In re R.D.

2004 | Cited 0 times | California Court of Appeal | December 13, 2004

OPINION

INTRODUCTION

Following defendant's admission of a robbery allegation, the juvenile court made him a ward of the court and placed him on probation in a foster care facility. When the defendant violated the terms of his probation, the juvenile court ordered that he be committed to the California Youth Authority (CYA). Defendant claims the court abused its discretion in committing him to CYA. Defendant further contends the court erred by failing to consider his educational needs, and that a probation officer's social study relied upon by the court was inadequate. In support of his claims, he requests that we take judicial notice of certain reports concerning CYA that were created after the order committing him to CYA. We deny the request for judicial notice and affirm.

FACTUAL BACKGROUND

Defendant was involved in an armed robbery. Following the robbery, the car he was riding in was stopped by police for a traffic violation. Defendant ran from the car while attempting to conceal a sawed-off rifle underneath his shirt. He was apprehended.

The People filed a petition pursuant to section 602 of the Welfare and Institutions Code alleging that defendant was a person described by section 602 and that he committed, among other crimes, second degree robbery. [1] (Pen. Code, §§ 211 & 212.5, subd. (c).) Prior to the jurisdictional hearing, defendant admitted the robbery allegation, which the juvenile court found true, and the People dismissed the remaining charges. The court found defendant to be a person described by section 602, vacated the date for the jurisdictional hearing, and set a date for a dispositional hearing.

In connection with the dispositional hearing, defendant's probation officer submitted a report setting forth, among other information, the nature of the allegations against defendant, his family and personal health information, medical information, developmental limitations, statements by the

defendant and his parents, school records, and an analysis of dispositional issues. In a section of the report titled "Developmental/Function Limitations," the probation office noted that defendant is "Audio/Speech Impaired," but left unchecked the box next to "Special Ed. Required." A case plan submitted with the report stated that an "Educational Assessment/IEP" was not needed. The report included a recommendation that defendant be placed in the custody of the probation officer and placed on probation subject to certain conditions. One of the conditions required defendant to "[o]bey the rules and regulations of the placement . . . ."

Defendant initially contested the probation officer's recommendation concerning restitution for the victim of the robbery and a proposed finding that a motor vehicle was involved in the robbery. Defendant did not dispute other aspects of the probation officer's report. At the dispositional hearing held in August 2003, defendant stipulated to the probation officer's placement recommendation. Defendant was made a ward of the juvenile court and placed in the custody of the probation officer pending placement in a foster care facility on the terms and conditions set forth in the probation officer's report. Defendant did not appeal from the court's order.

Following the dispositional hearing, defendant was placed with the Fouts Springs Youth Facility (Fouts). While en route to Fouts, defendant told the probation officer about the robbery and said that he "would have used the gun, if anyone had tried to stop him." According to the officer, defendant "was apathetic to the serious nature of his offense or the possible consequences that could have resulted."

During the first two weeks of defendant's placement with Fouts, defendant was involved in several incidents involving violations of the facility's rules and conditions of his probation. On one occasion, he picked up a rock and threatened to throw it at a corrections officer. He was also disrespectful toward staff members and repeatedly failed to follow staff directives. When defendant was admonished for his conduct and informed he could be removed from the program and committed to CYA, he responded, "Good, I hate this place and would rather be at YA." He told a probation officer how he would violate his probation, including going "AWOL," so that he could be sent to CYA.

After being informed of the possibility of being committed to CYA, defendant caused a disturbance in one wing of the Fouts facility. After being told to return to his wing, he "laid on the floor, laughed loudly and repeatedly shouted[,] `San Bernardino in the house.'" He was subsequently "verbally combative with staff and failed to comply with staff directives"; he calmed down only after being warned "that he would be peppered [sic] sprayed." His probation officer reported that he was "refusing to tak[e] medications" and was involved in "physical altercations."

