

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Alonzo J., a Person Coming Under the Juvenile Court Law

SUPREME COURT
FILED

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

Case No. S206720

JUN 25 2013

Plaintiff and Respondent,)

Frank A. McGuire Clerk

vs.)



Deputy

Alonzo J.,)

Defendant and Appellant.)

Third Appellate District, No. C068046
Sacramento County Superior Court, No. JV130980
Honorable Robert M. Twiss

APPELLANT'S ANSWER BRIEF ON THE MERITS

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QUESTION PRESENTED

May a juvenile court accept a plea of no contest (Cal. Rules of Court, rule 5.778(e)) from a minor without the consent of the minor's counsel?

STATEMENT OF THE CASE

On November 3, 2010, a petition under Welfare and Institutions Code¹ section 602, subdivision (a), was filed against appellant, Alonzo J., alleging assault with a deadly weapon (skateboard) by means of force likely to produce great bodily injury under Penal Code section 245, subdivision (a)(1), a felony (count one); assault with a deadly weapon (metal heater) by means of force likely to produce great bodily injury under Penal Code section 245, subdivision (a)(1), a felony (count two), and malicious and unlawful damage and destruction of a door under Penal Code section 594, subdivision (b)(2)(A), a misdemeanor (count three). (1 CT² 54-57.)

On January 25, 2011 and February 2, 2011, the juvenile court held hearings pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, to address the fact that Alonzo J. wanted to accept a prosecution plea bargain offer and his

¹ All statutory references shall be to the Welfare and Institutions Code unless otherwise stated.

² As used herein, "CT" refers to the Clerk's Transcript on Appeal; "RT" refers to the Reporter's Transcript on Appeal; "ART" refers to the Augmented Reporter's Transcript on Appeal; "Slip Opn." refers to the Court of Appeal's opinion in this case; "RMB" refers to respondent's opening brief on the merits.

attorney would not consent to the plea agreement. (1 RT 39-56; 64-74.)

The court denied the *Marsden* motion. (1 RT 54-56; 73-74.)

On February 17 and 18, 2011, the court conducted a contested jurisdictional hearing. (1 CT 117-120.) After testimony from several witnesses and closing arguments, the court found all three counts true beyond a reasonable doubt and sustained the petition. (1 CT 117-120; 1 RT 276-282.) The court found that the offenses alleged in counts one and two were felonies. (1 CT 120; 1 RT 281.) At a dispositional hearing on March 8, 2011, the court found that continuance in the home of Alonzo J.'s mother would be contrary to his welfare; that his mother was incapable of providing or had failed or neglected to provide proper maintenance, training, and education of Alonzo J.; and that Alonzo J. had been tried on probation in his mother's custody and had failed to reform. (1 CT 126-127; 2 RT 361.) The court directed the Sacramento County Probation Department to place Alonzo J. (1 CT 127; 2 RT 361.)

On October 10, 2012, the Third District Court of Appeal reversed the juvenile court's adjudication. (Slip Opn. pp. 18-19.) As relevant to the question presented in this case, the court held that "the juvenile court erred under the plea procedure for juveniles ([Cal. Rules of Court,] rule 5.778) by not allowing Alonzo to plead no contest as an alternative plea procedure to

admitting the allegations of the section 602 petition. (Rule 5.778(c), (d), (e).)” (Slip Opn. p. 8.)

This Court granted respondent’s petition for review on January 23, 2013.

INTRODUCTION

This case presents the issue of the proper interpretation of California Rules of Court, rule 5.778(e), and who makes the fundamental decision to enter a no contest plea in juvenile court, i.e., whether the minor may enter a no contest plea with the court’s consent, as the rule plainly states, or whether the minor may only enter a no contest plea with his or her attorney’s approval. Under the rules of statutory construction, rule 5.778(e) allows a minor to enter a no contest plea, subject to the approval of the juvenile court, and consent of counsel is not a prerequisite to entry of a no contest plea. In so providing, rule 5.778 is not inconsistent with section 657, subdivision (b), which requires a minor’s counsel to consent before a minor may *admit* allegations in a petition. In this case, after nearly three months in a juvenile detention center, Alonzo J. wished to accept a prosecution plea bargain offer that would allow him to go home with supervision in exchange for pleading to one felony count of assault with a deadly weapon. His attorney, however, would not consent to Alonzo J.’s

acceptance of this offer. The juvenile court relied on Alonzo J.'s attorney's assessment of the case and refused to accept a plea from Alonzo J. The juvenile court did not follow the procedure outlined in rule 5.778 and failed to recognize that Alonzo J. could plead no contest without the consent of counsel. The Court of Appeal's decision that the trial court erred in not accepting the plea was correct and should be affirmed.

STATEMENT OF FACTS

Appellant adopts the "FACTUAL AND PROCEDURAL BACKGROUND" set forth in the Court of Appeal's opinion, which concisely and accurately sets forth the relevant factual and procedural background of the case. (Slip Opn. pp. 3-8.)

ARGUMENT

I.

