

**In re MYRESHEIA W.**

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,  
DIVISION FIVE

61 Cal. App. 4th 734

February 19, 1998, Decided

Myresheia W. filed this mandate petition challenging the respondent court's order in juvenile delinquency proceedings denying her a right to a jury trial. Petitioner was charged with one count of the crime of second degree robbery, in violation of Penal Code section 211. Petitioner alleges that with the passage of the "Three Strikes" legislation, she should be entitled to a jury trial because of the consequences delinquency adjudications pose for serious juvenile offenders. We disagree and deny the writ.

DISCUSSION

Juveniles have traditionally not been entitled to jury trials. The United States Supreme Court in *In re Gault* (1967) did hold that the due process clause of the Fourteenth Amendment afforded certain rights to minors, including the right to receive adequate notice of the charges, right to have counsel, the privilege against self-incrimination, and the right to confront one's accuser.

In 1971, the United States Supreme Court recognized that juvenile court proceedings are different from criminal proceedings. "[T]he applicable due process standard in juvenile proceedings . . . is fundamental fairness [with] an emphasis on factfinding procedures." (*McKeiver v. Pennsylvania*). Using the standard of *McKeiver*, the United States Supreme Court concluded "that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."

Before 1975, the California Supreme Court held that a jury trial was inappropriate in juvenile adjudications. In 1975, the California Supreme Court construed Welfare and Institutions Code section 680 as authorizing juvenile court discretion to impanel advisory juries in jurisdictional hearings. However, the court noted that: "As all parties hereto are fully aware, neither the state nor the federal Constitution guarantees a jury trial in a juvenile proceeding." There was no suggestion or indication by the court that the discretionary use of an advisory jury in an exceptional case would in any way alter the traditional nature of juvenile proceedings.

On November 8, 1994, California voters passed Proposition 184, which added section 1170.12 to the Penal Code. The law provides for increased sentences when defendants are convicted of a current felony and one or more specified priors are found to be true. If a defendant is convicted of a current felony and one "strike" prior is proved, the

defendant's sentence is doubled; if two or more "strike" priors are proved, the sentence is at least twenty-five years to life in prison.

The case of *People v. Davis*, sets the ground rules on the use of juvenile adjudications as strike priors. An order adjudging a minor to be a ward of the juvenile court can be deemed a conviction of a crime for purposes of the Three Strikes law if the order qualified under the remainder of the Three Strikes law. Only certain juvenile adjudications qualify as priors under the Three Strikes: " 'A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if: (A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) . . . or (2) . . . as a felony. (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare [\*\*\*10] and Institutions Code.' "

The minor argues that the *Davis* opinion and the collateral effect of a juvenile court judge sustaining a petition alleging an offense which would be a serious crime if charged against an adult fundamentally change the juvenile court law so that there is now a jury trial right. We disagree. First, given the statutory language, the offenses which qualify for treatment as strike priors constitute a relatively small portion of the juvenile court case load. The strike law would apply only in cases in which a minor was at least 16 years of age, charged with a serious or violent felony offense, and is dealt with in juvenile proceedings rather than adult court. At the outset, the law presumes these minors unfit for juvenile court.

Second, prior to the adoption of the Three Strikes law there was authority for the adult courts to consider juvenile proceedings in determining the base term for sentencing. Pursuant to rule 421 of the California Rules of Court, prior sustained petitions can be considered by a trial court in finding circumstances in aggravation for purposes of setting the base term of a sentence. Federal law also allows the consideration of juvenile records in determining an appropriate sentence.

Third, the California juvenile court system remains unique and different from the adult court system. The Welfare and Institutions Code continues to place special duties upon California juvenile court judges and other participants in the juvenile court system, separate and apart from those placed upon criminal court judges. California law requires juvenile court personnel to take a different view of their role than that taken by their counterparts in the criminal courts.

The California juvenile system has available diagnostic and rehabilitative services that are significantly better than those available in adult criminal proceedings. The options available to a juvenile court hearing officer after a minor has been declared a ward of the court are numerous, including diagnostic studies, home on probation, suitable placement,

detention, camp placement, and commitment to the California Youth Authority.

(2) The purpose of juvenile proceedings remains markedly different from that of adult proceedings. The state's purpose in juvenile proceedings is a rehabilitative one distinguishable from the criminal justice system for adults, which has a purely punitive purpose separate from its rehabilitative goals. The proceedings are intended to secure for the minor such care and guidance as will best serve the interests of the minor and the state and to impose upon the minor a sense of responsibility for his or her actions. The purpose of imprisonment pursuant to criminal law is punishment. While part of the juvenile justice system does include punishment in certain cases, it does not change the primary purpose of juvenile proceedings from that of preserving and promoting the welfare of the child. In juvenile law, ". . . the reference to punishment did not alter the overall rehabilitative aspect of the juvenile justice system."

The Three Strikes use of a juvenile adjudication in sentencing does not alter the treatment purpose of the previous juvenile adjudication. Even considering the Three Strikes potential, the end result of a declaration of delinquency remains different from a finding of criminal guilt in adult proceedings.

When the Legislature and the voters of the State of California enacted the Three Strikes law, they did not require jury trials for minors. We decline to add the requirement of jury trial in juvenile adjudications simply as a result of the fact that if a minor commits certain crimes as an adult, the juvenile adjudications, in limited situations, may result in additional punishment for the now adult offender. The collateral impact of the Three Strikes law does not change the fundamentally different nature of juvenile and adult court proceedings. Hence, a juvenile adjudication without a jury trial does not violate a juvenile's due process rights.

