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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MARCOS H., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCOS H.,

Defendant and Appellant.

D050829

(Super. Ct. No. JJL23673)

APPEAL from an order of the Superior Court of Imperial County, Poli Flores,
Temporary Judge. Affirmed.

Seventeen-year-old Marcos H. entered a negotiated admission to one count of smuggling aliens into the country (8 U.S.C § 1324(a)(2)(B)(iii)). The juvenile court declared Marcos a ward (Welf. & Inst. Code, § 602), and placed him on probation,

conditioned on him spending 73 days in juvenile hall. Marcos appeals, contending the juvenile court did not have jurisdiction because the petition filed against him alleged he violated a federal statute. We affirm.

FACTS

On February 11, 2007, Marcos, a resident of Mexico, drove a van with 21 passengers from Mexico into the United States. Marcos was aware the passengers did not have documentation to enter the United States legally. Marcos was arrested by U.S. Border Patrol officers in Calexico.

Marcos's attorney filed a motion to dismiss the petition on the ground that the juvenile court lacked jurisdiction. The court denied the motion. Subsequently, Marcos entered a negotiated admission that he illegally brought aliens into the United States without immediately presenting them to an appropriate immigration officer in violation of title 8 United States Code section 1324(a)(2)(B)(iii). The prosecutor agreed to dismiss a second allegation that Marcos had resisted a federal officer. (18 U.S.C. § 111.)

On April 26, the court declared Marcos a ward of the court and placed him on probation. The court ordered Marcos to spend 73 days in juvenile hall, with credit for 73 days served.

DISCUSSION

Marcos contends the federal courts have exclusive jurisdiction to hear violations of federal immigration law, and, therefore, the juvenile court erred by denying his motion

to dismiss, which was based on the court's lack of jurisdiction. The contention is without merit.¹

Generally, state courts may assume subject matter jurisdiction over a federal cause of action absent a provision by Congress to the contrary or "disabling incompatibility between the federal claim and state[]court." (*Gulf Offshore Co. v. Mobil Oil Corp.* (1981) 453 U.S. 473, 477.) In considering the propriety of state-court jurisdiction over any particular federal claim, we begin with the strong presumption that state courts enjoy concurrent jurisdiction. (*Id.*, at p. 478.) It is presumed Congress ordinarily does not intend to displace existing state authority. (*Tafflin v. Levitt* (1990) 493 U.S. 455, 466.) "To give federal courts exclusive jurisdiction over a federal cause of action, Congress must, in an exercise of its powers under the Supremacy Clause, affirmatively divest State courts of their presumptively concurrent jurisdiction." (*Yellow Freight System, Inc. v. Donnelly* (1990) 494 U.S. 820, 823.) Congress may confine jurisdiction to the federal courts either explicitly or impliedly; the presumption can be rebutted by an explicit statutory directive or an "unmistakable implication from legislative history." (*Gulf Offshore Co. v. Mobil Oil Corp.*, *supra*, 453 U.S. at p. 478.) It can also be rebutted "by a clear incompatibility between state-court jurisdiction and federal interests." (*Ibid.*)

¹ We note the issue is currently pending in our Supreme Court in *In re Jose C.* (2007) 155 Cal.App.4th 1115, review granted January 16, 2008 (S158043).

Marcos's argument is based on title 18 United States Code section 3231, which provides: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."² It is well settled that section 3231 provides federal courts with exclusive jurisdiction over federal criminal law claims. (See *Tennessee v. Davis* (1879) 100 U.S. 257, 262.)

However, the Juvenile Justice and Delinquency Prevention Act of 1974, sections 5031 et seq. (the Act), provides that a juvenile:

"shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony . . . and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction."
(§ 5032.)

Under the Act, Congress "revoked the district courts' preexisting, largely unrestricted subject-matter jurisdiction over criminal prosecutions against juveniles[.]" by declaring that acts otherwise criminal, when committed by juveniles, generally become noncriminal and merely "juvenile delinquen[t]" conduct. (*United States v. Chambers*

² All further statutory references are to title 18 of the United States Code, unless otherwise specified.

