In the Supreme Court of the State of California

In re GREG F., a Person Coming Under the Juvenile Court,

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

GREG F.,

Defendant and Appellant.

S191868

First Appellate District No. A127161
Sonoma County Superior Court No. 35283-J
Honorable Raima H. Ballinger, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

Appellant argues Welfare and Institutions Code section 733, subdivision (c) (§ 733(c))[1] negates the juvenile court's power under section 782 to dismiss an admitted allegation ineligible for a Division of Juvenile Justice (DJJ) commitment to impose such a disposition on an earlier sustained DJJ-eligible offense.[2] Trumpeting section 733(c) as a restriction on the number of DJJ commitments—which begs the question of the restriction's application and scope—appellant asserts, like the Court of Appeal, that the juvenile court abused its discretion by setting aside his admission to a DJJ-ineligible offense. (Appellant's Answer Brief on the Merits (AABM) 2, 12-15; see *id.* at p. 32; Typed Opn. 9 (Opn.).)

Relying on *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455 (*V.C.*), appellant claims, first, that section 733(c) replaces DJJ-suitability determinations based on the minor's tendency toward serious or violent conduct from an individualized evaluation of the minor's delinquency history with a rote determination of the minor's most recent "admitted" offense. That new legislative focus, he asserts, redefines the "interests of justice" standard of section 782. (AABM 15-20.) Second, appellant, like the Court of Appeal, asserts that section 733(c) is a specific law addressing

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[1] Further unspecified statutory references, except for reference to Penal Code section 1385, are to the Welfare and Institutions Code. Rule references are to the California Rules of Court.

[2] In the opening brief, respondent characterized the 2007 revision as an amendment to section 733(c). (See Respondent's Opening Brief on the Merits, pp. 6, 11, 28 (ROMB).) More accurately, the Legislature repealed former section 733 (Stats. 2007, ch. 175, § 21), and replaced it with current section 733 (Stats. 2007, ch. 175, § 22). Former section 733 had set forth the prohibitions on a DJJ commitment in one paragraph. The new version listed those prohibitions in subdivisions (a) and (b), and added as subdivision (c) the new prohibition on DJJ commitments for nonspecified offenses.

DJJ commitments that impliedly trumps, under rules of statutory construction, the older, more general dismissal power of a juvenile court in section 782. In this connection, he asserts the use of the section 782 dismissal power to continue jurisdiction over a minor to impose "a more severe punishment," rather than to terminate jurisdiction, is a "convoluted" practice unreported in decisions before 2007 that makes section 733(c)'s phrase "the most recent offense alleged in any petition" surplus language. (AABM 21-24; see also Opn. 8-9.) Third, invoking Presiding Justice Scotland's concurrence in *V.C.*, *supra*, 173 Cal.App.4th at pp. 1470-1473, appellant argues that a juvenile court can employ section 782 only to terminate jurisdiction, not to set aside a pending subsequent petition. (AABM 25-30.) Appellant also claims the juvenile court erred by setting aside the last petition in his case because his "welfare" did not require a DJJ commitment. (AABM 43-47.) For the reasons below, we disagree with these claims.

ARGUMENT

THE COURT OF APPEAL ERRED IN INTERPRETING SECTION 782 TO PROHIBIT DISMISSAL OF THE MOST RECENT PETITION

A. Section 733(c) Does Not Preclude Dismissal of the Most Recent Sustained Offense Prior to Disposition

Appellant reads *V.C.* as holding that section 733(c) makes a dismissal of the last sustained allegation against a minor pursuant to section 782 not in the "interests of justice." (AABM 3, 15.) *V.C.* does not deem section 733(c) a legislative finding that the interests of justice are disserved whenever the dismissal of the most recently-admitted delinquency allegation allows the juvenile court a DJJ disposition option than would not otherwise have been available.

First, under any reasonable reading of the statute, the Legislature fully appreciated that the interests of justice may be served by such a dismissal in

any number of cases, not the least being cases where a strategic plea in avoidance is entered in hopes of evading the consequences of a more serious, albeit less recently sustained, allegation. In some cases, the welfare of the minor essentially dictates the consideration of a wide range of dispositions, including DJJ, particularly where the juvenile court confronts multiple sustained allegations or petitions with one or more serious or violent felonies. Which allegation or petition was the last sustained, perhaps more often than not, may be irrelevant to the welfare of the minor or to the interests of justice.

We do not disagree with appellant that the revision of section 733 was meant to limit the number of wards committed to DJJ (cf. AABM 32-33), especially those who had been committed to DJJ for nonserious, nonviolent offenses (see § 731.1). But, contrary to appellant's implication, the statute gives no hint that the Legislature sub silentio wanted to frustrate its own basic goals in enacting the Juvenile Court law or to undermine the very responsibilities that the law imposes on the juvenile court. (See ROMB 8-10; *John L. v. Superior Court* (2004) 33 Cal.4th 158, 184; *In re Jose T.* (2011) 191 Cal.App.4th 1142, 1152.)

