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OPINION	:	No. 79-1209
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of	:	<u>May 28, 1980</u>
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SUBJECT: Youth Authority—In committing a person to the Youth Authority under the provisions of Welfare and Institutions Code section 1731.5, the court may not properly order that the commitment period run consecutively to a prior juvenile court commitment. Where a Youth Authority ward commits an offense while on parole and is sentenced to county jail, the Youth Authority is not required to give credit for the jail confinement time upon revoking the ward's parole.

The Honorable Pearl S. West, Director, Department of the Youth Authority, has requested an opinion on the following questions:

1. In committing a person to the Youth Authority under the provisions of Welfare and Institutions Code section 1731.5, may the court order the commitment period to run consecutively to a prior juvenile court commitment?
2. Where a Youth Authority ward commits an offense while on parole and is sentenced to county jail, must the Youth Authority give credit for the jail confinement time upon revoking the ward's parole?

CONCLUSIONS

1. In committing a person to the Youth Authority under the provisions of Welfare and Institutions Code section 1731.5, the court may not properly order that the commitment period run consecutively to a prior juvenile court commitment.

2. Where a Youth Authority ward commits an offense while on parole and is sentenced to county jail, the Youth Authority is not required to give credit for the jail confinement time upon revoking the ward's parole.

ANALYSIS

Youth Authority wards may be divided into two classifications: those committed by the juvenile court system pursuant to Welfare and Institutions Code sections 731 and 1736¹ (hereinafter "juveniles") and those committed by the criminal court system pursuant to section 1731.5 (hereinafter "youthful offenders"). (See *People v. Olivas* (1976) 17 Cal. 3d 236, 240–241 fn. 5; *People v. Jiminez* (1979) 94 Cal. App. 3d 707, 709–711.)

In the question presented, we are asked to consider the situation of a ward who has been committed to the Youth Authority from both the juvenile court system and the criminal court system. Such circumstances may result, for example, by the following chain of events: (1) a juvenile commits a burglary and is sent to the Youth Authority by a juvenile court judge under the provisions of section 731, (2) after a confinement period of one year, the Youth Authority grants parole, (3) the juvenile becomes an adult upon reaching his 18th birthday, and (4) after committing another burglary, he is convicted and sent back to the Youth Authority by a superior court judge under the provisions of section 1731.5.

The issue to be resolved is whether the superior court judge may properly order that section 1731.5 commitment run consecutively to the section 731 commitment, which would still have "time available" after a parole revocation by the Youth Authority. We conclude that such an order would be improper.

The statutory authority for imposing consecutive sentences is found in Penal Code section 669:

"When any person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed

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

shall direct whether the terms of imprisonment or any of them to which he is sentenced shall run concurrently or consecutively; . . .”

Penal Code sections 1170 and 1170.1 specify how the aggregate term of imprisonment is to be determined where consecutive sentences are imposed.

We note first that while imprisonment of adults “is best served by terms proportionate to the seriousness of the offense” (Penal Code § 1170 subd. (a) (1)), Youth Authority commitments are for “training and treatment directed toward the correction and rehabilitation of young persons.” (§ 1702; see *In re Eric J.* (1979) 25 Cal. 3d 522, 531; *In re Aline D.* (1975) 14 Cal. 3d 557, 567; *In re Leonard R.* (1977) 76 Cal. App. 3d 100, 104.)

Under the Juvenile Court Law (§§ 200–945), a “disposition occurs at a “dispositional hearing,” where the minor is “committed” to the Youth Authority; no “judgment of conviction” is rendered or “sentence” imposed. (See §§ 731, 742.) Section 203 specifically provides:

“An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.”

Hence, the Penal Code provision authorizing “consecutive sentences” is not expressly applicable to commitments to the Youth Authority and provides no direct basis for ordering Youth Authority commitments to run consecutively.

Such an interpretation of the relevant Penal Code provisions is consistent with the Youth Authority’s responsibility under the Welfare and Institutions Code in determining the commitment period of one of its wards.

In *People v. Franklin* (1980) 102 Cal. App. 3d 250, the Court of Appeal recently reviewed a superior court order of commitment under section 1731.5 that attempted to limit the Youth Authority’s jurisdiction over the defendant to a period of three years. The limitation was struck down by the Court of Appeal on the grounds that a section 1731.5 commitment was for an indefinite period, with the determination to be made by the Youth Authority as to the extent of its jurisdiction, including period of parole. (*Id.*, at 253–254.)

