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**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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| In re Jose S., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>JOSE S.,<br>Defendant and Appellant. | A173967<br><br>(San Mateo County Super Ct. No. 17-JW-2000) |

Jose S., who admitted committing murder (Pen. Code, § 187, subd. (a)) at the age of 15, appeals from the juvenile court's July 29, 2025 order setting aside a previous dispositional order and committing him to county jail until his 25th birthday. He maintains the court, by committing him to county jail, imposed an unauthorized disposition. We affirm.

## BACKGROUND

### A.

Until recently, the Department of Corrections and Rehabilitation's Division of Juvenile Justice (DJJ) was " 'the state's most restrictive placement for its most severe juvenile offenders.' " (*People v. I.B.* (2024) 104 Cal.App.5th 702, 708.) In 2020, the Legislature passed Senate Bill No. 823 (2019–2020 Reg. Sess.) (Stats. 2020, ch. 337) as part of its juvenile justice realignment efforts, which closed DJJ (as of June 30, 2023) and

transferred DJJ's responsibilities to the counties. (Welf. & Inst. Code, § 736.5, subds. (a), (e); *People v. I.B.,* at p. 708.)[1]

In the wake of DJJ's closure, commitment to a county's secure youth treatment facility (SYTF) is "reserved for wards who have committed the most serious offenses, for whom such commitment is necessary to achieve the goals of rehabilitation and community safety." (*In re Tony R.* (2023) 98 Cal.App.5th 395, 410; see § 875, subds. (a)(1), (a)(3).)

**B.**

In June 2017, when Jose was 15 years old, Jose's friend went to a store, in Sacramento, to make a drug sale. Jose's friend was confronted by two men, one of whom told Jose's friend to leave. The friend then went to Jose's home and told him what happened. Jose retrieved a handgun that he had previously stolen and returned to the store with his friend. When they confronted the two men, one of the men punched Jose's friend. Jose drew the gun from his waistband and shot both men. One of the men died at the scene; the second man and a bystander were wounded.

The Sacramento County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) alleging, inter alia, that Jose committed murder (Pen. Code, § 187, subd. (a)), plus enhancements for Jose's use of a firearm (*id.*, § 12022.53, subds. (b)-(d)).

In 2019, Jose admitted the murder allegation and that he personally and intentionally discharged a firearm, which caused great bodily injury or death (Pen. Code, § 12022.53, subd. (d)). The juvenile court adjudged Jose a ward of the court and

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

committed him to the DJJ for a maximum term of seven years, four months, and two days (or until age 25).

A few years later, Jose was sentenced to two years in state prison following an adult conviction for battery on a non-prisoner. He was delivered to prison on December 30, 2022, with a projected release date of June 4, 2023. In anticipation of Jose's release from prison and DJJ's impending closure (see § 736.5, subd. (e)), Jose's commitment to DJJ was recalled. He was continued as a ward and committed to the Sacramento County SYTF.

Jose and the probation department requested transfer to San Mateo County. Over the prosecutor's opposition, the juvenile court found Jose's legal residence was in San Mateo County and granted the transfer. The court also determined the closure of DJJ necessitated a new disposition hearing. The San Mateo County juvenile court accepted the transfer, over objections from the San Mateo County probation department and the prosecutor, and denied a request for transfer out.

On January 12, 2024, the probation department reported that, since entering San Mateo County's Youth Services Center while awaiting disposition, Jose had received five incident reports for disparaging available programming, refusing to follow staff directives, throwing a gang sign, and physical fights with other wards. Probation recommended committing him to San Mateo County's Success and Opportunities Aspiring Readiness for Reentry (SOARR) program at the SYTF. The juvenile court ordered Jose committed to SYTF for a maximum term of confinement of two years and 11 months—or until age 25 (§ 875, subd. (c)(1)(A))—and an individual rehabilitation plan (§ 875, subd. (d)(1)) was developed.

**C.**

On May 3, 2024, a notice of juvenile probation violation was filed, pursuant to section 777, subdivision (a), alleging that Jose physically assaulted another ward at SYTF. Jose admitted the violation. A progress review report (§ 875, subd. (e)(1)(A)) from probation recommended that Jose be continued as a ward of the court and remain in the SOARR program. On August 27, 2024, the juvenile court adopted the probation report's findings and recommendations.