Nor is there any basis to infer that the Legislature, by reason of section 733(c), impliedly amended the statutory goals of the Juvenile Court law or otherwise contemplated that section 733(c) would promote mischievous results. To the contrary, the Legislative Counsel's digest for Senate Bill 81 (SB 81) as amended, states a considerably more narrow purpose of the bill to "restrict the authority" of the juvenile court and to "prohibit the commitment of" wards who have committed a nonenumerated offense. (Respondent's Motion to Take Judicial Notice (RMJN), Exh. B, Leg. Counsel's Dig., Assem. Bill 81 (2007-2008 Sess.) Stats. 2007, ch. 175), p. 3.)

This change in the law represented part of a plan, along with specified funding to be provided to the counties (§ 1950 et seq. [added by Stats. 2007, ch. 175, § 30]), to transfer rehabilitative responsibility for juvenile delinquency cases to the counties for all but a core element of wards, i.e., those who are currently violent or serious offenders. The evident reasons for the transfer were (1) alleviation of the extremely high cost of programming for DJJ wards—especially in light of the remedial mandates required by the consent decree entered in *Farrell v. Cate* (*Farrell*) (Alameda Superior Ct. No. RG03078344); and (2) recognition that juvenile rehabilitation should, if possible, be done at the local level. (Cf. AABM 32-33.) The Legislature concluded that local treatment usually prevents recidivism effectively and at less cost. (§§ 1950, 1960; see generally *In re D.J.* (2010) 185 Cal.App.4th 278.)

Despite the increased cost of DJJ programming, the Legislature did not eliminate a DJJ option when needed to address the needs of particular wards and to secure public safety. It recognized the core population of juvenile offenders whose current dangerousness and lack of amenability to available local programming requires placement in DJJ's secure, long-term treatment facilities. (See § 1960; Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (LexisNexis 2011 ed.) Delinquency, § 3.96[6][a], p. 3-173 (Seiser).)

As regards section 733(c), then, the continuation of DJJ as the treatment facility of last resort is in the interests of justice and protects the public safety. A minor's welfare may be best protected by a DJJ commitment so that he or she becomes "a law-abiding and productive member of their family and the community." (§ 202, subd. (b).) For example, as discussed further in the final section of this brief, appellant's own DJJ commitment was highly appropriate and, more to the point, far from the kind of commitment the Legislature sought to prohibit in section

733(c). After a full assessment of appellant's welfare and the community's need for safety, the juvenile court found local placements were unavailable to address appellant's current dangerousness and his rehabilitative needs. Section 733(c) does not render that individualized decision unlawful.

Second, *V.C.* did not hold, as appellant asserts, that dismissal of a sustained allegation disserves the interests of justice unless a ward's current dangerousness is assessed *only* by reference to the most recent "admitted" or "sustained" offense. (Cf. AABM 17-19, 38-39.) Indeed, the discussion of the point and of section 782 dismissal generally in *V.C.* was obiter dictum. The majority granted a writ of mandate on other grounds. (See ROMB 16-18.)

The actual holding of *V.C.* was that the juvenile court abused its discretion by overturning an *already-executed, negotiated, non-DJJ-eligible disposition* to reach back to an earlier section 707, subdivision (b) allegation in order to impose a DJJ commitment. (*V.C.*, *supra*, 173 Cal.App.4th at pp. 1459, 1465-1467.) In other words, *V.C.* validated due process by ensuring that an executed disposition after a plea bargain is not unwound by the dismissal of an allegation. (See *ibid.*)

V.C. did not address the instant situation where the most recent petition is *dismissed prior to disposition*. Nor does *V.C.* stand for a proposition that section 733(c) changed the usual rules in juvenile (or criminal) court that the judge, on a more comprehensive view of the matter, can reject a plea bargain and dismiss or set aside an allegation, between the entry of the admission and the disposition. Thus, *V.C.* is not dispositive of this case. (*People v. Evans* (2008) 44 Cal.4th 590, 599 ["'[a]n appellate opinion is not authority for everything said in the court's opinion but only "for the points actually involved and actually decided"'"]; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790, fn. 11.)

Moreover, *V.C.*'s reasoning does not support a conclusion that the Legislature thought a ward's speedy admission to the latest allegation of a DJJ-ineligible offense—before the juvenile court has been fully informed of the circumstances of the instant conduct and other factors which determine current dangerousness—is conclusive of available disposition options in each pending case. Such a rule may well be administratively unworkable. At the very least, it would compel exacting review of the record and the interests of justice before the juvenile court accepted an admission to allegations of DJJ-ineligible offenses. This would be necessary in order for the court not to be inadvertently locked into an inappropriate disposition if the minor had admitted a more serious offense. The result is neither consistent with the purposes of the Juvenile Court law nor "in the interests of justice."