Twenty-two days after his placement with Fouts, the People filed a "Juvenile Wardship Petition" pursuant to section 777, subdivision (a)(2), alleging that defendant violated his probation by failing to comply with placement staff directives, threatening to harm placement staff, or using profanity. [2] Such conduct, the petition alleged, violated the condition of probation that he obey the rules and

regulations of the placement. Defendant admitted this allegation and the juvenile court found it true. The court then stated, "we'll refer the matter to probation and get a report and recommendation for disposition." It also set a date for a "dispositional" hearing.

The probation officer prepared a new report which restated the circumstances regarding defendant's behavior at Fouts. The report concludes: "[Defendant] was granted the opportunity to change his behavior through the placement process and willfully and blatantly failed to embrace that opportunity. . . . It is the opinion of this officer, since the minor is not amiable [sic] to the rehabilitative process, coupled with his continued delinquent, defiant behavior and the serious nature of his sustained allegation, a commitment to [CYA] is warranted at this juncture. It is believed that it is only through the services offered by [CYA], that [defendant] can change his delinquent, defiant and criminal behavior, and while doing so, also protect the community at large." The probation officer recommended "that the court find that the [defendant] is not an individual with exceptional needs pursuant to Section 1742 . . . ."

At the hearing held in December 2003, the court indicated that it had read, among other documents, the probation officer's "current report" and previous report, as well as psychological evaluation reports prepared by Dr. Annette Ermshar and Dr. Kent Franks. The most recent probation officer's report was admitted into evidence without objection. Defendant offered the testimony of Dr. Ermshar, who opined that defendant has cyclothymic disorder, which is "basically a fluctuating mood disturbance." She further testified that defendant's disorder is treatable with medication, which defendant has been taking. Dr. Ermshar opined that she was "not sure Youth Authority is the best placement for [defendant] at this time given our knowledge of how well he was [sic] responded to medications. [She believed] that a prolonged placement with medication and therapy addressing some of his anger issues and intensive therapy would really serve him better at this time." There was no evidence submitted that defendant had been identified by an individualized education program (IEP) team as an "individual with exceptional needs" within the meaning of section 1742. Nor did either of the psychologists that evaluated defendant recommend that he undergo an IEP assessment.

Following testimony of witnesses, including defendant, and argument by counsel, the court ordered that defendant be committed to CYA. A CYA commitment, the court explained, was "[n]ot only [in] the best interest of the community for community safety, but in the best interest of this minor where he would have a broad range of treatment alternatives available and including the psychotropic meds that he apparently needs." The court found that defendant "is not an individual with exceptional needs within the meaning of [section] 1742 . . . ." Defendant appealed this order.

ANALYSIS

A. Request for Judicial Notice

Defendant has requested that we take judicial notice of three documents that defendant's counsel

states he "found at the website of the Prison Law Office at www.prisonlaw.com." [3] The documents are: (1) "General Corrections Review of the California Youth Authority," by Barry Krisberg, Ph.D., dated December 23, 2003; (2) "Report of Findings of Mental Health and Substance Abuse Treatment Services to Youth in California Youth Authority Facilities," by Eric W. Trupin, Ph.D. and Raymond Patterson, M.D., dated December 2003; and (3) "Education Program Review of California Youth Authority," by Dr. Thomas O'Rourke and Dr. Robert Gordon, dated December 2003. Attached to his request for judicial notice, defendant includes 16 pages out of at least 81 total pages of the Krisberg report, what appears to be the entire Trupin and Patterson report, and pages 1, 2, 18, and 46 of the O'Rourke and Gordon report. These reports address issues related to the operation of the CYA, including (among others) the CYA's systems for classifying wards, mental health and substance abuse services, and educational programs within the CYA.

Judicial notice of these documents was not requested from the juvenile court and they were not otherwise submitted to the juvenile court or part of the record on appeal. Indeed, according to defendant, they were not available until after the December 2003 hearing in this case.

Pursuant to Evidence Code sections 459, subdivision (c), and 455, subdivision (a), we permitted the People to submit an opposition to the request for judicial notice. The People filed an opposition and defendant filed a reply. We deny the request.