About three months later, the probation department petitioned to set aside Jose's SYTF commitment, pursuant to section 779.5,[2] noting that the placement had become untenable because, over the preceding eight months, Jose had been consistently defiant and violent. Probation asked the court to set aside Jose's SYTF placement and have him remain at county jail, where he was being held to answer recently filed criminal charges in adult court. The petition noted that, in November

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[2] Section 779.5 provides: "The court committing a ward to a secure youth treatment facility . . . may thereafter modify or set aside the order of commitment upon the written application of the ward or the probation department and upon a showing of good cause that the county or the commitment facility has failed, or is unable to, provide the ward with treatment, programming, and education that are consistent with the individual rehabilitation plan . . . , that the conditions under which the ward is confined are harmful to the ward, or that the juvenile justice goals of rehabilitation and community safety are no longer served by continued confinement of the ward in a secure youth treatment facility. The court shall notice a hearing in which it shall hear any evidence from the ward, the probation department, and any behavioral health or other specialists having information relevant to consideration of the request to modify or set aside the order of commitment. The court shall, at the conclusion of the hearing, make its findings on the record, including findings as to the custodial and supervision status of the ward, based on the evidence presented."

2024, Jose was arrested after engaging in physical altercations with staff and assaulting another ward. The San Mateo County district attorney filed a criminal complaint charging him with four felony counts of resisting an executive officer (Pen. Code, § 69) and one misdemeanor count of battery (*id.*, § 242). In the month before the physical altercations, Jose had refused to engage in structured programming, expressed his preference for county jail, and threatened to assault staff if he was not sent to county jail.

After the hearing on probation's petition was repeatedly continued, Jose himself moved to set aside his SYTF commitment and terminate the juvenile court's jurisdiction. Jose conceded: "The parties are in agreement that [his] SYTF/SOARR commitment should be set aside and the court has authority to do this under [section] 779.5." He further stated, "if the court wants to incarcerate him in county jail, then it must acknowledge it is giving up on his juvenile rehabilitation and, as a result, cannot incarcerate him on the juvenile matter (because it would not be consistent with rehabilitative requirements . . . )."

The probation department filed a supplemental petition seeking an order that Jose—a ward over 19 years old—could be housed in county jail, pursuant to section 208.5, for the remainder of the juvenile court's jurisdiction because he posed a danger to others, should be held accountable for his violent offense, and could be effectively served in county jail. The People joined in the proposal to set aside the SYTF commitment, citing section 779.5, but asked the court to order Jose to serve the remainder of his confinement at juvenile hall and to then grant the probation department's petition that he be housed in county jail pursuant to section 208.5. The People alternatively argued that, when a ward is returned to local custody after having been committed to DJJ and having served time in an adult facility, the

juvenile court may commit the ward to jail, under section 875, subdivision (k).

On July 29, 2025, the juvenile court granted the motions and set aside the SYTF placement, under section 779.5, finding there was a showing of good cause that rehabilitation and community safety goals were not being served. The court further noted that "the parties are in agreement that under . . . [s]ection 779.5, the Court has the discretion to recall a [SYTF] commitment."

Concluding the matter was then on for disposition and having received testimony on the availability of rehabilitative services in the county jail, the juvenile court ordered Jose committed to county jail as a ward until the age of 25, citing section 208.5. Although Jose's counsel did state that Jose could not be "ordered to serve his baseline term in county jail once his SYTF commitment is terminated," Jose did not object to placement in the county jail. His counsel stated: "[T]hat is an issue that I have discussed with Jose and that is fine."

## DISCUSSION

Despite having asked the juvenile court to set aside his SYTF commitment and agreeing to placement in county jail, Jose now maintains the juvenile court's disposition order was unauthorized. We disagree.

We generally review a juvenile court's dispositional order for abuse of discretion. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330; see *In re Greg F.* (2012) 55 Cal.4th 393, 411.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) To the extent Jose raises pure issues of law, such as statutory interpretation, our review is de novo. (*R.E. v. Superior Court* (2019) 42 Cal.App.5th 373, 378.) "In interpreting a statute, our task is to determine the

Legislature's intent in order to effectuate the statute's purpose. [Citation.] We first examine the statute's language, giving the words a commonsense and plain meaning." (*Gabriel M. v. Superior Court* (2024) 107 Cal.App.5th 446, 451-452.)

In arguing that a county jail commitment is unauthorized, Jose largely relies on decades-old cases that barred juvenile courts from committing a ward to jail if the ward was 18 years old or younger. (See, e.g., *In re Kenny A.* (2000) 79 Cal.App.4th 1, 5-6 [juvenile court cannot commit an 18-year-old ward to county jail]; *In re Jose H.* (2000) 77 Cal.App.4th 1090, 1097 [same].) Jose does not grapple with the current version of the statutes (see, e.g., § 208.5, subd. (b) ["[t]he probation department may petition the court to house a person who is 19 years of age or older in an adult facility, including a jail or other facility established for the purpose of confinement of adults"]) or the fact that he was 23 years old at the time of the challenged order. Moreover, Jose himself agreed with the probation officer and prosecutor that county jail was the preferred placement.