Finally, appellant seeks to bring his case within the holding of *V.C.*, that due process is violated by a negotiated admission's abrogation after its execution. Specifically, he claims his admission to one DJJ-ineligible offense in exchange for dismissal of the other DJJ-ineligible offense based on the same conduct gave rise to an "expectation that he would not be sent to DJJ and [that he] had a due process right to the fulfillment of his deal." (AABM 21; see also AABM 38-40.) Appellant's hope for a windfall from his early admission in one case does not equate to a constitutional right to receive a non-DJJ commitment. At the hearing on the motion to dismiss, appellant alleged no prejudice except DJJ becoming an option were his admission set aside. (RT [Aug. 19 & Oct. 23, 2009] 13.) He established no detrimental reliance on his admission. (*In re Kenneth H.* (2000) 80 Cal.App.4th 143, 148-150.)[3]

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[3] Appellant mistakenly suggests respondent argues that the juvenile court could "dismiss all more recent" DJJ-ineligible petitions to reach back (continued...)

B. The Legislative History of Section 733(c) Does Not Support the Court of Appeal's Conclusion

Because the plain language of section 733(c) is clear, resort to legislative history is unnecessary. Unless it would lead to "mischievous results" or otherwise clearly be contrary to the Legislature's intent, "'[i]f there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." [Citation.].' [Citation.]" (AABM 23; see AABM 41; see also *In re A.G.* (2011) 193 Cal.App.4th 791, 803.) Nonetheless, it is significant that the legislative history supports respondent's argument. Respondent has sought judicial notice of legislative history underlying section 733(c) to provide this Court with analyses that may have informed the Legislature when it revised section 733. (Cf. AABM 40-41.) Contrary to the argument that the Legislature intended current dangerousness to be measured by the most recent offense at the time of admission, it is logical to conclude that the Legislature understood its reference to the "most recent offense" to mean an *adjudicated* petition.

In accord with due process, the establishment of a delinquent act is the necessary predicate to the juvenile court's exercise of its dispositional authority. (See ROMB 8, 11, 13-14.) Only after jurisdiction to intervene in the affairs of the minor and his or her family has been established, does the juvenile court proceed to disposition in accord with the goals sought to be achieved by the Juvenile Court law. (See § 202, subds. (a), (b); *In re A.G.*, *supra*, 193 Cal.App.4th at pp. 802-803; cf. *In re Myresheia W.* (1998) 61

(...continued)
to some DJJ-eligible offense in the past. (See AABM 23, 37.) This ignores the actual holding of *V.C.* that after disposition of a DJJ-ineligible petition, a juvenile court may not ignore that disposition and reach back to impose a DJJ commitment.

Cal.App.4th 734, 737-738, quoting *McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 539-540 (plur. opn. of Blackman, J.).)

As explained in our opening brief (ROMB 27-28 & fn. 9), given the common understanding of the word "adjudicated" in juvenile law and as that term is used in the legislative history underlying section 733(c), the Legislature intended that DJJ eligibility would be determined not on the basis of an admission alone, but on an informed dispositional determination of the minor's current level of dangerousness and the need for a secure treatment option.

The analysis by the Assembly Rules Committee's Office of Floor Analyses for the "Senate Third Reading," explained that proposed section 733(c) would "[p]rohibit[] the intake of youthful offenders *adjudicated* for non-violent, non-serious offenses . . . ." (RMJN, Exh. B, Assem. Rules Com., Off. of Floor Analyses, 3rd reading analysis of Sen. Bill 81 (2007-2008 Sess.), p. 1, italics added.) The analysis by the Office of Senate Floor Analyses also explained that a DJJ commitment would be prohibited for "youthful offenders *adjudicated* for non-violent, non-serious offenses non-707(b) offenses) . . . ." (*Id.*, Off. of Sen. Floor Analyses, analysis of Sen. Bill 81 (2007-2008 Sess.), June 20, 2007, p. 2, italics added.) The analysis of the Senate Republican Fiscal Office used slightly different language, indicating the change would "stop[DJJ] intake of non-serious, non-violent, non-sex offender juvenile wards from counties." (*Id.*, Sen. Republican Fiscal Off., analysis of Sen. Bill 81 (2007-2008 Sess.), p. 1.) This last analysis further explained the belief that "non-serious, non-violent, non-sex offender wards [are] likely better served in their community . . . ." (*Id.* at p. 2 (Arguments in Support).) The Department of Corrections and Rehabilitation enrolled bill report to the Governor advised that SB 81 would accomplish his plan "to move specified non-violent juvenile

offenders to the county level . . . ." (*Id.*, Cal. Dept. of Corrections and Rehabilitation Enrolled Bill Rep., p. 1.)

Hence, even were resort to legislative history necessary to understand section 733(c)'s language, the history reflects that the Legislature understood the terms "admitted" or "sustained" meant that a ward may not be committed to DJJ once a disposition following and based upon an admission or contest to a DJJ-ineligible offense was adjudicated. (Cf. *In re Melvin S.* (1971) 59 Cal.App.3d 898, 900-901.)

