsupported assertion of possible benefit” was not evidence that could support a commitment to a secure facility].)

The Attorney General maintains “[a]ny lack of additional information” on exactly what was the “‘appropriate’ programming” is “immaterial” because the juvenile court appropriately based its decision on the “‘actual evidence in the record’ coupled with its own familiarity with available programming.”

However, while *Carlos J.* recognized parties who “frequently participate in placement determinations” have knowledge of the programs available for disposition placements and they may “speak in ‘shorthand’ about placements and other matters . . . judicial review by [an appellate] court[] requires some concrete evidence in the record about relevant programs at the DJF. Otherwise, th[e] court’s review for substantial evidence is an empty exercise, not meaningful appellate review of a legal proceeding resulting in [the] commitment of a minor.” (*Carlos, J., supra*, 22 Cal.App.5th at pp. 11–12, italics omitted.)

The record before us presents the same problem—given the limited record, we cannot engage in meaningful review of the juvenile court’s commitment decision as to the specific benefits a secure facility could afford T.M. or the unsuitability of a less restrictive alternative placement. (See *Carlos J., supra*, 22 Cal.App.5th at p. 10 [the appellate “court cannot review the adequacy of the evidence supporting the [trial court’s] finding . . . without evidence in the record of the programs . . . expected to be of benefit”]; *id.* at p. 12 [“judicial review *by this court*, requires some concrete evidence in the record about relevant programs,” otherwise “this court’s review for

substantial evidence is an empty exercise”].) We must therefore reverse and remand the matter for further proceedings. In doing so, we are in no way discounting the significance of the juvenile court’s concerns about T.M.’s record of failing to abide by the terms and conditions of his multiple probations and the increasing frequency and seriousness of the crimes he has committed. These must certainly weigh in the court’s disposition determination on remand.⁹

DISPOSITION

The juvenile court’s order committing T.M to a secure youth treatment facility is reversed, and the matter is remanded for a new disposition hearing consistent with this opinion.

⁹ Given our conclusion that reversal and remand are required, we need not, and do not, separately address T.M.’s argument that no substantial evidence supports the juvenile court’s finding that no less restrictive alternative disposition is suitable.

Banke, Acting P.J.

We concur:

Langhorne Wilson, J.

Smiley, J.

A171624, In re TM