We need not decide, however, whether Jose forfeited his current argument or whether section 208.5 authorized the jail commitment. (See § 208.5, subds. (b)-(c) [authorizing placement of wards 19 years or older in jail in certain circumstances and requiring written findings]; but see *id.*, subd. (e) ["[a] person who is 19 years of age or older and who has been committed to a county juvenile facility or a facility of a contracted entity shall remain in the facility and shall not be subject to a petition for transfer to an adult facility"].) Instead, we conclude section 875, subdivision (k), provides an alternative ground for affirming the disposition. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19 [reviewing court may affirm trial court decision on any correct legal theory].)

Section 875 was enacted in 2021 and amended in 2023. (Stats. 2021, ch. 18, § 12, eff. May 14, 2021; Stats. 2023, ch. 47, §

30, eff. July 10, 2023.) The statute governs commitments to a SYTF for those youth who, like Jose, have committed the most serious offenses and would have previously been committed to DJJ. (§ 875, subds. (a)(1), (a)(3); *In re Tony R., supra,* 98 Cal.App.5th at pp. 406, 410.)

As the People correctly point out, section 875, subdivision (k), states: "Upon return to local custody, *a person who was, prior to July 1, 2023, sentenced to state prison and was found to be a ward of the court and committed to the Division of Juvenile Justice, shall not be committed or detained in a juvenile facility*, unless the juvenile court with jurisdiction over that person finds it is in the person's best interest and does not find that it would create a risk to the other youth in the juvenile facility. *A juvenile court exercising jurisdiction over the commitment or detention of a person described in this subdivision may order the person into an adult facility, including a jail* or other facility established for the confinement of adults, a less restrictive program, as defined in section (f), if the person is otherwise eligible for that program, or returned to the Department of Corrections and Rehabilitation pursuant to subdivision (f) of Section 1732.9." (Italics added.)

The statute's plain language applies here. Jose is "a person who was, prior to July 1, 2023, sentenced to state prison and was found to be a ward of the court and committed to the Division of Juvenile Justice." (§ 875, subd. (k).) As Jose concedes, he was sentenced to prison in 2022 and was also found to be a ward and committed to DJJ, in 2019. The question is where to place him after his "return to local custody." (§ 875, subd. (k).) Nobody suggests it was in Jose's best interest to remain in the juvenile facility; indeed, he agreed to set aside his commitment to SYTF after committing assaults, refusing to engage in rehabilitative programming, and requesting placement in jail. The juvenile court was thus authorized to "order [Jose] into an adult facility, including a jail . . . ." (§ 875, subd. (k).)

In his reply brief, Jose offers a contorted reading of the statute. He argues that section 875, subdivision (k), does not apply to him because it prescribes a specific sequence: *first* the person must have been sentenced to state prison, *then* adjudged a ward of the court, and *then* committed to DJJ.

This is not a reasonable construction of the statute. Section 875, subdivision (k)'s plain language does not prescribe a particular sequence. Under Jose's interpretation, moreover, the Legislature authorized jail only in narrow, peculiar circumstances where a minor—that is, a person under 18 years of age (see § 602)—is sentenced to prison as an adult for one crime, then later is found to be a ward in juvenile court for another crime. Jose does not explain why the Legislature would exclude jail as an option in the more likely scenario—where the sequence is reversed. (See *In re Julian R.* (2009) 47 Cal.4th 487, 495 ["[t]he jurisdiction of the juvenile court extends to persons who are *under* 18 years of age when they violate any law defining a crime"], italics added.)

Indeed, the statute's reference to section 1732.9, subdivision (f), supports our conclusion that section 875, subdivision (k), applies here: "Notwithstanding any other law, a person who has been returned to the county after serving a sentence imposed pursuant to Section 1170 of the Penal Code for a felony committed *while the person was in the custody of the [DJJ*], may be transferred to the custody of the Department of Corrections and Rehabilitation if the person consents to the transfer after having been provided with [certain] explanations [from a probation officer] . . . , and after consulting with the juvenile counsel of record." (§ 1732.9, subd. (f), italics added.) Accordingly, we read section 875, subdivision (k), in harmony with section 1732.9 and common sense to include wards (like Jose) who were committed to DJJ and thereafter sentenced to state prison.

Jose has not demonstrated error.

## DISPOSITION

The dispositional order, dated July 29, 2025, is affirmed.

BURNS, J.

WE CONCUR:

JACKSON, P.J.
CHOU, J.

*In re Jose S. / P. v. Jose S. (*A173967*)*

Superior Court of San Mateo County, No. 17-JW-2000, The Honorable Sharon K. Cho, Judge.

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