This interpretation of section 733(c) promotes the goals of the Juvenile Court law and the responsibilities imposed upon the juvenile court. The circumstances involved in selection of the individualized treatment regime for the particular minor may require a DJJ commitment. There is no suggestion in the legislative history that the Legislature intended to foreclose the juvenile court from using section 782 prior to disposition to set aside an admission where the interests of justice—including protection of the community and the welfare of the minor—mandate the consideration of a DJJ commitment. "'Absent an express declaration of legislative intent, we will find an implied repeal "only when there is not rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation."' [Citation.]" (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477.)

C. The Procedural History of this Case Illustrates the Anomalies that Result from the Court of Appeal's Holding

The procedural circumstances of this case are not routine. (See ROMB 30-31.) Appellant states probation and the prosecutor had "ample time to decide how to proceed and *chose* to file a" DJJ-ineligible petition. (AAMB 33, italics added.) The minor committed the DJJ-ineligible, gang

assault at supper on the evening of Sunday, August 16, 2009. (1CT 106; cf. 2CT 190 [offense committed Aug. 18].) The petition was dated and filed Tuesday, August 18, 2009. (1CT 104-105.) Appellant admitted to the DJJ-ineligible offense at his detention hearing the following morning. (1CT 111-112.) The charging prosecutor was aware that appellant was a ward based upon a previously sustained felony offense. (1CT 106-107.) However, the record does not indicate whether the charging prosecutor or probation were aware of the dicta in *V.C.* (that opinion being filed May 19, 2009), that suggested that by filing that petition, appellant might become DJJ-ineligible. As the detention calendar deputy subsequently acknowledged, later on the day of appellant's admission that deputy recognized the possible impact of *V.C.*'s dicta and sought to have that admission set aside. (1Aug.RT 72; 1CT 119 [request to put matter on calendar with probation's concurrence and with appellant's opposition].) The bench officer who took the admission at the detention hearing had not been involved in the prior dispositional efforts to effect appellant's rehabilitation.[4] (See RT [Aug. 19 & Oct. 23, 2009] 6 (DRT); 1 Aug.RT 73, 77 ["It looks like in my absence—I just wasn't here while these proceedings took place"].)

Probation previously had recommended a DJJ commitment. Following a full evaluation of appellant's history and then circumstances, the court had decided to instead order placement. That placement failed and appellant was in custody while probation attempted to find another placement. There is no indication that after appellant committed the August 16, gang assault, probation now desired a non-DJJ placement.

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[4] The probation officer is required to prepare a report for the detention hearing. (See ROMB 12-13.) The August 19, 2009, minute order reflects that the court "read and considered [the] detention sheet." (1CT 111.) That document is not part of the record. (See 1CT 104-130.)

The detention hearing judge in the current proceedings also may have failed to realize that the early admission to the DJJ-ineligible offense could foreclose the later use of DJJ as a dispositional option. (See 1Aug.RT 72-73 [familiarity of judge at Aug. 26, 2009, hearing with *In re J.L.* (2008) 168 Cal.App.4th 43 (*J.L.*)]; see also Cal. Judges Benchguides, Juvenile Delinquency Dispositional Hearing, Benchguide No. 119, p. 119-48 (CJER 2011 rev.) [citing to *J.L.*]; *In re D.J.*, *supra*, 185 Cal.App.4th at p. 287.)

In cases like these, where probation and the prosecutor have the relevant information indicating the ward's last, most recent sustained offense is a section 707(b) offense, they will file a section 777 notice, not a new delinquency petition. The juvenile court may retain DJJ as a dispositional option where the subsequent misconduct is alleged in a section 777 notice. This may occur no matter how remote in time the DJJ-eligible offense was committed.[5] Under appellant's proposed statutory interpretation, however, current dangerousness may *only* be measured by the elements of the last admitted offense, which may be temporally-remote conduct. (See AAMB 35 [respondent "making a policy argument"].)

In interpreting a statute, the Legislature is not presumed to have intended mischievous results. "We presume that . . . legislative provisions were not intended to produce unreasonable results and adopt a common sense construction over one leading to mischief or absurdity." *In re Samano* (1995) 31 Cal.App.4th 984, 989.) To conclude that in passing section 733(c) the Legislature intended to preclude the use of DJJ as a dispositional option as soon as the minor enters an admission is inconsistent

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[5] The offense which appellant concludes is solely determinative of current dangerousness could have been committed several years previous. (See §§ 606, 707, subd. (b); *In re Veronique P.* (2004) 119 Cal.App.4th 195, 200-201; *In re Julian O.* (1994) 27 Cal.App.4th 847, 850-851.)

with the permissible application of section 777, and causes mischievous results.