Several provisions of the Welfare and Institutions Code make clear that the consecutive sentencing procedure of the Penal Code is inapplicable to Youth Authority commitments. Section 1765 provides:

“(a) Except as otherwise provided in this chapter, the Authority, shall keep under continued study a person in its control and shall retain him, subject to the limitations of this chapter, under supervision and control *so long as in its judgment such control is necessary for the protection of the public.*

“(b) The Authority shall discharge such person as *soon as in its opinion* there is reasonable probability that he can be given full liberty without danger to the public.” (Emphasis added.)

Section 1766 states:

“When a person has been committed to the authority it may

“(a) Permit him his liberty under supervision and upon such conditions as it believes best designed for the protection of the public;

“(b) Order his confinement under such conditions as it believes best designed for the protection of the public, except that a person committed to the Youth Authority pursuant to Sections 731 or 1731.5 may not be held in physical confinement for a total period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought the minor under the jurisdiction of the juvenile court, or which resulted in the commitment of the young adult to the Youth Authority. Nothing in this subdivision limits the power of the authority to retain the minor or the young adult on parole status for the period permitted by Sections 1769, 1770, and 1771;

“(c) Order reconfinement or renewed release under supervision as often as conditions indicate to be desirable;

“(d) Revoke or modify any order except an order of discharge as often as conditions indicate to be desirable;

“(e) Modify an order of discharge if conditions indicate that such modification is desirable and when such modification is to the benefit of the person committed to the authority;

“(f) Discharge him from its control when it is satisfied that such discharge is consistent with the protection of the public.” (Emphasis added.)

Section 1767 provides in part:

“Except as provided in Section 1711.5 of this code, every order granting probation to, committing to an institution, granting and revoking parole and issuing final discharges to any person under the control of the authority shall be made by the authority and the authority may not delegate the making of such decisions to any other body or person.

Section 1767.3 states in part:

“The authority may suspend, cancel, or revoke any parole without notice, and may order returned to the custody of the authority any person committed to it who is upon parole.”

Taken together, these provisions of the Welfare and Institutions Code demonstrate an intent by the Legislature to place responsibility upon the Youth Authority for determining the extent of a ward’s commitment period. No provision in the Welfare and Institutions Code authorizes a criminal court to affect the length of a Youth Authority commitment by specifying that its commitment shall be consecutive to a juvenile court commitment.

The conclusion to the first question, therefore, is that in committing a person to the Youth Authority under the provisions of section 1731.5, a court may not properly order that the commitment period run consecutively to a prior juvenile court commitment.

The second question is based upon the following chain of events: a ward (juvenile or youthful offender) of the Youth Authority has been paroled, has committed a crime, and has been sentenced to county jail by a criminal court. We are asked whether the Youth Authority, in subsequently revoking the ward’s parole, must deduct the jail confinement period from the confinement time remaining on the Youth Authority commitment. We conclude that credit need not be given for the jail confinement time.

As previously set forth, section 1766 limits the confinement time of a ward committed to the Youth Authority pursuant to sections 731 and 1731.5 to “the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought the minor under the jurisdiction of the juvenile court, or which resulted in the commitment of the young adult to the Youth Authority.” Similar language is contained in sections 726 and 731, pertaining expressly to juvenile court wards.

We believe that these statutory provisions suggest consideration as to whether an adult would be given credit against his maximum period of imprisonment under similar

circumstances, i.e., serving a sentence in jail for a subsequent unrelated offense after which his parole is revoked. (See *In re Eric Jr.*, *supra*, 25 Cal. 3d 522, 536.) The answer is no. While the Legislature may have limited the period of confinement under these circumstances (see Penal Code § 3057 subd. (a)), we have found no law authorizing credit to be given to an adult against such period of confinement. Accordingly, since an adult would not be entitled to credit in similar circumstances, we do not believe that sections 726, 731, and 1766 require the Youth Authority to grant credit where one of its parolees serves a jail sentence on an unrelated offense.

The conclusion to the second question, therefore, is that where a Youth Authority parolee commits an offense and is sentenced to county jail, the Youth Authority need not give credit for the jail confinement time upon revoking the ward's parole.
