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OPINION	:	No. 80-216
	:	
of	:	<u>September 30, 1980</u>
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SUBJECT: DEPARTMENT OF YOUTH AUTHORITY; PHYSICAL CONFINEMENT TIME—A person committed to the Department of the Youth Authority prior to the decision in *In re Eric J.*, who did not receive precommitment custody credit, is entitled to adjustments to his or her period of authorized physical confinement time. A person committed to the Department of the Youth Authority by the juvenile court for whom the committing court computed the maximum term at less than the highest of the three ranges provided in Welfare and Institutions Code section 726, is subject to having his or her period of maximum physical confinement recomputed to specify the correct maximum.

The Honorable Pearl S. West, Director, Department of the Youth Authority, has requested an opinion on questions which we have phrased as follows:

1. Is a person committed to the Department of the Youth Authority by the juvenile court prior to the decision in *In re Eric J.* (1979) 25 Cal. 3d 522, who did not receive precommitment custody credit, entitled to adjustments to his or her period of authorized physical confinement time, and if so, by whom?

2. Is a person committed to the Department of the Youth Authority by the juvenile court for whom the committing court has computed the maximum term at less than the highest of the three ranges provided for by Welfare and Institutions Code section 726, subject to having his or her period of maximum confinement recomputed and, if so, by whom?

CONCLUSIONS

1. A person committed to the Department of the Youth Authority by the juvenile court prior to the decision in *In re Eric J.*, *supra*, 25 Cal. 3d 522, who did not receive precommitment custody credit, is entitled to adjustments to his or her period of authorized physical confinement time and the Youth Authority may administratively make such adjustments.

2. A person committed to the Department of the Youth Authority by the juvenile court for whom the committing court computed the maximum term at less than the highest of the three ranges provided in Welfare and Institutions Code section 726, is subject to having his or her period of maximum physical confinement recomputed to specify the correct maximum. Such correction of the commitment order must be made by an appropriate court order.

ANALYSIS

Introduction:

Welfare and Institutions¹ Code Section 726 provides in pertinent part:

“In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

“As used in this section and in Section 731, ‘maximum term of imprisonment’ means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170

¹ Hereafter, all unidentified section reference will be to the Welfare and Institutions Code.

of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be-proven if pled.

“If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ‘maximum term of imprisonment’ shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code

“If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the ‘maximum term of imprisonment’ is the longest term of imprisonment prescribed by law.

“‘Physical confinement’ means placement in a juvenile bail, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.”

Section 731 provides in pertinent part:

“When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court . . . may commit the minor to the Department of the Youth Authority.”

“A minor committed to the Department of the Youth Authority may not be held in physical confinement for a 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 or continued the minor under the jurisdiction of the juvenile court. Nothing in this section, limits the power of the Youthful Offender Parole Board to retain the minor on parole status for the period permitted by Section 1769.”

Accordingly, a ward committed to the California Youth Authority (hereafter, “CYA”) pursuant to sections 602, 726, and 731, (hereafter ‘referred to as a “section 602 ward”) on the basis of a felony offense having a determinate sentence, may be held in physical confinement for a period equal to the upper term of the three term sentence choice prescribed under the Determinate Sentence Law (Pen. Code, § 1170 *et seq.*) without the necessity of finding circumstances in aggravation as provided for in subdivision (b) of Penal Code section 1170. As to other felonies and as to misdemeanors, section 726 simply provides: that the maximum period of physical confinement is to be measured by the longest term of imprisonment prescribed by law for the offense.

In *In re Eric J.*, *supra*, 25 Cal. 3d 522, the Supreme Court considered three issues regarding the provisions of section 726. First, the court rejected a contention that to the extent section 726 permits imposition of the upper determinate term without a finding of aggravating circumstances, it violates the equal protection clause of the state and federal constitutions. In this regard the court held adults and minors are not similarly situated with respect to their liberty interests. Section 602 wards are confined for the purposes of rehabilitation whereas adults are confined for the purposes of punishment.

Second, the court in *Eric J.* held that a section 602 ward is entitled to precommitment custody credit similar to that provided the adults by Penal Code section 2900.5 for time spent in custody in juvenile detention facilities prior to commitment to CYA.

Third, the court held that where the juvenile court aggregates a felony and a misdemeanor term under section 726, the “consecutive” misdemeanor “sentence” is to be computed at one-third the maximum jail term prescribed by law. The court found that the provisions of section 726, in effect, incorporate by reference the consecutive sentence provisions of Penal Code section 1170.1, subdivision (a) and make them applicable to misdemeanor terms which are aggregated with felony terms.