Moreover, in other instances probation or the prosecutor may not be aware that the last sustained petition included a DJJ eligible offense. (ROMB 30-31; cf. AABM 34.) Where probation and the prosecutor are aware of the DJJ eligible offense, the norm would be filing a section 777 notice. Once the prosecutor expeditiously files a delinquency petition for a detained minor, the authority to dismiss rests solely with the juvenile court. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 515-516 (*Romero*).) The court taking the admission may not know of the ward's circumstances.

D. A Strict Analogy of Section 782 to Section 1385 Is Incorrect

Contrary to appellant's and the Court of Appeal's reasoning, a strict analogy of section 782 to section 1385 is inappropriate. (See ROMB 22-26.) Not only does the philosophy underlying the Juvenile Court law and the treatment options available to the juvenile court substantially differ from the adult criminal justice system (*In re Myresheia W., supra*, 61 Cal.App.4th at pp. 740-741; see also *In re A.G., supra*, 193 Cal.App.4th at pp. 800, 802-803), but section 782 differs in language from section 1385. Thus, it would be inaccurate to equate the two statutes' meaning and application. (See *In re Juan C.* (1993) 20 Cal.App.4th 748, 752, fn. 3.)

For example, section 1385 requires an adult court to determine whether dismissal is in the "interests of justice." By contrast, section 782 requires the juvenile court to consider *both* the interests of justice and the welfare of the minor. (Compare § 202 with Pen. Code, § 1170, subd. (a)(1); rule 4.410; see *Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 236 [while analogizing to § 1385, assessing both the interests of justice and the welfare of the minor in addressing the minor's § 782

claim].) In some instances, the welfare of the minor may compel a commitment to DJJ. If, as appellant suggests, section 782 were interpreted, based on section 1385, to mean that because of the state's financial situation, the "interests of justice" precludes dismissal prior to disposition, a juvenile court would be precluded from its obligation to consider the welfare of the minor. Nor could it consider public safety, a coequal factor that in juvenile cases must inform the interests of justice.

Moreover, even were section 782 interpreted according to section 1385 to mean the juvenile court may not dismiss a petition when that dismissal runs to the minor's "immediate detriment" and that a more restrictive placement constitutes "detriment" (see AAMB 41), it would be erroneous to conclude that dismissal under section 782 is necessarily to the minor's immediate detriment. (See *People v. Orin* (1975) 13 Cal.3d 937, 946 ["such dismissals have been upheld where designed to enable the prosecution 'to obtain further witnesses, or add additional defendants, to plead new facts, or to plead new offenses'"]; see also *People v. Hernandez* (2000) 22 Cal.4th 512, 524.) Here, for example, the court did not dismiss the petition to immediately impose a DJJ commitment. Rather, in accord with the purposes of the Juvenile Court law, it dismissed the petition to allow it a full range of dispositional options, including possible commitment to DJJ.

Even by applying an "interests of justice" analysis based solely on financial considerations (see *V.C.*, *supra*, 173 Cal.App.4th at pp. 1468-1469), the grant of the power of dismissal is proper here since even under section 1385, the courts have recognized "that '"[m]andatory, arbitrary or rigid sentencing procedures invariably lead to unjust results. Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case."'" (*People v. Jones* (2007) 157 Cal.App.4th 1373, 1379.) Here, dismissal under section 782 allowed

the juvenile court to consider fully appellant's conduct, past and present, to make an informed decision that he was currently too dangerous to be placed in a nonsecure treatment facility.

Furthermore, even were section 782 construed strictly in accord with that of section 1385, the latter dismissal power cannot be precluded absent express language or legislative intent affirmatively demonstrating that the Legislature intended to preclude its use. (*People v. Hatch* (2000) 22 Cal.4th 260, 269; *Romero, supra*, 13 Cal.4th at pp. 518-520; *People v. Fritz* (1985) 40 Cal.3d 227, 230-231; *People v. Jones, supra*, 157 Cal.App.4th at p. 1379 .) The plain language of the section 733(c) and its legislative history fails to indicate a legislative intention to preclude the use of section 782 in the present circumstances. Moreover, "[i]t is well established that a court may exercise its power to strike under section 1385, 'before, during or after trial,' up to the time judgment is pronounced. [Citations]." (*Romero, supra*, 13 Cal.App.4th at p. 524, fn. 11.) The juvenile court dismissed the petition prior to disposition, and prior to admission or contest on the section 777 notice.

E. Appellant Unpersuasively Invokes Canons of Statutory Interpretation to Conclude that Section 782 Cannot Be Used to Dismiss the Most Recent Admitted Offense

Appellant contends the Court of Appeal correctly applied the rules of statutory construction that a more recent and specific statute governs over an older, more general statute. (AABM 3, 21-24; see also Opn. 8-9.) Application of this canon is unconvincing. The Legislature is presumed to have been aware of section 782 when it amended section 733(c). But it does not follow that the Legislature implicitly determined that section 733(c) was intended to abrogate the juvenile court's broad traditional authority under section 782, any more than the statute represents an implicit legislative abrogation of individualized determinations of the

appropriateness of a DJJ commitment. The juvenile court has had the authority to base its dispositional determination on its assessment of the minor's present dangerousness and amenability to a particular treatment regime. To now say that that determination of current dangerousness may only be based upon the commission of conduct minimally meeting the elements of a DJJ-eligible offense, is contrary to the purposes of the Juvenile Court law.