A JUVENILE COURT MAY ACCEPT A PLEA OF NO CONTEST FROM A MINOR WITHOUT THE CONSENT OF THE MINOR'S COUNSEL

Under the plain language of rule 5.778, a minor may plead no contest to allegations in a section 602 petition without the consent of his or her attorney. This interpretation of rule 5.778 is consistent with section 657, subdivision (b), which requires a minor's attorney to consent when the minor *admits* allegations in a petition. The legislative history of section 657

and rule 5.778 support this conclusion. Providing a way for a minor to plead no contest without the consent of counsel also allows a minor to exercise his or her constitutional right to make the fundamental decision to accept or reject a prosecution plea bargain offer. Because rule 5.778 allows a minor to plead no contest without the consent of counsel and because the rule is consistent with section 657 and the U.S. and California Constitutions, it has the force of a statute. As a result, a juvenile court is allowed to accept a minor's no contest plea without the consent of counsel. This court should find that the rule gives the minor the power to enter a no contest plea even if counsel does not consent.

A. Standard of review

The California Rules of Court “have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1011, quoting *In re Richard S.* (1991) 54 Cal.3d 857, 863.) A California Rule of Court that conflicts with a statute or constitutional provision is unconstitutional. (*Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1476.) “[A]ppellate courts conduct a de novo review of interpretations of relevant California Rules of Court.” (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 81.) “The ordinary principles of

statutory construction govern [a court's] interpretation of the California Rules of Court. [Citations.] [The Court's] objective is to determine the drafter's intent." (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 902.)

When the Judicial Council adopts a rule of court that is quasi-legislative and does not merely interpret a statute, the scope of review is narrow. (*Sara M. v. Superior Court, supra*, 36 Cal.4th 998, 1012-1014, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1.) If the court is "satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th 1, 10-11.)

B. The plain and unambiguous language of rule 5.778 allows a juvenile court to accept a plea of no contest without the consent of the minor's counsel.

Under the rules of statutory construction, "[i]f the rule's language is clear and unambiguous, it governs. [Citation.]" (*Alan v. American Honda Motor Co., Inc., supra*, 40 Cal.4th 894, 902.) The plain and unambiguous

language of rule 5.778³ allows a minor to enter a no contest plea, subject to the juvenile court's approval, when the minor's counsel does not consent to the minor's admission. (See Cal. Rules of Court, rule 5.778.) Respondent fails to consider the plain language of rule 5.778.

Under rule 5.778(c), (d), and (e), a minor has the option to either (1) deny the allegations of a section 602 petition, (2) admit the allegations, or (3) plead no contest to the allegations. Before a minor may admit or plead no contest to the allegations, certain conditions must be met. Rule 5.778(d)

³ Subdivisions (c), (d), and (e) of rule 5.778 are relevant to section I.B. of appellant's argument:

(c) Admission of allegations; prerequisites to acceptance

The court must then inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court must state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (b).

(d) Consent of counsel--child must admit

Counsel for the child must consent to the admission, which must be made by the child personally.

(e) No contest

The child may enter a plea of no contest to the allegations, subject to the approval of the court.

states “Consent of Counsel – child must admit [¶] Counsel for the child must consent to the admission, which must be made by the child personally.” It is clear from this language that rule 5.778(d), requires the child’s attorney to consent to the child’s admission.

Rule 5.778(e), is equally as clear: “No contest [¶] The child may enter a plea of no contest to the allegations, subject to the approval of the court.” Rule 5.778(e) does not require that the child’s counsel’s consent to a no contest plea. Instead, rule 5.778(e) clearly and separately states that the child may enter a no contest plea subject to the approval of the court. Notably absent from rule 5.778(e) is any requirement that the child’s counsel must also consent to the no contest plea. The fact that the procedures for admissions and no contest pleas are addressed in separate subdivisions of rule 5.778 shows the Judicial Council’s intent that there is a difference in the procedure for each plea. (See *In re Marriage of Harris* (2004) 34 Cal.4th 210, 222, quoting *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659 [a particular clause or section is considered in the context of the statutory framework as a whole].) Respondent does not address how the Judicial Council’s separate explanations of an admission and a no contest plea in different subdivisions is consistent with respondent’s proposed construction of the

rule.

Based on the plain language of rule 5.778, a juvenile court may accept a plea of no contest from a minor without the consent of the minor's counsel.

C. Interpreting rule 5.778(e) to allow the entry of a no contest plea subject to the approval of the juvenile court, but without the consent of counsel, is not inconsistent with section 657, subdivision (b).

As stated above, a rule of court has the force of a statute if it is not inconsistent with any California statute. (*Sara M. v. Superior Court, supra*, 36 Cal.4th 998, 1011.) Respondent contends that allowing a minor to enter a no contest plea without the consent of the minor's attorney impermissibly circumvents the attorney-consent safeguard in section 657, subdivision (b) and is therefore inconsistent with this statute. (RMB 8-11.) Appellant disagrees.

As will be shown, contrary to respondent's contention, rule 5.778(e) is not inconsistent with section 657. First, section 657, subdivision (b) does not address no contest pleas—the statute is simply silent on the appropriate procedure for accepting a no contest plea from a minor. Second, a no contest plea without the consent of counsel does not circumvent any type of safeguard in the attorney-consent provision of section 657, subdivision (b) because other statutes and rules of court ensure that a minor's rights are

adequately protected in juvenile court. Third, a no contest plea does not have the same legal effect as an admission in juvenile court and, because there is a distinction, the procedures that apply when a minor admits allegations do not necessarily apply when a minor enters a no contest plea. Finally, cases construing Penal Code section 1018 do not show that the Legislature intended to require a minor's attorney to consent to a no contest plea in addition to an admission.

