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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN D.,

Defendant and Appellant.

A130776

**(Mendocino County Super. Ct.
No. SCUkJDSQ 10-1596001-002)**

Juan D. (appellant), born in May 1994, appeals a juvenile court dispositional order committing him to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ). He contends he was improperly committed to DJJ because his most recent offense was not a qualifying offense under Welfare and Institutions Code section 707, subdivision (b).¹ We conclude the dispositional order must be reversed.

BACKGROUND

In May 2010, appellant admitted two counts of a four count juvenile delinquency petition (§ 602), filed in April 2010 and amended in May 2010. The remaining counts were dismissed. Appellant admitted committing felony mayhem (Pen. Code, § 203) and felony assault with a deadly weapon (*id.*, § 245, subd. (a)(1)) with infliction of great bodily injury (*id.*, § 12022.7, subd. (a)). According to the probation report's summary of

¹ All undesignated section references are to the Welfare and Institutions Code.

the relevant police report, the charges were based on an incident in which appellant allegedly beat the victim with a baseball bat and carved the victim's back with a piece of metal.

In July 2010, after the probation department recommended appellant be committed to DJJ, the juvenile court granted the defense request to have appellant evaluated by a psychologist. In August 2010, the psychologist recommended that appellant be placed at the Northern California Regional Center (CRC) in Humboldt, instead of DJJ. On August 31, the juvenile court indicated its intent to place appellant at CRC if the facility found appellant suitable for that program.

On September 22, 2010, a second petition was filed, alleging that appellant assaulted a fellow juvenile hall detainee by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1)). On October 14, the petition was amended to reduce the allegation to misdemeanor battery (*id.*, § 242), and appellant admitted that allegation.

In November 2010, appellant was evaluated by another psychologist, who recommended for appellant either a 90-day DJJ diagnostic evaluation or a straight commitment to DJJ. On November 30, at a combined dispositional hearing on the two petitions, the juvenile court declared appellant a ward of the court, committed him to DJJ, and found the maximum term of confinement was 12 years.

In December 2010, the probation officer recommended dismissal of the second petition. On December 15, the juvenile court dismissed the second petition, even though appellant had already admitted the amended allegation and a disposition had been imposed. The court also affirmed the DJJ commitment on the first petition. This appeal followed.

DISCUSSION²

A juvenile court's authority to commit a minor to DJJ is a matter of statutory law. Pursuant to section 733,³ subdivision (c) (hereafter section 733(c)), "[a] ward of the juvenile court who meets any condition described below shall not be committed to the [DJJ]: [¶] . . . [¶] (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, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code."

The offense alleged in the second petition and admitted by appellant, misdemeanor battery (Pen. Code, § 242), is not an offense "described in subdivision (b) of Section 707" or a sex offense set forth in Penal Code section 290.008. Thus, pursuant to section 733(c), it could not provide a legal basis for committing appellant to DJJ.

Pursuant to section 782 and *In re J.L.* (2008) 168 Cal.App.4th 43, the juvenile court dismissed the second petition, so that under section 733(c) "the most recent offense[s] alleged in any petition and admitted or found to be true by the court" would be the felony mayhem and assault offenses, which are offenses "described in subdivision (b) of Section 707" that could support appellant's DJJ commitment. In dismissing the second petition, the court stated it was doing so "in the interest of justice."

Section 782 provides in relevant part: "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."

² This analysis is adapted from this court's opinion in *In re Greg F.* (2011) 192 Cal.App.4th 1252; the California Supreme Court granted review June 8, 2011 (No. S191868).

³ Section 733 was enacted in 2007. (Stats. 2007, ch. 175, § 22, eff. Aug. 24, 2007, operative Sept. 1, 2007; amended by Stats. 2008, ch. 699, § 28.)

Deciding appellant's claim of error depends, in part, on resolving the apparent conflict between sections 733(c) and 782; two appellate decisions have reached inconsistent results on this issue. In *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455 (*V.C.*), the minor was charged in a section 602 petition filed in 2005 with a DJJ-eligible sex offense and was granted probation. While on probation, he was charged in a section 602 petition filed in 2007 with three new offenses, only one of which was DJJ-eligible. Pursuant to a plea bargain, the minor admitted the non-DJJ-eligible offense and the two DJJ-eligible offenses were dismissed, and he was continued on probation. (*V.C.*, at p. 1460.) Thereafter, the prosecution filed a section 777 notice of probation violation based on the minor's commission of two non-DJJ-eligible offenses. To avoid the bar of section 733(c), the prosecutor moved under section 782 to dismiss the 2007 petition so that it could seek a DJJ commitment on the DJJ-eligible offense charged in the 2005 petition. The juvenile court granted the motion and dismissed the 2007 petition pursuant to section 782. (*V.C.*, at p. 1461.)