"'[T]he principle that a specific statute prevails over a general one applies only when the two sections cannot be reconciled. [Citations.]' [Citation.] If we can reasonably harmonize '[t]wo statutes dealing with the same subject,' then we must give 'concurrent effect' to both, 'even though one is specific and the other general. [Citations.]' [Citation.]" (*Garcia v. McCutchen, supra,* 16 Cal.4th at p. 478.) Sections 733(c) and 782 may be harmonized. It would be incorrect to assume that in adding section 733(c), the Legislature conclusively intended to foreclose application of the goals underlying the Juvenile Court law by prohibiting the use of the section 782 when the court determines that the ward is currently a violent or serious offender.

A limitation on section 782 in the application of section 733(c) "would be a significant change in the law." (*Garcia, supra,* 16 Cal.4th at pp. 481-482 [rejecting argument that Govt. Code, § 68608 limited application of Code Civ. Proc., § 575.2, subd. (b)].) Where, as here, "nothing in either the statutory language or the legislative history" reflects "a legislative intent to override" an exercise of traditional judicial powers, the Court has not found itself "persuaded the Legislature would have silently, or at best obscurely, decided so important . . . a public policy matter and created a significant departure from the existing law.' [Citation.]" (*Ibid.*; see *In re Michael G.* (1988) 44 Cal.3d 283, 294.)

F. Section 782 Is Not Merely a Termination Statute

Appellant contends the legislative history underlying an earlier rejected legislative proposal, Senate Bill 1221 (SB 1221), mandates a conclusion that section 782 may be used only to terminate jurisdiction. (AABM 3, 24-30.) We disagree.

SB 1221 was a proposal in 1970 to add a general dismissal statute to the Juvenile Court law. Although SB 1221 was not adopted, the same language was used the following year when the Legislature enacted section 782. Appellant makes selective use of one legislator's comments as evidence of the proper construction of section 782. He references testimony adduced at the interim legislative hearing held on November 20, 1970, at which the author of SB 1221, and later section 782, Senator Kennich, stated he was advancing the legislation to authorize a juvenile court to terminate jurisdiction over a case in two instances: (1) where the interests of justice and the welfare of the minor required dismissal of the petition; or (2) if the minor was not in need of rehabilitative treatment. (Appellant's Motion to Take Judicial Notice, Exh. C, p. 16.)

Senator Kennich never expressed an intention to limit the dismissal statute only to *complete termination* of jurisdiction. Even assuming Senator Kennich may have intended section 782 to be used only as a termination statute, "the Legislature is not a person. What goes on in the minds of individual legislators when enacting a statute cannot fix its meaning. Rather, the Legislature is a collective entity and its 'intentions' are primarily known by its legislative acts. [Citation.] The statutes themselves embody the collective 'intention' of the Legislature. '[*W*]*henever a law is adopted, all that is really agreed upon is the words.*" [Citation.] As is often emphasized, '"[i]t is elementary that there can be no intent in a statute not expressed in its words; that the intention of the legislature must be determined from the language of the statute . . . .'

[Citation.]" (*In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 739; see *In re A.P.*, *supra*, 193 Cal.App.4th at p. 806, fn. 13 ["committee reports are not necessarily reliable guides to the Legislature's intent"].)

The legislative history underlying section 782 does not reflect an intent that the statute operate only as a mechanism to terminate jurisdiction. Moreover, the available legislative history does not indicate that members of the Legislature, other than Senator Kennich and the other several legislators attending the November 1970 interim hearing, were aware of substance of the testimony adduced at that hearing. Nor does it suggest that the Legislature enacted section 782 strictly in accord with Senator Kennich's earlier expressed views.

Appellant's surmise that prior to the enactment of section 782 the juvenile courts lacked, and therefore that the Legislature provided, solely a jurisdictional termination statute, is also contrary to existence of section 778. That statute, enacted in 1961, and amended in 1963, already allowed "termination of jurisdiction." (Stats. 1961, ch. 1616, § 2, p. 3492; Stats. 1963, ch. 917, § 11, p. 2168; see *In re Corey* (1964) 230 Cal.App.2d 813, 819, fn. 6, 831-832.)