1. Section 657 does not address no contest pleas and rule 5.778(e) fills this statutory gap by specifying the procedure for entering a no contest plea.

Section 657, subdivision (b) provides, “[a]t the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of Section 601 or 602, may, with the consent of counsel, admit in court the allegations of the petition and waive the jurisdictional hearing.” (Welf. & Inst. Code, § 657, subd. (b).) The amendment to section 657 that added the attorney-consent requirement for an admission went into effect in 1972. (See Stats. 1971, ch. 1389, § 4.) Section 657, subdivision (b) does not address no contest pleas by a minor and does not explicitly prohibit the court from accepting a no contest plea without the consent of the minor's counsel.

The California Legislature has directed the Judicial Council to

“establish rules governing practice and procedure in the juvenile court not inconsistent with law.” (Welf. & Inst. Code, § 265.) The Judicial Council followed this directive when it enacted the original version of rule 5.778 (former rule 1354), which went into effect in 1977. This rule, like rule 5.778, outlined the procedure for taking a minor’s plea in juvenile court and, most relevant to this appeal, established the practice in juvenile court of allowing no contest pleas.

Under current law, section 657, subdivision (b) and rule 5.778(c)-(d) outline the procedure for an admission in juvenile court. Rule 5.778(e) outlines the separate procedure for a no contest plea. Rather than being inconsistent with section 657, subdivision (b), rule 5.778(e) fills a gap left by the statute and clarifies that a minor may enter a no contest plea subject to the approval of the juvenile court. By allowing a minor to plead no contest, rule 5.778(e) establishes a new practice and procedure in juvenile court that is consistent with section 657 and section 265.

The consistency between section 657, subdivision (b) and rule 5.778 is shown by a comparison to Penal Code section 1016,⁴ which outlines the

⁴ Penal Code section 1016 provides:

There are six kinds of pleas to an indictment or an information, or to a complaint charging a misdemeanor or infraction:

permissible pleas in an adult case. Under Penal Code section 1016, an adult defendant may plead guilty, not guilty, nolo contendere (no contest), or not

1. Guilty.
2. Not guilty.
3. Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.
4. A former judgment of conviction or acquittal of the offense charged.
5. Once in jeopardy.
6. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

(Footnote cont'd)

guilty by reason of insanity, in addition to other pleas that are not relevant in this case. Like a guilty plea provided by Penal Code section 1016, subdivision 1, section 657, subdivision (b) and rule 5.778(c)-(d) allow a minor to admit allegations in juvenile court with the consent of counsel. Like a not guilty plea provided by Penal Code section 1016, subdivision 2, rule 5.778(c) allows a minor to deny allegations and requires the juvenile court to state on the record that the minor does not admit the allegations if the child neither admits nor denies the allegations. And like Penal Code section 1016, subdivision 3, rule 5.778(e) allows a minor to plead no contest to allegations subject to the approval of the juvenile court. Section 702.3, subdivision (a) mirrors Penal Code section 1016, subdivision 6 by allowing a minor to deny a petition with a plea of not guilty by reason of insanity. Section 657, subdivision (b); section 702.3, subdivision (a); and rule 5.778 are thus the juvenile counterparts to Penal Code section 1016: together they outline the permissible pleas in juvenile cases, including the requirements for each type of plea. Based on these considerations, rule 5.778(e) is not inconsistent with section 657, subdivision (b).

Additionally, because section 657 does not address no contest pleas and because rule 5.778(e) fills this statutory gap by providing that a minor may enter a no contest plea and outlining the procedure for such a plea, the

rule is quasi-legislative. (See *Sara M. v. Superior Court*, *supra*, 36 Cal.4th 998, 1012-1014, citing *Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th 1.) As a result, this court's review is limited to determining that rule 5.778(e) "lay within the lawmaking authority delegated by the Legislature" and that it is reasonably necessary for juvenile practice and procedure. (See *Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal.4th 1, 10-11.) As explained above, rule 5.778 is within the authority outlined in section 265 because the rule implements plea procedures and practices in juvenile court, which are analogous to the plea procedures in adult court. Rule 5.778 builds upon and is consistent with section 657, subdivision (b).

Finally, as stated above, rule 5.778 and the former versions of the rule have provided that a minor may enter a no contest plea subject to the approval of the court since 1977 (approximately 36 years). (See former Cal. Rules of Court, rules 1354(f) [effective 1977]; 1488(f) [effective 1989]; 1487(e) [effective 1991].) Since the former version of rule 5.778 was enacted, juvenile courts have accepted no contest pleas. (See, e.g., *In re Mark L.* (1983) 34 Cal.3d 171, 173-174; *In re Thomas R.* (1991) 2 Cal.App.4th 738, 740; *In re James R.* (2007) 153 Cal.App.4th 413, 417.) During this time period, section 657, subdivision (b) was amended but

nothing was added to the statute regarding no contest pleas. (See Stats. 1984, ch. 158, § 1.) When the Judicial Council amended a former version of rule 5.778 to remove language stating that the procedure for the entry of a no contest plea was the same as that of an admission, the Legislature did not respond by amending section 657. (Compare former Cal. Rules of Court, rules 1354(f) [effective 1977] and 1488(f) [effective 1989] with former Cal. Rules of Court, rule 1487(e) [effective 1991].) The Legislature's acquiescence to a rule of court that it has specifically directed the Judicial Council to create is significant and evidences the Legislature's belief that a no contest plea subject to the approval of the juvenile court is not inconsistent with section 657. (See *Sara M. v. Superior Court*, *supra*, 36 Cal.4th 998, 1014-1015.)