On a petition for writ of mandate the appellate court reversed, concluding the juvenile court abused its discretion under section 782 in dismissing the 2007 petition. (*V.C.*, *supra*, 173 Cal.App.4th at pp. 1463-1469.) In considering whether the dismissal was “ ‘in the interests of justice,’ ” the court found Penal Code section 1385, the dismissal statute applicable to adult criminal proceedings, analogous to section 782. (*V.C.*, at p. 1464.) *V.C.* noted that decisions interpreting Penal Code section 1385 have found that section “ ‘runs only in the immediate favor of a defendant, i.e., by cutting off an action or a part of an action against the defendant.’ [Citations.]” (*V.C.*, at p. 1465, fn. 9.) Extending that reasoning to section 782, *V.C.* found it “troubling” that the court used its dismissal power under section 782 to increase the range of potential sanctions to which the minor defendant was subject if found in violation of his probation. (*V.C.*, at p. 1465, fn. 9.) *V.C.* concluded that the dismissal of the 2007 petition was not “in the interests of justice” under section 782 because it was a violation of due process to deprive the minor of the benefit of the fully-executed plea bargain by dismissing the 2007 petition

at the prosecution's request in order to render the minor eligible for a DJJ commitment based on the 2005 petition. (*V.C.*, at pp. 1465-1467.)

V.C. also concluded that the juvenile court's dismissal was contrary to the Legislature's intent in enacting section 733(c): "The language of section 733(c) allows commitment to [DJJ] only when 'the most recent offense alleged in any petition and admitted or found to be true by the court' . . . 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 [DJJ] commitment. Dismissal of the most recent petition in order to reach back to an earlier petition containing a [DJJ] qualifying offense would be contrary to the unmistakable plain language of section 733(c). It would frustrate the legislative policy expressed by the language of section 733(c). Such a dismissal cannot be in the interests of justice. [Citation.]" (*V.C.*, *supra*, 173 Cal.App.4th at p. 1468.)

In *In re J.L.*, *supra*, 168 Cal.App.4th 43, the minor admitted a March 2006 section 602 petition alleging a DJJ-eligible offense (felony assault) and was continued at an adolescent center placement. In August 2006, a section 777 notice of probation violation was filed alleging the minor failed to return to his placement. (*In re J.L.*, at pp. 49-50.) In December 2006, a section 602 petition was filed charging the minor with another DJJ-eligible offense (attempted second degree robbery while armed with a knife) and a misdemeanor. The minor admitted the attempted robbery with a knife allegation and the misdemeanor was dismissed. The minor also admitted the probation violation alleged in the August 2006 section 777 notice. At the disposition hearing, the court heard evidence regarding the prosecutor's and probation department's recommendation that the minor be committed to DJJ, and continued the disposition hearing before making a dispositional ruling. (*In re J.L.*, at p. 50.) Thereafter, the minor sought to withdraw his admission to the weapon enhancement in the December 2006 petition, stating that the law had changed under section 733 after he admitted the enhancement, and asserting that if the

enhancement were not found true, the attempted robbery would be a non-DJJ eligible offense under section 733(c). The court granted the minor's motion to withdraw his admission to the weapon enhancement and set a contested hearing thereon. (*In re J.L.*, at pp. 50-51.) Thereafter, the prosecutor sought dismissal of the December 2006 petition under section 782 and a commitment of the minor to DJJ. (*In re J.L.*, at pp. 52-53.) Pursuant to section 782, the court granted the prosecution's motion to dismiss the December 2006 petition, set aside the minor's admission thereto and all subsequent proceedings on that petition, found the minor had committed the charged probation violation and committed him to DJJ based on the original assault charge in the March 2006 petition. (*In re J.L.*, at pp. 53-54, 57.)