Finally, section 782 specifically provides for more than just termination. The statute states: "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 the minor *and* the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation." (Emphasis and underlining added.) The second prong of section 782 allows the juvenile court to dismiss an original petition at disposition if it finds that supervision and/or treatment is unnecessary. (See also rule 5.790(a)(2)(A).) But the plain language of the

first prong of the statute speaks only to the petition then currently before the court. According to the first prong, the court may dismiss that petition or set aside the findings and dismiss the petition, when, after considering both the minor's rehabilitative needs and the interests of justice, such dismissal is necessary. The interests of justice are clear. "[I]n all deliberations [conducted] pursuant to" the Juvenile Court law, the court "shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor . . . ." (§ 202, subd. (d)); see 1 Stats. 1982, ch. 170, § 1, p. 545; 2 Stats. 1984, ch. 756, §§ 1-2, pp. 2726-2727 [repeal of previous § 202 and enactment of new section]; 1 Stats. 1989, ch. 569, § 1, pp. 1874-1875; cf. *In re Ricardo M.* (1975) 52 Cal.App.3d 744, 748-749.) To conclude that section 782 precludes dismissals apart from termination of jurisdiction itself, ignores the plain language of the statute's first prong which allows for dismissal of "the petition." The juvenile court here acted pursuant to the first prong of section 782.

G. DJJ Was the Only Available and Appropriate Option for Appellant to Meet His Needs and the Goals of the Juvenile Court Law

Finally, appellant claims the court erred by setting aside his admission and dismissing the last petition because his "welfare" did not require a DJJ commitment. (AABM 3, 43-47.) At issue here is whether the juvenile court had statutory authority to set aside appellant's admission. Nonetheless, the circumstances of this case vividly illustrate that a DJJ commitment was in appellant's best interests, and that such an option should not lightly be foreclosed to juvenile courts.

Appellant is a currently violent offender who must be afforded long-term treatment in the secure facilities at DJJ in order to attempt rehabilitation. In arguing to the contrary, appellant ignores his prior,

sometimes violent, past gang-involvement and minimizes the facts of the committing offense. He asserts as facts the version of events he told the investigating police officer. (AABM 6, citing to 1CT 37-38.) His version related during the probation interview, however, "differed greatly from the statement he provided officers." (1CT 42.) The facts as set forth in the dispositional study establish that appellant got out of a car with a baseball bat in hand. He previously had bullied Joseph and took Joseph's bicycle. On this occasion, he and his two companions yelled gang slogans, displayed gang signs, and threw rocks at Joseph. Appellant then ran at Joseph with the baseball bat, hit Joseph in the head, and tried to take Joseph's bicycle.

In addition to the severity of the victim's injuries and their evident continuation (1CT 40), the assault caused Joseph constantly to be in fear of retaliation (a likely scenario in gang-related crimes), prevented him from living at his mother's house, and caused him to refrain from playing outside (1CT 40-41). Equally important for rehabilitative purposes, the probation officer noted that at the time of the probation interview, appellant was "unable to accept responsibility for his actions. Greg provided little insight into his motivations on the day off the offense and showed little remorse for the victim." (1CT 42.)

In regard to the criminal conduct forming the basis for the dismissed petition and section 777 notice, appellant again relies on what he told the probation officer during the probation interview. There he claimed "the incident was not planned; he decided to join in after seeing [another of the Nortenos who attacked the three Sureno detainees] initiate it." (AABM 6, citing to 2CT 190-192, 195.) Yet, during that same interview appellant expressed disappointment that two other gang members had not joined in the assault, telling the probation officer "'that fool [one of those two other Nortenos] said he was down, what a bitch.'" (2CT 191.) Appellant's

statements to the probation officer were also contrary to the premeditation of the attack as observed by juvenile hall staff. (2CT 191.)

Appellant had a "turbulent" childhood. (1CT 44; see 1CT 44-47.) Since age 12 he has been involved with Norteno criminal street gang and has also had significant substance abuse issues during that time. (1CT 24, 38; see 1CT 41-42.) While in juvenile hall pending disposition on the assault petition, he was "attacked from behind" by another resident. (1Aug.RT 14-15.)

Despite the initial DJJ recommendation (1Aug.RT 10; 14; see 1CT 22), the court sought two separate psychological evaluations prior to making its first dispositional decision (1Aug.RT 9, 13-14, 20, 23). In the social study filed December 5, 2008, the probation officer conveyed Dr. Schneider's recommendation for a placement in a residential drug treatment and behavioral-modification program with a suspended DJJ commitment. (1CT 21.) Dr. Schneider also recommended that appellant's "violence risk in the community be re-accessed prior to any conditional release in the community following treatment." (1CT 21.) Probation adamantly recommended a DJJ commitment, with public safety being a primary concern. (1CT 22-23.) On December 5, 2008, when the court indicated it planned to place appellant "out-of-state," appellant objected to placement in Rites of Passage (ROP), and the court continued the matter to "try to make [the placement] fit." (1Aug.RT 25; see 1Aug.RT 23-24, 29 ["He's had a rough 15 years. And it's totally due to things that were outside of his control. . . . [T]his Court is going to try to do is to provide him with real stability"].)