2. **The juvenile statutory framework and rules of court show that a no contest plea without the consent of counsel does not circumvent any type of safeguard in the attorney-consent provision of section 657, subdivision (b).**

Respondent argues that the attorney-consent provision of section 657 was "logically included to carry out the Legislature's intent to protect the rights of minors in making" the decision to admit the allegations in a petition. (RMB 6.) Respondent further contends that interpreting rule 5.778(e) to allow a minor to enter a no contest plea to the allegations in a

section 602 petition without the consent of counsel “would invalidly circumvent the safeguard that was clearly established by the Legislature in Welfare and Institutions Code section 657.” (RMB 9-10.) Appellant disagrees that allowing a minor to enter a no contest plea without the consent of counsel would invalidly circumvent the Legislature’s intent to protect the rights of minors.

The Legislative history shows, as respondent argues, that the attorney-consent provision of section 657, subdivision (b) was added to protect the rights of minors. (See Assem. Com. on Crim. J., Bill Analysis Worksheet on Sen. Bill No. 1094 (1971 Reg. Sess.) Aug. 31, 1971, p. 2.) Allowing a minor to plead no contest without the consent of his or her attorney, however, does not impermissibly circumvent the safeguard in section 657, subdivision (b). Rule 5.778(e) must be construed with reference to the entire statutory framework it is a part of, not just as an individual subdivision. (*In re Marriage of Harris, supra*, 34 Cal.4th 210, 222.) The juvenile statutory framework and rules of court provide substantial protection for a minor’s rights without requiring the minor’s attorney to consent to a no contest plea.

- a. **Rule 5.778, in addition to other statutes and rules of court, protects a minor’s constitutional rights when the juvenile court accepts a no contest plea without the consent of counsel.**

Rule 5.778 as a whole functions to protect a minor’s rights regardless of whether the minor pleads no contest without the consent of counsel or enters an admission. At the beginning of a jurisdictional hearing, the juvenile court must read the section 602 petition and, if requested, “must explain the meaning and contents of the petition, the nature of the hearing, the procedures of the hearing, and possible consequences.” (Cal. Rules of Court, rule 5.778(a).) In addition to this, the juvenile court must advise the minor that he or she has a right to a hearing, the right against self-incrimination, the right to confront and cross-examine witnesses, and the right to compel the attendance of witnesses on the minor’s behalf. (Cal. Rules of Court, rule 5.778(b).) Rule 5.778 also requires the juvenile court to give the advisements required by rule 5.534.⁵

⁵ Rule 5.534 provides, in pertinent part:

(g) Right to counsel (§§ 317, 633, 634, 700)

At each hearing the court must advise an self represented child, parent, or guardian of the right to be represented by counsel and, if applicable, of the right to have counsel appointed, subject to a claim by the court or the county for reimbursement as provided by law. . . . [¶] . . . [¶] . . . [¶] . . .

Following a minor's admission or no contest plea, a juvenile court must make specific findings, including that the minor "has knowingly and intelligently waived the right to a hearing on the issues by the court, the

- (k) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)
 - (1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:
 - (A) Any right to assert the privilege against self-incrimination;
 - (B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing;
 - (C) The right to use the process of the court to bring in witnesses; and
 - (D) The right to present evidence to the court.
 - (2) The child, parent, guardian, and their attorneys have:
 - (A) The right to receive probation officer or social worker reports; and
 - (B) The right to inspect the documents used by the preparer of the report.
 - (3) Unless prohibited by court order, the child, parent, guardian, and their attorneys also have the right to receive all documents filed with the court.

right to confront and cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the child's behalf, and the right to assert the privilege against self-incrimination.” (Cal. Rules of Court, rule 5.778(f)(3).) In determining whether the minor is validly waiving his or her constitutional rights, the juvenile court must consider the minor's age, experience, education, background, intelligence, and whether the minor has the capacity to understand his or her rights. (See *People v. Nelson* (2012) 53 Cal.4th 367, 378.)

The court must also find that the minor “understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest,” and that “[t]he admission or plea of no contest is freely and voluntarily made.” (Cal. Rules of Court, rule 5.778(f)(4)-(5); see also *People v. Nelson, supra*, 53 Cal.4th 367, 378.) Juvenile courts are aware that the “admissions and confessions of juveniles require special caution.” (*People v. Lessie* (2010) 47 Cal.4th 1152, 1166, quoting *In re Gault* (1967) 387 U.S. 1, 45 [18 L.Ed.2d 527, 87 S. Ct. 1428].) The court must also find that “[t]here is a factual basis for the admission or plea of no contest.” (Cal. Rules of Court, rule 5.778(f)(8).) As in adult court, the juvenile court “may develop the factual basis for the plea on the record through its own examination by having the [minor]

describe the conduct that gave rise to the charge [citation], or question the [minor] regarding the factual basis described in the complaint or written plea agreement.” (*People v. Holmes* (2004) 32 Cal.4th 432, 436; see also *People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1576.) As a result, the juvenile court is not required to have counsel stipulate to a factual basis and may find that there is a factual basis for a no contest plea even if counsel does not consent to the plea.