The minor appealed, arguing his most recent offense was a probation violation, not a section 707, subdivision (b) offense, and therefore he was ineligible for a DJJ commitment. (*In re J.L.*, *supra*, 168 Cal.App.4th at pp. 47, 57.) In affirming the dismissal of the December 2006 section 602 petition and the DJJ commitment, the appellate court stated: “[S]ection 733 does not specifically authorize the dismissal of a petition containing the most recent offense admitted or found to be true. However, section 782 does authorize the juvenile court to set aside findings and to dismiss a petition ‘if the court finds that the interests of justice and the welfare of the minor require such dismissal’” (*In re J.L.*, at p. 57.)⁴

We resolve the apparent conflict between sections 733(c) and 782 by relying on two principles of statutory construction. First, a later enacted statute, like section 733(c), ordinarily controls over an earlier enacted one. (*In re Michael G.* (1988) 44 Cal.3d 283, 293.) We are entitled to presume that, in 2007, when the Legislature enacted section

⁴ The appellate court also held that a section 777 notice of probation violation “does not constitute an offense alleged in a ‘petition’ ” pursuant to section 733(c). (*In re J.L.*, *supra*, 168 Cal.App.4th at p. 61; accord, *In re M.B.* (2009) 174 Cal.App.4th 1472, 1477-1478.) Thus, the court concluded that “ ‘the [minor’s] most recent offense alleged in any petition and admitted or found to be true by the court’ ” was not the probation violation, but the DJJ-eligible assault alleged in the original petition that the minor admitted. (*In re J.L.*, *supra*, 168 Cal.App.4th at p. 63.)

733(c), it was aware of the earlier enacted section 782, and could have clarified that section 782 remains available to the juvenile court to dismiss a petition containing the most recent offense, which is non-DJJ eligible, to reach back to an earlier petition containing a DJJ-eligible offense for purposes of committing the minor to DJJ. (*In re Michael G.*, at p. 293.) In the absence of any indication of such legislative intent, we will not assume such intent exists, particularly in light of section 733(c)'s clear substantive and temporal restrictions on committing minors to DJJ. The second principle of statutory construction we rely on is that more specific statutory provisions normally control as against more general provisions when both concern the same subject. (*In re Michael G.*, at p. 293.) Under this principle, section 733(c) would control over section 782, given that both statutes generally concern the disposition of juvenile matters, but section 733(c) is more narrowly concerned with commitments to DJJ.

While juvenile courts have broad discretion under section 782 to dismiss petitions when required by the interests of justice and the minor's welfare (*Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 232), absent a showing of legislative intent this discretion is not broad enough to trump the clear limits that section 733(c) places on the court's dispositional authority (see *People v. Hatch* (2000) 22 Cal.4th 260, 269 [§ 1385 does not permit dismissals in the interest of justice where the Legislature had clearly evidenced a contrary intent]). We agree with *V.C.* that utilizing section 782 to dismiss the most recent petition adjudicating a nonserious offense to reach back to an earlier petition adjudicating a serious offense undermines section 733(c)'s prohibition against committing a minor to DJJ for any offense other than “ ‘the most recent offense alleged . . . and admitted or found true by the court,’ ” as well as the budgetary purpose underlying section 733(c). (See *V.C.*, *supra*, 173 Cal.App.4th at pp. 1468-1469.)

We thus conclude the juvenile court lacked authority under section 782 to dismiss the second petition for the purpose of reaching back to the first petition in order to support appellant's DJJ commitment.⁵

The People assert that this case is distinguishable from *V.C.* because in that case there had been a disposition on the first petition (i.e., probation, see *V.C.*, *supra*, 173 Cal.App.4th at p. 1459), while in this case appellant was in juvenile hall awaiting disposition on the first petition when he committed the offense alleged in the second petition. However, the People do not explain how that affects our analysis of the plain language of section 733(c), which focuses on the most recent offense, not whether there is an earlier offense for which there has been no disposition. Any argument that the result in this case is not good policy is more properly directed to the Legislature. (See *V.C.*, at p. 1472, Scotland, P.J., concurring [“To the extent there may be a flaw in the legislative scheme, it is up to the Legislature, not the courts, to correct it.”].)

Given our conclusion that the court abused its discretion in dismissing the second petition, we reverse the dispositional order and remand the matter for reconsideration.

⁵ The prosecutor actively participated in the hearing on October 14, 2010 that resulted in the amendment of and admission to the September 2010 petition. The record reflects the prosecutor reduced the allegation in that petition to a misdemeanor with the understanding that appellant would enter a plea to that offense that day. The prosecutor was also aware that the earlier April 2010 petition was pending disposition. Thus, we are not faced with a “race-to-the-courthouse” situation, where a minor admits a newly-filed petition in the prosecutor’s absence in order to trigger the bar of section 733(c). We express no opinion as to whether an admission in such circumstances would bar a DJJ commitment on an earlier filed petition. (See *People v. Michaels* (2002) 28 Cal.4th 486, 512-514; *Cronk v. Municipal Court* (1982) 138 Cal.App.3d 351; see also, *People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1229-1236.)

DISPOSITION

The dispositional order is reversed and the matter remanded to the juvenile court for reconsideration of the disposition in light of this decision.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.