A "reviewing court may take judicial notice of any matter specified in [Evidence Code] Section 452." (Evid. Code, § 459, subd. (a).) Evidence Code section 452 sets forth, in separate subdivisions, matters which may be judicially noticed. Defendant's request is based upon subdivisions (c), (g), and (h). None of these subdivisions support the granting of defendant's request.

Evidence Code section 452, subdivision (c), provides: "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The three documents are reports prepared by various individuals, purportedly in response to inquiries made by the Attorney General. The materials do not constitute official acts of any governmental department and are not judicially noticeable under this subdivision.

Evidence Code section 452, subdivision (g), permits a court to take judicial notice of "[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute." Evidence Code section 452, subdivision (h), provides for judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." "Sources of reasonably indisputable accuracy" includes "treatises, encyclopedias, almanacs, and the like, [and] also persons learned in the subject matter." (Com. to Evid. Code, § 452.) The reports that defendant submitted analyze and express opinions regarding certain aspects of CYA's operations and services, and make recommendations for improvements. They cannot reasonably be considered matters of either common knowledge or "capable of immediate and

accurate determination by resort to sources of reasonably indisputable accuracy." The documents are not judicially noticeable under Evidence Code section 452, subdivisions (g) or (h). The request for judicial notice is therefore denied.

B. Sufficiency of the Evidence for Changing the Court's Prior Dispositional Order

"Any order made by the [juvenile] court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article [sections 775-785]." (§ 775.) Under section 777, a probation officer or prosecuting attorney may request that an order directing one manner of placement be changed to direct commitment to CYA by notice alleging "a violation of a condition of probation not amounting to a crime." (§ 777, subd. (a)(2).) [4] The facts alleged in the notice must be established by a preponderance of the evidence. (§ 777, subd. (c); John L. v. Superior Court (2004) 33 Cal.4th 158, 165.) Here, the defendant admitted allegations of his violation of probation.

Although section 777, subdivision (a)(2), does not refer to any requirement of pleading or proof other than the violation of a condition of probation, section 734 provides: "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." Moreover, juvenile courts are to be guided, at all stages of proceedings, by the purposes of the juvenile court law. (In re S. S. (1995) 37 Cal.App.4th 543, 550.) In particular, "[m]inors under the jurisdiction of the juvenile court as a consequence of delinquent conduct 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." (§ 202, subd. (b).) This statement of purpose of the juvenile court law "recognizes punishment as a rehabilitative tool and emphasizes the protection and safety of the public." (In re Lorenza M. (1989) 212 Cal.App.3d 49, 57.) These principles are applicable to section 777 hearings. (See Eddie M., supra, 31 Cal.4th at p. 507 [court's broad discretion in section 777 proceedings subject to the "bounds" of section 202].)

"The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision." (In re Angela M. (2003) 111 Cal.App.4th 1392, 1396 (Angela M.); see § 734.) "There is no abuse of discretion where the commitment is supported by substantial evidence on the record." (In re Kevin F. (1989) 213 Cal.App.3d 178, 186.)

The record includes substantial evidence from which the court could have concluded that a commitment to CYA would probably benefit defendant. A probation officer's report and recommendation can constitute evidence that a CYA commitment would benefit the ward. (See In re Pedro M. (2000) 81 Cal.App.4th 550, 555-556; In re Jose R. (1983) 148 Cal.App.3d 55, 61.) Here, the probation officer reported that defendant was not amenable to the rehabilitative process offered at

the less restrictive Fouts facility. He further stated, "it is only through the services offered by [CYA], that [defendant] can change his delinquent, defiant and criminal behavior." Moreover, defendant's announcement that he "would AWOL" from the less restrictive placement, as one court stated, "required consideration of the need for a locked facility for his own good." (In re Gregory S. (1978) 85 Cal.App.3d 206, 213; see In re Jose R., supra, at p. 61 [the "need for a locked facility" is a valid consideration in determining that a ward would benefit from a CYA commitment].)