In this case, the Court of Appeal below correctly determined that “the juvenile court impermissibly relied solely on the belief of Alonzo’s defense counsel that there was no factual basis for a plea in this case, rather than independently determining the issue itself.” (Slip Opn. 8-9, 13-15.) Respondent contends that the Court of Appeal was mistaken because a court must only establish a factual basis after a minor has admitted or pled no contest to the pending charges and no plea was entered in this case. (RMB 11-12.) Respondent’s argument misses the point of the court’s holding and fails to consider the specific circumstances of this case. By relying only on Alonzo’s counsel’s personal assessment of Alonzo’s case, the juvenile court prevented him from even attempting to enter a negotiated plea on his own. The Court of Appeal was correct when it concluded that this was improper. (See Slip Opn. 8-9, 13-15.) A juvenile court must

independently determine if there is a factual basis for a plea. (See *People v. Wilkerson, supra*, 6 Cal.App.4th 1571, 1576; see also Pen. Code, § 1192.5 [“The *court* shall also cause an inquiry to be made of the defendant to satisfy itself that . . . there is a factual basis for the plea.” (emphasis added)].) The juvenile court’s failure to conduct an independent inquiry into the factual basis here brought the plea bargaining process to an end before Alonzo J. had an opportunity to enter a negotiated plea.

The requirements for explanations and findings outlined above ensure that a minor understands the delinquency proceedings, including his or her rights, and is fully aware of any rights he or she is giving up. The procedures set forth in rule 5.778 safeguard a minor’s rights regardless of whether the minor enters an admission or no contest plea.

In addition to rule 5.778, numerous other statutes and rules require the juvenile court to advise a minor of his or her rights throughout the juvenile court proceedings. (See Welf. & Inst. Code, §§ 630, 633, 700, 702.5; Cal. Rules of Court, rules 5.534(g), (k), 5.754(a).)

If a minor does enter a no contest plea, rule 5.778(e), like Penal Code section 1016, subdivision 3, provides that the plea is subject to the approval of the juvenile court—a minor cannot plead no contest automatically. This is an additional safeguard and restriction that is in place for no contest pleas

that is not required when a minor enters an admission. (See Cal. Rules of Court, rule 5.778(d)-(e).)

Respondent warns that the procedure of accepting a no contest plea without the consent of counsel “creates a substantial risk that the juvenile court may become involved in judicial plea bargaining in excess of the court’s discretion.” (RMB 12.) The risk of judicial plea bargaining however, does not depend on whether a minor admits or pleads no contest to allegations. Instead, judicial plea bargaining occurs when a trial or juvenile court “substitute[s] itself as the representative of the People in the negotiation process[.]” (*People v. Clancey* (2013) 56 Cal.4th 562, 573-574, quoting *People v. Orin* (1975) 13 Cal.3d 937, 943.) This would occur before a minor even decided to enter an admission or no contest plea. Additionally, case law controls judicial plea bargaining. For example, after respondent filed the opening brief on the merits, this court decided *People v. Clancey, supra*, 56 Cal.4th 562, 569 which “map[ped] the line between the power of the executive and the judiciary in the context of plea bargaining and sentencing.” Given the recent guidance on the issue of improper judicial plea bargaining, it is unlikely that a juvenile court will overstep its lawful discretion when considering whether to approve a no contest plea. Finally, case law clearly establishes that a juvenile court

would violate a minor's due process rights in inducing a minor to waive his or her constitutional rights in exchange for some benefit. (See *People v. Collins* (2001) 26 Cal.4th 297, 309.)

b. A represented minor who pleads no contest without the consent of counsel will still have the benefit of counsel's advice.

Allowing a minor to plead no contest without counsel's consent does not undermine section 657 because a represented minor will still have the benefit of counsel's advice even if the minor ultimately decides to accept a prosecution plea bargain offer. Appellant's interpretation of rule 5.778 does not relieve a minor's attorney from providing effective representation. (See *In re Edward S.* (2009) 173 Cal.App.4th 387, 406-407.) The right to effective assistance of counsel extends to plea negotiations. (*Missouri v. Frye* (2012) ___ U.S. ___ [132 S.Ct. 1399, 182 L.Ed.2d 379, 390].) "If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." (*Lafler v. Cooper* (2012) ___ U.S. ___ [132 S.Ct. 1376, 182 L.Ed.2d 398, 410].) When a minor wishes to accept a prosecution plea bargain offer, the minor's counsel will advise the minor regarding the strengths and weaknesses of the case and provide advice regarding the offer. Nothing about appellant's interpretation of rule 5.778 prevents the minor's counsel from effectively representing the minor

and providing competent advice regarding the minor's case. Instead, appellant's interpretation of rule 5.778 ensures that there is a procedure in place for the minor to accept a prosecution plea bargain offer, subject to the court's approval, in the event the minor and his or her attorney disagree regarding whether the minor should accept the offer.

c. California law recognizes that juveniles may waive the constitutional rights that are in place to protect them.

Finally, while the attorney-consent requirement of section 657 may be in place to protect a minor's rights, the juvenile law allows minors to waive numerous rights without the consent, or assistance, of counsel. This court has concluded that a minor "has the capacity to make a voluntary confession, even of capital offenses, without the presence or consent of counsel or other responsible adult" (*People v. Lara* (1967) 67 Cal.2d 365, 383; see also *People v. Nelson, supra*, 53 Cal.4th 367, 379-380 [juvenile invocation of counsel following *Miranda* waiver properly evaluated under the same standard as adults]; *People v. Lessie, supra*, 47 Cal.4th 1152, 1156-1157 [standard for determining whether a person has waived his or her Fifth Amendment privilege is the same for minors and adults].)