We are advised by CYA that some of the commitment orders for section 602 wards presently in its custody (1) specify a period of confinement less than the maximum term as defined in section 726 or, (2) do not specify precommitment custody credit. The questions presented herein concern the responsibility of CYA² with respect to such orders in light of the *Eric J.* decision.

Question 1:

We are asked whether section 602 wards committed to CYA prior to the decision in *In re Eric J.*, *supra*, 25 Cal. 3d 522 are entitled to precommitment custody credit as specified in that decision and if they are, whether CYA may administratively give such credit. The court in *In re Eric J.*, *supra*, at page 536 stated such credit was to be given “in

² The Director of CYA is generally responsible for the care and treatment of persons committed to his or her custody (§§ 1712–1714). However, the Youthful Offender Parole Board is vested with the authority to determine the length of confinement and parole as well as the discharge date or a CYA committee. (§§ 1765, 1766.) The Legislature in creating this separate board (see Stats. 1979, ch. 860) expressed the intention that the Director and the Board cooperate and work together in the areas of each other’s authority. (§ 1714.) We are advised that CYA staff, not Board staff, maintains the records of inmates. (See §§ 1740, 1741, 1763.)

order to carry out the mandate of section 726 The court's holding was an interpretation of existing law, i.e., section 726 which provides that a minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed on an adult convicted of the same offense or offenses.

In *In re Kapperman* (1974) 11 Cal. 3d 542, the Supreme Court struck down a provision of Penal Code section 2900.5 limiting the statutes application to persons committed to the custody of the Director of Corrections after its effective date as unconstitutional. The court found that the provision of the statute denied a benefit to certain members of the class of prison inmates and granted it to others and that the classification was without support of a rational and legitimate state interest. It was thus invalid under former article I, sections 11 and 21 of the California Constitution (see now art. IV, § 16, and art. I, § 7) requiring the uniform operation of laws and proscribing special privileges, and under the equal protection clause of the Fourteenth Amendment of the United States Constitution. The final paragraph of *In re Kapperman*, *supra*, at p. 555 reads:

“Thus, we conclude that the credit under section 2900.5 should be extended to those incarcerated or on parole for felony offenses regardless of the date of their commitment to state prison. *We hereby direct the Adult Authority to take appropriate steps to inform petitioner and all other persons under its custody and supervision of the availability of that credit, to ascertain the amount of credit due and to adjust its records accordingly.*” (Emphasis added.)

More recently, the Supreme Court in holding persons sentenced to state prison are entitled to precommitment “conduct” credits (see Pen. Code, § 4019) in addition to the custody credits provided for in Penal Code section 2900.5 stated that, while the obligation is on the trial court to determine the amount of credit, the Department of Corrections is authorized to compute additional credit due inmates already committed to its custody. (*People v. Sage* (1980) 26 Cal. 3d 498 as modified at 27 Cal. 3d 144a (advance reports); but see *In re Allen* (1980) 105 Cal. App. 3d 310.)

In our view the same type of administrative procedure is available to CYA with respect to section 602 wards who are entitled to precommitment custody credit. In this regard, we note the court in *In re Ruben Al.* (1979) 96 Cal. App. 3d 690, 703, which case was decided while *Eric J.* was pending in the Supreme Court, found no need to consider the minor's contention that he was entitled to precommitment custody credit. The court stated: “Presumably if such credits are awarded, the minor will receive benefit thereof administratively.” (*Id.*)

It is our conclusion, therefore, that a section 602 ward committed to CYA prior to the decision in *Eric J.* is entitled to precommitment custody credit as specified in that decision and CYA may administratively provide the appropriate credit for such ward who did not receive such credit on the commitment order.

Question 2:

Section 726 provides that in the case of a minor committed to CYA “as a result of an order of wardship made pursuant to section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” Section 726 defines this maximum term as the longest of the three terms set forth in Penal Code section 1170, subdivision (a) (2). CYA advises us that in the case of some commitment orders, the juvenile courts have not specified that maximum term as the longest term, but instead have chosen a lesser term apparently on the theory that the juvenile court has discretion in this respect.