In addition, the court relied upon evidence of the need for defendant to take medication and his refusal to take his medicine at an "open placement" facility. The court stated, "he needs treatment, there's no question about that. Just a question where the treatment should be given. [¶] In [the] Court's view it should be given in a secure setting. The Youth Authority has such a setting. They also have the treatment facilities. . . . they are implementing new treatment programs, [with] much more emphasis [than] they had in recent years with individual treatment. They [CYA management] sound very hopeful that their programs will be even more beneficial to young people they deal with. And I believe that [defendant] could benefit in the Youth Authority facility including -- the clinic has [a] professional staff of psychiatrists, psychologists, [and] social workers who can evaluate and appropriately deal with his needs, his treatment needs." The record thus amply demonstrates that the court was "fully satisfied" that a CYA commitment would probably benefit defendant. (§ 734.)

The appropriateness of CYA commitment in light of the public safety and protection goals of the juvenile court law is also supported by the record. (See § 202, subd. (b).) After participating in a robbery and being in possession of a sawed-off rifle, defendant candidly told his probation officer that he would have used the gun if anyone had tried to stop him. During his two-week stay at a less restrictive facility, he threatened staff members with a rock, was disrespectful to the staff, refused to follow directives and take medicine, and caused a disturbance. He also told his probation officer that he "would AWOL from the placement [at Fouts]." By directing defendant to the more restrictive CYA, he is less likely to pose a danger to the public. There is thus substantial evidence that the court's ruling was consistent with the public safety and protection goals of the juvenile court law.

Because there was sufficient evidence of both probable benefit to defendant of a CYA commitment and of the danger defendant presented to the public if he remained in a less restrictive placement, we affirm the juvenile court's commitment of defendant to CYA.

Defendant next contends that at the CYA "he will not receive the treatment he requires for his diagnosed mental health conditions." He relies extensively upon the reports that are the subject of his request for judicial notice, which we have denied. In any event, in reviewing a lower court's decision, we are "`limited to a consideration of matters contained in the record of trial proceedings, and . . . "[m]atters not presented by the record cannot be considered on the suggestion of counsel in the briefs."' [Citations.]" (In re Rogers (1980) 28 Cal.3d 429, 437, fn. 6.) The subject reports were not before the juvenile court and, even if they were judicially noticeable, will not be considered in this appeal.

Defendant also relies heavily upon the testimony of Dr. Ermshar, who recommended that defendant not be committed to CYA. Where, as here, our task is to determine whether substantial evidence supports the court's determination, we do not "reweigh the evidence, reappraise the credibility of witnesses or redetermine factual conflicts, those functions being within the province of the trier of fact." (In re Frederick G. (1979) 96 Cal.App.3d 353, 367.) Because there was substantial evidence supporting the court's determinations, the court acted within its discretion in rejecting Dr. Ermshar's recommendation. (See In re Robert H. (2002) 96 Cal.App.4th 1317, 1329.)

C. Social Study Report for Section 777 Hearing

Defendant claims the report prepared by his probation officer for his section 777 hearing is incomplete because it did not contain all matters relevant to disposition. He further contends the probation officer's report "ignored the nature and extent of [defendant's] mental health and special educational needs." We hold that because a complete social study report is no longer required for a hearing held pursuant to section 777, there was no error.

Our analysis of the rights and obligations concerning the production and scope of a probation officer's report begins with section 280. This section provides: "It shall be the duty of the probation officer to prepare for every hearing on the disposition of a case as provided by Section[s] 356, 358, 358.1, 361.5, 364, 366, 366.2, or 366.21 as is appropriate for the specific hearing, or, for a hearing as provided by Section 702, a social study of the minor, containing such matters as may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case."

Of the sections referenced in section 280, the only one that is potentially relevant is section 702. This section provides for a hearing to determine "the proper disposition to be made of [a] minor" who has been found to be "a person described by Section 300, 601, or 602." The hearing described in section 702 is commonly referred to as the dispositional hearing and is the second step of a "two-step proceeding. The first step is the determination of jurisdiction, and the second step is determination of the appropriate disposition and placement." (In re James B. (2003) 109 Cal.App.4th 862, 873; see In re Gladys R. (1970) 1 Cal.3d 855, 859.)