A minor may also waive his or her right to counsel for the juvenile

proceedings. (*In re Shawn F.* (1995) 34 Cal.App.4th 184, 195-196; see also Welf. & Inst. Code, §§ 634 [court shall appoint counsel “unless there is an intelligent waiver of the right of counsel by the minor”], 700 [same]; Cal. Rules of Court, rules 5.534(h)(2)(A) [court must appoint counsel “unless the child knowingly and intelligently waives the right to counsel”].) Additionally, a minor may consent to a search of his or her parents’ home in certain circumstances and may waive or restrict appellate review of his or her case. (*In re Robert H.* (1978) 78 Cal.App.3d 894, 899; *In re Uriah R.* (1999) 70 Cal.App.4th 1152, 1154, 1158.) The fact that a juvenile may waive numerous constitutional rights without the consent or assistance of counsel demonstrates that allowing a minor to plead no contest without the consent of counsel does not impermissibly circumvent section 657, subdivision (b).

3. A no contest plea does not have the same legal effect as an admission in juvenile court.

A critical component of respondent’s argument is that an admission or “a guilty plea and a no contest plea have the same ‘legal effect.’” (RMB 8-9, 11.) Respondent cites Penal Code section 1016 for this proposition. (RMB 9.) Appellant disagrees because rule 5.778 does not include the same language as Penal Code section 1016, which states that a guilty plea and a no contest plea have the same legal effect in certain circumstances.

Additionally, the legislative history of rule 5.778 shows the Judicial Council's intent that an admission and a no contest plea in juvenile court do not have the same legal effect.

- a. **Unlike Penal Code section 1016, rule 5.778(e) does not state that a no contest plea and an admission have the same legal effect.**

Penal Code section 1016 outlines the six types of pleas in a criminal case and includes a no contest plea:

Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

(Pen. Code, § 1016, subd. (3) [Emphasis added].) In contrast to Penal Code section 1016, rule 5.778 does not contain any language regarding the legal effect of a no contest plea. Instead, Rule 5.778 repeatedly recognizes a distinction between an admission and a no contest plea. As outlined above, rule 5.778(c)-(d) allows a minor to admit the allegations in a petition with the consent of counsel. Rule 5.778(e) allows a minor to plead no contest to

allegations subject to the approval of the court.

Additionally, subdivision (f) explains the findings that the court must note in its minutes “[o]n an admission or plea of no contest.” The court must find that “[t]he child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;” that “[t]he admission or plea of no contest is freely and voluntarily made;” and that “[t]here is a factual basis for the admission or plea of no contest[.]” (Cal. Rules of Court, rule 5.778(f)(4), (5), (6).) Subdivision (g) explains that “[a]fter accepting an admission or plea of no contest, the court must proceed to disposition hearing under rules 5.782 and 5.785.”

Construing rule 5.778 to provide that an admission and a no contest plea are the same would not give significance to every word in the rule, rendering the parts of the rule that address no contest pleas surplusage. Such a construction should be avoided. (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131; *Alan v. American Honda Motor Co., Inc.*, *supra*, 40 Cal.4th 894, 902.)

Further, under rules of statutory construction, a court does “not construe statutes in isolation, but rather read[s] every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.” (*In re Marriage of Harris*, *supra*, 34

Cal.4th 210, 222 quoting *People v. Pieters* (1991) 52 Cal.3d 894, 899 [internal quotation omitted].) Here, there is no indication in the other juvenile rules of court that an admission and a no contest plea have the same legal effect. Instead, rule 5.800, which addresses deferred entry of judgment, actually shows the opposite. Rule 5.800(f)(1) provides that, “If the child consents to the deferred entry of judgment, the child must enter an admission as stated in rule 5.778(c) and (d). A no-contest plea must not be accepted.” (Emphasis added.) If an admission and a no contest plea were truly the same, it would not matter whether a minor eligible for deferred entry of judgment entered a no contest plea or an admission. The fact that a no contest plea will not be accepted for deferred entry of judgment and that rule 5.800(f)(1) requires an admission discloses the Judicial Council’s intent that a no contest plea is not the same, and does not have the same legal effect, as an admission in juvenile court.

Moreover, even in adult proceedings, the legal effect of a no contest plea is not the same as a guilty plea in all circumstances. In addition to stating that the legal effect of a no contest plea and a guilty plea to a crime punishable as a felony are the same, Penal Code section 1016, subdivision 3 also explains how there is a distinction between a guilty plea and a no contest plea in all other cases. When a person pleads guilty to an offense,

the guilty plea is admissible in a subsequent civil action on the ground that it is an admission. (*People v. Yartz* (2005) 37 Cal.4th 529, 539, quoting *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 605.) This rule extends to no contest pleas to an offense punishable as a *felony*. (Pen. Code, § 1016, subd. 3; *Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 284, 288; see also Evid. Code, § 1300 [hearsay exception in civil action for judgment based on no contest plea to *felony* offense].) If a defendant enters a no contest plea to a crime that is not punishable as a felony, however, the plea and any admissions during the plea proceedings may not be used against the person in a civil suit based on the prosecuted act. (Pen. Code, § 1016, subd. 3; *Rusheen v. Drews, supra*, 99 Cal.App.4th 279, 284.) This is a significant distinction that respondent fails to mention and that shows a no contest plea does not have the same legal effect as a guilty plea in all circumstances, even in adult court.

b. The legislative history of rule 5.778 shows that a no contest plea in juvenile court does not have the same legal effect as an admission.