On December 17, 2008, appellant's second evaluator, Dr. Doty, testified she believed appellant required a dual diagnosis program. "That would address both his substantial substance abuse problem and also his mental health issues." (RT [Dec. 17, 2008] 2 (Evid. RT).) However, Dr.

Doty acknowledged "there are few dual diagnosis programs that are really dual . . ." and she recommended a mental health program. (Evid. RT 4.) The court did not want appellant placed locally, even believing post-treatment foster care might be appropriate. (Evid. RT 7-8.) When a local mental health treatment program was suggested, the probation officer responded that the program was not for "criminally-inclined boys" and besides not being "a good placement for him, it wouldn't be good for the other children there . . . ." (Evid. RT 13.) Dr. Doty believed ROP would not provide the "sophisticated counseling that . . . Greg is going to need." (Evid. RT 13.) The probation officer concurred. (Evid. RT 14.) The probation officer suggested the Wilderness Recovery Center (WRC), noting that while it was not a dual diagnosis program, "they do intensive individual and group therapy." (Evid. RT 16.) On December 22, 2008, the court ordered out-of-home placement (without imposing a suspended DJJ commitment) and appellant was placed at WRC.

Appellant was extremely resistive to treatment at WRC from the start. He was returned to juvenile hall not only because of program failure, but because, despite the court's earlier warning (1Aug.RT 39), he threatened to abscond if not removed from WRC (1CT 70; 2CT 194; see 1Aug.RT 53, 58 [appellant's contempt for WRC "has been toxic for some of the other participants"]). WRC was concerned about appellant's "lack of victim empathy and his entrenched gang involvement. WRC staff reported appellant would benefit from a program of behavior modification to address his antisocial traits in order to abate his defiance and gang association before he would be able to benefit from in-depth therapeutic introspection and victim empathy." (2CT 194.)

At the June 11, 2009, status review hearing, the court reminded appellant that it had not followed probation's DJJ recommendation. (1Aug.RT 60-61.) It continued the matter so that a placement could be

found, advising appellant: "[A] lot of what happens is going to depend on your behavior here, and I'm going to be watching that like a hawk. And you know I will, because we've had this discussion before." (1Aug.RT 68.) Appellant committed the gang-related batteries two months later.

Appellant had a dispute with another detainee in September 2009. (DRT 10-11; see DRT 12 [prosecutor's proffer there were "several instances where Greg's behavior has been . . . extremely poor towards peers and staff"].) At the October 23, 2009, hearing the court told appellant to be on his best behavior. (DRT 18.) On October 27, 2009, the court again expressed the need for appellant do well in juvenile hall while awaiting placement. (RT [Oct. 27, 2009] 7.) At a November 17, 2009, hearing, the court again advised appellant to be of good behavior, cautioning him to be "the most helpful kid they've got in juvenile hall . . . ." (RT [Nov. 17, 2009] 3-5.) On December 8, 2009, the court reminded appellant not to get into a fight while in juvenile hall. (3Aug.RT 92.) On January 4, 2010, "the minor and a fellow gang associate attempted to assault another resident." (2CT 185; see 2RT 16.) While appellant's misconduct in juvenile hall was one reason for the DJJ commitment (some placements rejected appellant because of his behavior in juvenile hall [see 2RT 16-18]), the record makes clear the commitment was made because of the lack of other, available, appropriate treatment placements.[6]

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[6] Appellant complains about the juvenile court's comments at disposition regarding its attendance at a recent judges' training which informed judges of the beneficial changes made at DJJ. (AABM 18.) Appellant did not object to these comments below and thus forfeited any claim of error. (*People v. Simon* (2001) 25 Cal.4th 1082, 1103; *In re Alexander A.* (2011) 192 Cal.App.4th 847, 858-859.) Moreover, there was no error. The juvenile court is required to be aware of available program and placement options. (Cal. Stds. Jud. Admin., § 5.40(e)(10).)

(continued...)

CONCLUSION

Accordingly, respondent respectfully requests that the judgment of the Court of Appeal be reversed.

Dated: November 8, 2011

Respectfully submitted,

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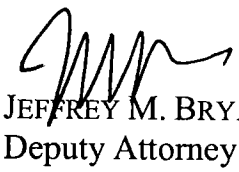

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(...continued)

Appellant also asks this Court to take judicial notice of an August 4, 2011, Order Granting Motion to Enforce Court-ordered Remedial Plans and to Show Cause Why Defendant Should Not Be Held in Contempt of Court in *Farrell*. (AABM 45 & fn. 26; see Exh. E.) Judicial notice is inappropriate. The issue here is the court's statutory authority to use 782 in these circumstances. This case does not concern the adequacy of DJJ programs or the *Farrell* litigation.

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 6,495 words.

Dated: November 8, 2011

KAMALA D. HARRIS
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Greg R. F. a Minor**
No.: **S191868**

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 November 8, 2011, I served the attached **RESPONDENT'S 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 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, 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 November 8, 2011, at San Francisco, California.

E. McDonald
Declarant

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Signature

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