As presently enacted, section 726 is clear on its face. It states that the commitment order “shall specify” the maximum term of physical confinement. It then defines what that term is. In *In re James A.*, *supra*, 101 Cal. App. 3d 332, the court rejected a contention that the juvenile court had discretion to determine the maximum term of physical confinement at less than the upper sentencing choice as provided for in Penal Code section 1170, subdivision (a) (2). The court held that in respect to the computation of this term the order of commitment “is not a determinative order.” (101 Cal. App. 3d at p. 338.)³ The Juvenile Court Law provides for indeterminate terms with provision for parole as soon as appropriate. (*In re Eric J.*, *supra*, 25 Cal. 3d at pp. 531–532; *In re James A.*, *supra*, 101 Cal. App. 3d 332.) The court has no discretion to specify a term contrary to the maximum term provided for in section 726.

The third paragraph of section 726 which defines the maximum term of imprisonment as the longest of the three time periods set forth in Penal Code section 1170, subdivision (a) (2) was added by Statutes of 1977, chapter 1238, section 1, effective October 1, 1977. Prior to that date section 726 simply provided that the order of wardship “shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted

³ Section 726 does provide that the court may elect to aggregate the period of physical confinement on multiple counts or petitions. Thus, the court has discretion with regard to such aggregation. See *In re Richard W.* (1979) 91 Cal. App. 3d 960, 980, modified in 93 Cal. App. 3d 1010e (advance reports).

of the offense which brought the minor under the jurisdiction of the juvenile court.” (Stats. 1976, ch. 1071, § 29.)

The amendment of section 726 by Statutes of 1977, chapter 1238, section 1 was expressly declared by the Legislature to be a *clarification* of existing law. Section 4 of chapter 1238 provides:

“This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

“In order to *clarify* changes made in the extensive revision of the juvenile court law enacted at the 1975–1976 Regular Session of the Legislature, it is imperative that this act shall take effect immediately.” (Emphasis added.)

In *In re John W.* (1978) 81 Cal. App. 3d 994, the Court of Appeal, Third Appellate District, held that the phrase “the maximum term of imprisonment which could be imposed upon an adult convicted of the [same] offense” in section 726 as it read prior to the October 1, 1977 amendment means the upper determinate term for a felony offense as provided for in Penal Code section 1170, subdivision (a) (2). It held that the October 1, 1977 amendment merely clarified existing law. It noted that rule 3373(b) of the California Rules of Court as it existed prior to January 1, 1978, provided that as to a section 602 ward “the maximum term of confinement shall be determined by the procedures applicable to the sentencing of an adult to imprisonment.” The court held the rule to be in conflict with section 726 and thus not controlling. (See *McBride v. Alpha Realty Corp.* (1975) 49 Cal. App. 3d 925, 929.) The minor in *John W.* petitioned the Supreme Court for a hearing and the petition was denied on August 16, 1978.

In *In re Dennis C.* (1980) 104 Cal. App. 3d 16, the Court of Appeal, the Fifth Appellate District held that the October 1, 1977 amendment to section 726 as applied to criminal offenses committed by minors prior to that date constituted an ex post facto law in violation of the state and federal constitutions. The court, relying on former rule 1373(b) stated that prior to the amendment, a section 602 ward, like an adult, could not receive more than the middle determinate term absent a hearing and finding of aggravating circumstances. (See Pen. Code, § 1170. subd. (b).) The court rejected the rationale of *John W.* primarily on the basis of the premise that the 1977 amendment was not a “clarification” but a change of preexisting law. Petition for hearing by the respondent in *Dennis C.* was denied on May 28, 1980.

Thus, there is a question regarding the applicability of section 726 to section 602 wards who committed offenses prior to October 1, 1977. We view *John W.* as the more persuasive decision in light of basic principles of statutory construction.

The key to the issue is the interpretation of section 726 as it existed prior to the 1977 amendment. “The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (Select Base Materials (1959) 51 Cal. 2d 640, 645.) “In interpreting particular words, phrases or clauses in a statute, it is a cardinal rule that the entire substance of the statute or that portion relating to the subject under review should be examined in order to determine the scope and purpose of the provision containing such words, phrases, or clauses.” (*West Pica Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal. 3d 594, 608.) The words in question must be construed in context with the nature and purpose of the statute in mind. (*Id.*) in ascertaining legislative intent behind a statute, each word and clause should be given effect if at all possible. (*Gay Law Students Assn. v. Pacific Telephone & Telegraph Co.* (1979) 24 Cal. 3d 458, 478.)