In the event this court determines that the language of rule 5.778 is ambiguous, it “may consult appropriate extrinsic sources to clarify the drafters’ intent.” (*Rossa v. D.L. Falk Construction, Inc.* (2012) 53 Cal.4th 387, 392, quoting *Alan v. American Honda Motor Co., Inc., supra*, 40

Cal.4th 894, 902.) These extrinsic aids include “the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.” (*Volkswagen of Am. v. Superior Court* (2001) 94 Cal.App.4th 695, 703, quoting *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) The legislative history of rule 5.778 reflects the Judicial Council’s intent that an admission and a no contest plea do not have the same legal effect in juvenile court.

Former rule 1354 was the original rule on juvenile pleas and went into effect in 1977. Subdivision (f) of the rule provided the following:

[No contest (cf. Pen. Code, § 1016(3))] In lieu of admitting the allegations of the petition, the minor may enter no contest concerning the truth of the allegations, subject to the approval of the court. For purposes of these rules, *the procedure for and legal effect of an entry of no contest shall be the same as that of an admission, but the entry of no contest may not be used against the minor as an admission in any other action or proceeding.*

(First emphasis and brackets in original; second emphasis added.)

Former rule 1354 was repealed and reenacted as former rule 1488, effective July 1, 1989, with nonsubstantive changes. The material in former rule 1488 was then moved to former rule 1487 effective January 1, 1991. The rule was also revised at this time. The information regarding a no contest plea that originally appeared in subdivision (f) of the rule was

moved to subdivision (e). Additionally, the language regarding the legal effect of a no contest plea was removed. As amended, former rule 1487(e) provided: “[**No Contest**] The child may enter a plea of no contest to the allegations, subject to the approval of the court.” (Emphasis and brackets in original.)⁶

When construing statutes, courts “presume the Legislature intends to change the meaning of a law when it alters the statutory language [citation], as for example when it deletes express provisions of the prior version [citation].” (*People v. Mendoza* (2000) 23 Cal.4th 896, 916, quoting *Dix v. Superior Court* (1991) 53 Cal.3d 442, 461 [alterations in original].) Based on this rule of statutory construction, the fact that the Judicial Council removed the language from former rule 1488 stating that “the procedure for and legal effect of an entry of no contest shall be the same as that of an admission” evidences the Council’s intent that an admission and a no contest plea do not currently have the same legal effect.

⁶ Former rule 1487 was then amended once again effective January 1, 1998. Finally, former rule 1487 was renumbered rule 5.778 and amended effective January 1, 2007. These amendments are not relevant to this case.

4. Cases construing the attorney-consent requirement in Penal Code section 1018 do not show that no contest pleas without the consent of counsel are prohibited in juvenile court.

Respondent contends that section 657 is “akin to Penal Code 1018 and the limitations it places on defendants in capital cases and cases involving a sentence of life without the possibility of parole.” (RMB 10.) Appellant disagrees.

As relevant to the respondent’s argument, Penal Code section 1018 provides that “[n]o plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant’s counsel. . . .” (Pen. Code, § 1018.) In *People v. Chadd* (1981) 28 Cal.3d 739, 746, 749-750, this court held that under the clear and unambiguous language of section 1018, “a capital defendant is no longer permitted to plead guilty in this state against the advice of his attorney.”

There are notable differences between section 657 and Penal Code section 1018 that militate against extending cases construing the attorney-consent provision of Penal Code section 1018 to juvenile no contest pleas.

First, Penal Code section 1018 applies to guilty pleas in capital cases and begins by stating that a guilty plea to a capital offense shall not be

received from a defendant who is not represented by an attorney. Section 657, subdivision (b) does not contain a similar limitation; it does not state that a juvenile court may not accept an admission from a minor who is not represented by counsel. In light of other statutes and rules that allow a minor to waive counsel, an unrepresented minor may enter an admission because section 657, unlike Penal Code section 1018, does not expressly prohibit an unrepresented minor from admitting allegations. (See *In re Shawnn F.*, *supra*, 34 Cal.App.4th 184, 195-196; Welf. & Inst. Code, §§ 634 [court shall appoint counsel “unless there is an intelligent waiver of the right of counsel by the minor”], 700 [same]; Cal. Rules of Court, rules 5.534(h)(2)(A) [court must appoint counsel “unless the child knowingly and intelligently waives the right to counsel”].)