Dispositional hearings held pursuant to section 702 are further governed by rule 1492 of the California Rules of Court. [5] This rule requires the probation officer to prepare and submit a social study of the minor prior to a dispositional hearing. (Rule 1492(a).) As defendant correctly notes, the social study required by rule 1492 "must contain all matters relevant to disposition . . . ." (Ibid.) The court must "receive in evidence and consider the social study and any relevant evidence offered by the petitioner, the child, or the parent or guardian." (Rule 1492(b); see In re L. S. (1990) 220 Cal.App.3d 1100, 1104-1105, criticized on another point in People v. Bullock (1994) 26 Cal.App.4th 985, 989.)

The hearing that is the subject of this appeal was not a dispositional hearing under section 702, but a

hearing to change or modify a previous order pursuant to section 777. Section 280, which specifies the sections governing proceedings for which a social study is required, does not refer to hearings held pursuant to section 777. Section 775 provides that the change or modification of a juvenile court's prior order is "subject to such procedural requirements as are imposed by this article." (Italics added.) "This article" (which includes section 777) does not include any requirement that a probation officer prepare a social study report or the court receive or consider a probation officer's social study report.

The scope of a probation officer's report for a section 777 hearing is described in rule 1433. This rule provides, as is relevant here: "Before every hearing [to be held under section 777] the probation officer shall prepare a report on those matters relevant to a determination of whether the child has violated a condition of probation." (Rule 1433(e), italics added.) Thus, while a social study report prepared for the purpose of a dispositional hearing held under section 702 and rule 1492 "must contain all matters relevant to disposition" (rule 1492(a)), the probation officer's report for a hearing pursuant to section 777 requires only such information that is relevant to determining whether the alleged violation of probation occurred (rule 1433(e)). Defendant does not contend the probation officer's report in this case failed to comply with this rule.

Our conclusion that a complete social study report is not required for section 777 proceedings is further supported by the changes made to section 777 and the rules of court following the passage of Proposition 21 in March 2000. Prior to the passage of the proposition, the juvenile court rules made the rules governing the initial jurisdictional and dispositional hearings, including rule 1492's requirements concerning social study reports, applicable to section 777 proceedings. (Former rule 1431(e)(1).) Up until that time, a hearing pursuant to section 777 to change or modify a prior disposition order had to be initiated by the filing of a "supplemental petition." (Former § 777; Eddie M., supra, 31 Cal.4th at p. 489.) Former rule 1431 provided that hearings "on a subsequent or supplemental petition" in delinquency cases must be conducted according to the rules governing initial detention, jurisdictional, and dispositional hearings. (Former rule 1431(d) & (e)(1) & (2).) [6] Thus, the probation officer had a duty to prepare a social study report, and the court had a duty to receive and consider the report, in connection with section 777 hearings.

Proposition 21 revised section 777 in several respects, "relax[ing] certain procedures attending this prior practice." (Eddie M., supra, 31 Cal.4th at pp. 485-486.) As is relevant here, the need to file a "supplemental petition" was replaced with the requirement of a "noticed hearing." (§ 777; see Eddie M., supra, at p. 491.) Consistent therewith, rule 1431, which previously incorporated the social study requirement into section 777 proceedings, was revised to remove any reference to section 777. (Rule 1431; Drafter's Notes, Deerings Ann. Rules of Court (2004 ed.) foll. rules 1430 & 1431.) This revision severed the only link between the social study requirement applicable to dispositional hearings and section 777 proceedings. As a result, the social study required by rule 1492 for dispositional hearings is no longer required for section 777 proceedings. [7]

D. Consideration of Defendant's Educational Needs

Defendant contends that commitment to CYA was an abuse of discretion because the juvenile court failed to take into account defendant's "unique" educational needs. At a minimum, he argues that "remand is required to allow the juvenile court to make proper findings, on a more fully developed record, regarding [defendant's] educational needs." [8] We disagree.