Applying these rules to the former version of section 726, it seems clear that the words “maximum term of imprisonment which could be imposed upon an adult” refer to the *upper* determinate term specified in Penal Code section 1170. There is nothing in the section which suggests the court was to determine the term by the sentence choice procedure applicable to adults and set forth in Penal Code section 1170. If the Legislature had intended to make determinate sentence procedures applicable to section 602 wards, it could have so stated. It did not.

Moreover, to presume a legislative intent to apply to adult determinate sentence procedures by virtue of the language of section 726 would be contrary to nature and purpose of the Juvenile Court Law. As the court stated in *In re Eric J.*, *supra*, 25 Cal. 3d at pp. 531–532:

“The enactment of the Uniform Determinate Sentencing Act marked a significant change in the penal philosophy of this state regarding adult offenders. ‘The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.’” (Pen. Code, § 1170, subd. (a)(1).)

“There has been no like revolution in society’s attitude toward juvenile offenders. It is still true that ‘[j]uvenile commitment proceedings are designed for the purposes of rehabilitation and treatment, not punishment.’ (*In re Aline D.*, *supra*, 14 Cal. 3d 557, 567.) Therefore, Juvenile Court Law continues to provide for indeterminate terms, with provision for parole as soon as appropriate. (Welf. & Inst. Code, § 1176.)”

In *In re James A.* *supra*, 101 Cal. App. 3d at p. 337, the court in discussing the 1977 amendment to section 726 stated:

“The courts of this state have long recognized that an order of commitment under section 726 of the Welfare and Institutions Code is for an indeterminate term, that it is for the Youth Authority, after observation of a minor committed to it, to fix the actual term of his physical confinement (see *In re Herrera* (1943) 23 Cal. 2d [143 P. 2d 345]). The recognition of this role of the Youth Authority has not changed since section 726 was amended (effective Oct. 1, 1977) to include the challenged language here under review (see e.g., *In re Edward B.* (1979) 94 Cal. App. 3d 362; 365; *In re James V.* (1979) 90 Cal. App. 3d 300, 308.”

Thus, in our view the words at issue in former section 726 clearly were not intended to mean anything other than what they appear to say. The “maximum term of imprisonment” for an adult would be the highest determinate sentence choice. The fact an adult would not be subject to that term absent a finding of aggravating circumstances does not change the fact that it is the maximum term.

Furthermore, in amending section 726, by Statutes of 1977, chapter 1738, the Legislature expressly indicated that it was *clarifying* existing law.

“The construction of statutes is a function of the judiciary, but where a statute is ambiguous various aids may be employed in determining the legislative intent, and a subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act.” (*California Emp. Etc. Com. v. Payne* (1947) 31 Cal. 2d 210, 213–214.)

Thus, an express provision in a subsequent amendment to a statute that the amendment is clarifying the preexisting law may be considered in construing the original statute. (*Stockton Savings & Loan Bank v. Massanet* (1941) 18 Cal. 2d 200, 204.) As stated by the court in *Stockton Savings & Loan Bank v. Massanet*, *supra*, at p. 204:

“That is not giving a retroactive effect to a statute, because the meaning of the statute to be interpreted has always been the same. The subsequent legislation interpreting the statute construed, does not change the meaning; it merely supplies an indication of the legislative intent which may be considered together with other factors in arriving at the true intent existing at the time the legislation was enacted.”

We conclude, therefore, that former section 726 was properly construed by the court in *In re John W.*, *supra*, 81 Cal. App. 3d 994. Accordingly, under the holding in *In re James A.*, *supra*, 101 Cal. App. 3d 332, we conclude any commitment order which specifies less than the maximum term as defined in section 726 would not be authorized by law.

We are asked what CYA should do when it receives an order erroneously specifying a term other than the maximum term of commitment by section 726. An order specifying a legally unauthorized term, would be subject to correction by the trial court. A sentence not authorized by law is subject to correction by the court at any time. (*People v. Serrato* (1973) 9 Cal. 3d 753, 763; *People v. Walling* (1980) 105 Cal. App. 3d 893, 896; *People v. Benton* (1979) 100 Cal. App. 3d 92, 102; *People v. Massengale* (1970) 10 Cal. App. 3d 689, 693.) An administrative correctional agency may not “correct” errors contained in a judgment of commitment. (*In re Sandel* (1966) 64 Cal. 2d 412.) The agency must bring the case to the attention of the court for modification. (*Id.*) It is our conclusion, therefore, that CYA (or the Youthful Offender Parole Board) must seek judicial correction of the order.