(6th Cir. 1991) 944 F.2d 1253, 1258 (*Chambers*.)³ "Thus, a juvenile who has committed what otherwise 'would have been a crime if committed by an adult,' [citation] has not committed a criminal offense against the United States and is therefore not within the criminal jurisdiction of the federal courts." (*In re Sealed Case* (D.C. Cir. 1997) 131 F.3d 208, 211, italics omitted.) In section 5032, Congress "partially restored" to federal courts jurisdiction to hear criminal matters against juveniles if, and only if, the certification requirement is met. (*Chambers, supra*, 944 F.2d at p. 1259; *In re Sealed Case, supra*, 131 F.3d at p. 211.)

The certification by the Attorney General, as outlined in section 5032, is a jurisdictional requirement for a federal court to hear a criminal case involving a juvenile. (*Chambers, supra*, 944 F.2d at p. 1259; *In re Sealed Case, supra*, 131 F.3d at p. 211.) Without proper certification, a criminal case involving a juvenile cannot be heard by a federal court. No such certification was submitted in this case. Therefore, the juvenile court had subject matter jurisdiction and properly heard Marcos's case under the federal jurisdictional rules relating to the federal juvenile justice system.

This analysis is also in keeping with the "elementary tenet of statutory construction that 'where there is no clear intention otherwise, a specific statute will not be controlled . . . by a general one.'" (*Guidry v. Sheet Metal Workers Nat. Pension Fund* (1990) 493 U.S. 365, 375; see also *Mitchell v. Superior Court* (1989) 49 Cal.3d 1230,

³ In section 5031, "juvenile delinquency" is defined as a "violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult. . . ."

1250). The specific statute is 18 United States Code section 5032, which carves out an exception for federal criminal cases involving juveniles. For purposes of federal juvenile delinquency claims (see fn. 3, *ante*), section 5032 has replaced section 3231 as the applicable subject matter jurisdictional statute. (*Chambers, supra*, 944 F.2d at pp. 1257-1259.) In other words, section 3231 does not apply to juvenile proceedings.

Congress' enactment of section 5032 "reflects a legislative perception that accused juvenile offenders generally belong in the hands of state authorities, absent unusual circumstances and/or special procedural protections." (*Chambers, supra*, 944 F.2d at p. 1258.) "In short, Congress 'recognized that the federal court system is at best ill equipped to meet the needs of juvenile offenders. Deference to the state courts should always be observed except in the most severe of cases.'" (*Ibid.*)

The Act's distinction between adult crimes and "juvenile delinquency" (see fn. 3, *ante*) is similar to California's treatment of juvenile offenders. Juvenile delinquency proceedings in this state are largely considered civil in nature (Welf. & Inst. Code, § 203) and principally concerned with the status of the minor (*In re Kasaundra D.* (2004) 121 Cal.App.4th 533, 539-540.) Further, under California law, juvenile courts have jurisdiction over a minor who violates federal law. Welfare and Institutions Code section 602 states "any person who is under the age of 18 years when he or she violates any law of this state *or of the United States* . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." (Italics added.)

But for three cases, the authority cited by Marcos to support his argument that section 3231 is controlling in all cases involving only federal crimes predate the

enactment of the Act. *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433 did not involve a juvenile offender. Marcos relies on *State v. Tidwell* (Wash.Ct.App. 1982) 651 P.2d 228, 231, which held that section 3231 precluded a state court's jurisdiction over a juvenile delinquency petition based solely on an alleged violation of federal law. (Accord, *Matter of Welfare of J.J.T.* (Minn.Ct.App. 1997) 559 N.W.2d 714, 716.)

Neither the Washington nor the Minnesota appellate cases is availing. In *State v. Tidwell, supra*, 651 P.2d at pages 230 to 231, the Washington appellate court found section 5032 did not overcome the exclusive jurisdiction of federal court over federal crimes (§ 3231); rather, section 5032 was merely "an expression of congressional preference for state court jurisdiction over offenses committed by juveniles." (*State v. Tidwell, supra*, at p. 230.)

We reject that interpretation of section 5032 because of our conclusion that section 3231 is inapplicable to federal juvenile delinquency claims.

We also find unavailing Marcos's argument that immigration and alienage are the exclusive province of the federal government and therefore the states may not regulate or criminalize matters related to immigration or alienage. (See *Truax v. Raich* (1915) 239 U.S. 33, 42.) At issue in this case is not regulation or criminalization of immigration-related matters. This case is about whether a California juvenile court has jurisdiction to adjudicate violations of federal law by a juvenile. We conclude it does under section 5032 when the Attorney General of the United States does not follow the certification requirement of the statute.

DISPOSITION

The order of wardship is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.