Defendant relies, in part, on section 1742, which provides: "When the juvenile court commits to [CYA] a person identified as an individual with exceptional needs, as defined by Section 56026 of the Education Code, the juvenile court . . . shall not order the juvenile conveyed to the physical custody of the Youth Authority until the juvenile's [IEP] previously developed pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code for the individual with exceptional needs, has been furnished to the Department of the Youth Authority." Section 56026 of the Education Code defines an "individual with exceptional needs" as a person who, among other things, is "[i]dentified by an [IEP] team as a child with a disability" within the meaning of the Individuals with Disabilities Act (20 U.S.C. §§ 1400-1487), [9] whose impairment "requires instruction, services, or both, which cannot be provided with modification of the regular school program." (Ed. Code, § 56026, subds. (a) & (b).)

There is no evidence in the record, nor was any argument presented in the juvenile court, that defendant had been identified as "an individual with exceptional needs," within the meaning of section 1742 or section 56026 of the Education Code or was ever the subject of an IEP. The probation officer's August 2003 dispositional hearing report (which the court indicated it reviewed in connection with the December 2003 section 777 hearing) noted that "Special Ed." was not required. For the December 2003 hearing, the officer recommended that the court find that he was not an individual with exceptional needs pursuant to section 1742. Defendant did not object to or dispute this proposed finding. In the absence of any evidence otherwise, the juvenile court's acceptance of this recommended finding does not constitute an abuse of discretion.

Defendant also relies upon rule 1493(e)(5) and section 24(h) of the California Standards of Judicial Administration. At the time of the December 2003 hearing, rule 1493(e)(5) provided, in part: "The court must consider the educational needs of the child . . . ." (Former rule 1493(e)(5).) [10] The cited California Standards of Judicial Administration provides that juvenile courts should "[t]ake responsibility, with the other juvenile court participants at every stage of the child's case, to ensure that the child's educational needs are met . . . . Each child under the jurisdiction of the juvenile court with exceptional needs has the right to receive a free, appropriate public education, specially designed, at no cost to the parents, to meet the child's unique special education needs. (See Ed. Code, § 56031 and 20 U.S.C. § 1401(8).)" "`Special education' means specially designed instruction . . . to meet the unique needs of individuals with exceptional needs." (Ed. Code, § 56031, italics added.)

These principles were discussed in Angela M. In that case, the minor had been diagnosed as having

"chronic symptoms of bipolar disorder or attention deficit hyperactivity disorder." (Angela M., supra, 111 Cal.App.4th at p. 1395.) A psychologist reported that the child must "`undergo an IEP'-that is, that she be evaluated by education professionals to determine whether she had special educational needs." [11] (Id. at p. 1399.) In ordering that the child be committed to CYA, the juvenile court made no finding concerning the child's educational needs. (Id. at pp. 1396 & 1399.) The Court of Appeal held that the failure to make any findings concerning the minor's education required remand "to permit the juvenile court to make proper findings, on a more fully developed record, regarding [the minor's] educational needs." (Id. at p. 1399.)

Angela M. is distinguishable. Here, although the record includes the reports of two psychologists, one of whom testified at the December 2004 hearing, neither psychologist suggested or recommended that defendant "undergo an IEP" or be evaluated for "special educational" needs as in Angela M. (See Angela M., supra, 111 Cal.App.4th at p. 1399.) Although one of the psychologists noted that the defendant "would benefit from remedial education to help bolster his [nonverbal] problem solving skills," the probation officer reported that special education services were not required and that an "Educational Assessment/IEP" was not needed. (Italics added.) Even if the psychologist's reference to "remedial education" could be viewed as a reference to "special education," the court could reject such evidence in favor of the probation officer's statements. Moreover, unlike the juvenile court's complete failure to "mention this issue" in Angela M., in ordering the commitment to CYA, the juvenile court here expressly found that defendant was not an "individual with exceptional needs within the meaning of [section] 1742." Thus, in contrast to the facts in Angela M., a "more fully developed record" is not required in this case and the court's finding is sufficient to satisfy its obligations concerning the defendant's educational needs.

DISPOSITION

The order committing defendant to CYA is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

We concur:

Ward, Acting P.J.

Gaut, J.

1. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated. Section 602 authorizes the juvenile court to adjudge a child to be a ward of the court if he or she has committed a criminal offense while under the age of 18.

2. The district attorney in this case used a form of "Juvenile Wardship Petition" that predated the passage of Proposition

21 in March 2000. As discussed below, following the passage of Proposition 21, a "petition" was no longer required to institute proceedings under section 777.

3. According to this website, "The Prison Law Office strives to improve the living conditions of California state prisoners by providing free legal services. [¶] The Prison Law Office represents individual prisoners, engages in class action and other impact- litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country." (http://www.prisonlaw.com (as of July 6, 2004).)

4. Prior to the passage of Proposition 21 in March 2000, section 777 further required that a supplemental petition seeking a change in a prior disposition order based upon a probation violation must include facts showing that the previous disposition was not effective in the rehabilitation or protection of the minor. (Former § 777, subd. (a)(2); see also former Cal. Rules of Court, rule 1431(a)(1); In re Ronald E. (1977) 19 Cal.3d 315, 326.) Thus, at section 777 hearings held prior to the passage of Proposition 21, courts were required to hear "evidence as to the efficacy of the prior disposition," consider "whether the prior dispositional order had entirely failed," and determine "if a more restrictive level of confinement was necessary to the minor's rehabilitation." (In re Jorge Q. (1997) 54 Cal.App.4th 223, 236.) While evidence concerning the ineffectiveness of the previous disposition order may continue to be relevant in determining whether or how to change or modify a previous order, following the passage of Proposition 21, such ineffectiveness need no longer be alleged or proved. (§ 777; In re Marcus A. (2001) 91 Cal.App.4th 423, 427, disapproved on another point in In re Eddie M. (2003) 31 Cal.4th 480, 502 (Eddie M.).)

5. All further references to rules are to the California Rules of Court.

6. This rule stated: "The hearing on a subsequent or supplemental petition shall be conducted as follows: [¶] (1) The procedures relating to jurisdiction hearings prescribed in . . . chapter 8 for delinquent children shall apply to the determination of the allegations of a subsequent or supplemental petition. . . . [¶] . . . [¶] (2) The procedures relating to disposition hearings prescribed in . . . chapter 8 for delinquent children shall apply to the determination of disposition on a subsequent or supplemental petition." (Former rule 1431(e)(1) & (2).) The former "chapter 8" referenced in rule 1431 included rule 1492 governing dispositional hearings.

7. We do not suggest, however, that the probation officer's report for a section 777 proceeding cannot include information beyond what is described in rule 1433. Indeed, the probation officer's report in this case included, in addition to facts concerning the alleged probation violations, information regarding defendant's family relationships and health issues. Nor do we suggest that the juvenile court should not consider information and evidence other than the facts concerning the alleged violation of probation. As set forth in part B. above, the juvenile court must be guided, at all stages of proceedings, by the purposes of the juvenile court law, including the provision of treatment "consistent with [the minor's] best interest and the best interest of the public." (§ 202, subd. (b).) Our holding in this part is limited to the narrow issue of whether the social study required by section 280 and rule 1492 must be prepared and considered at section 777 hearings.

8. These two arguments are made under separate headings in defendant's opening brief. Because of their essential similarity, we treat them together.

9. The Individuals with Disabilities Education Act (IDEA) defines "child with a disability" as a child "(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and [¶] (ii) who, by reason thereof, needs special education and related services." (20 U.S.C.A. § 1401(3)(A).)

10. This requirement was removed from the rule effective January 1, 2004. The rule currently requires the juvenile court to "consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. . . ." (Rule 1493(e)(5).)

11. An IEP is a written statement for children with a disability that includes, among other information, (i) a statement of the child's present level of educational performance, including how the child's disability affects the child's participation and progress in the curriculum; (ii) a statement of measurable annual goals, including benchmarks, or short- term objectives for meeting the child's educational needs, (iii) a statement of the special educational and related services the child will receive, and (iv) an explanation of the extent to which the child will not participate in regular education programs. (20 U.S.C.A. § 1414(d)(1)(A).)