Second, the Legislature had very different reasons for enacting the attorney-consent requirements in Penal Code section 1018 and section 657, subdivision (b). “[T]he consent requirement of [Penal Code] section 1018 has its roots in the state’s strong interest in reducing the risk of mistaken judgments in capital cases and thereby maintaining the accuracy and fairness of its criminal proceedings.” (*People v. Alfaro* (2007) 41 Cal.4th 1277, 1300.) Requiring consent in capital cases “constitutes legislative recognition of the severe consequences of a guilty plea in a capital case, and

provides protection against an ill-advised guilty plea and the erroneous imposition of a death sentence.” (*Ibid.*) In contrast to this, section 657, subdivision (b) was enacted to save time, minimize the detention of the minor, and allow the court and counsel to concentrate their efforts on the dispositional aspects of the case. (Sen. Com. on Ed., Sen. Policy Com. Analysis on Sen. Bill No. 1094 (1971 Reg. Sess.) as introduced, p. 5; Sen. Com. on Ed., Sen. Policy Com. Analysis on Sen. Bill No. 1094 (1971 Reg. Sess.) as amended June 23, 1971, p. 4; Assem. Com. on Crim. J., Bill Analysis Worksheet on Sen. Bill No. 1094 (1971 Reg. Sess.) Aug. 31, 1971, p. 2.) The consent requirement was intended to protect the minor’s rights. (Assem. Com. on Crim. J., Bill Analysis Worksheet on Sen. Bill No. 1094 (1971 Reg. Sess.) Aug. 31, 1971, p. 2.) While the amendment to section 1018 that added the consent requirement was part of an extensive revision of the death penalty laws to “safeguard against erroneous imposition of a death sentence,” the amendment to section 657 that added the consent requirement was mainly concerned with saving time and concentrating on the disposition of the case. (Compare *People v. Chadd*, *supra*, 28 Cal.3d 739, 750 with Sen. Com. on Ed., Sen. Policy Com. Analysis on Sen. Bill No. 1094 (1971 Reg. Sess.) as introduced, p. 5; Sen. Com. on Ed., Sen. Policy Com. Analysis on Sen. Bill No. 1094 (1971 Reg. Sess.) as amended

June 23, 1971, p. 4; Assem. Com. on Crim. J., Bill Analysis Worksheet on Sen. Bill No. 1094 (1971 Reg. Sess.) Aug. 31, 1971, p. 3.)

Finally, the consequences of a guilty plea in a capital case and a no contest plea in juvenile court are very different. While a person who pleads guilty to a capital crime is eligible for the death penalty based on the guilty plea, a juvenile offender who is younger than 18 when he or she commits a crime cannot be executed. (*Roper v. Simmons* (2005) 543 U.S. 551, 578-579.) Because there is no possibility that a minor in the juvenile court system will receive a death sentence, the rationale behind the attorney-consent requirement in Penal Code section 1018 does not apply. There is no risk of a mistaken judgment that would lead to the execution of an innocent person if a minor pleads no contest in juvenile court without the consent of counsel. Instead, the minor will most likely receive a more favorable outcome if he or she accepts a prosecution plea bargain offer (even without the consent of counsel) than he or she would receive if the allegations in a section 602 petition are found true by the juvenile court.

For the above reasons, Penal Code 1018 is not so comparable to section 657, subdivision (b) that it evidences the Legislature's intent to require a minor's attorney's consent to a no contest plea in juvenile court.

Based on these considerations, allowing a minor to plead no contest without the consent of counsel is not inconsistent with section 657, subdivision (b) and does not impermissibly circumvent the attorney-consent safeguard in the statute.

D. Interpreting rule 5.778(e) to allow the entry of a no contest plea without the consent of counsel protects a minor's constitutional right to make fundamental decisions in his or her case and is not inconsistent with the U.S. and California Constitutions.

Allowing a minor to enter a no contest plea subject to the approval of the court, but without the consent of counsel, recognizes a minor's constitutional right to decide to accept a prosecution plea bargain offer.

“[A] defendant possesses a constitutionally protected right to participate in the making of certain decisions which are fundamental to his or her defense.” (*In re Alvernaz* (1992) 2 Cal.4th 924, 936.) The decision whether to accept or reject a proposed plea agreement is fundamental to a defendant's defense. (*See ibid.* [ineffective assistance of counsel that results in a defendant's decision to reject an offered plea bargain and proceed to trial constitutes constitutional violation].) The decision to plead guilty pursuant to a plea bargain or proceed to trial is ultimately made by the defendant. (*Id.* at p. 933; see also *People v. Frierson* (1985) 39 Cal.3d 803, 814 [“[T]he decision whether to plead guilty to a lesser offense also

frequently reflects strategic concerns, but a defendant nonetheless retains personal control over such a plea.”.) Additionally, “[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” (*North Carolina v. Alford* (1970) 400 U.S. 25, 37 [91 S.Ct. 160, 27 L.Ed.2d 162]; see also *People v. West* (1970) 3 Cal.3d 595; *In re Alvernaz, supra*, 2 Cal.4th 924, 932 [characterizing a *West* plea as “a plea of nolo contendere, not admitting a factual basis for the plea”].) A criminal defendant, however, does not have an absolute constitutional right to have his guilty plea accepted by the court. (*People v. Snyder* (1989) 208 Cal.App.3d 1141, 1146-1147.)

Failing to provide a procedure for a minor to accept a prosecution plea bargain offer without the consent of his or her counsel would violate a minor’s constitutional right to make this decision. If rule 5.778 requires the minor’s counsel’s consent before the minor may admit the allegations or enter a no contest plea, the minor’s counsel and not the minor will be making the decision regarding whether to accept the prosecution’s offer in every single case. This interpretation of rule 5.778 conflicts with constitutional provisions, which would invalidate the rule. (See *Maribel M. v. Superior Court, supra*, 61 Cal.App.4th 1469, 1476.) Instead, a

constitutional interpretation is favored. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530.)

Under respondent's interpretation of rule 5.778, minors would be forced into contested jurisdictional hearings every time their attorneys did not consent to their decision to accept a prosecution plea bargain offer. A minor in this situation, like Alonzo J. in this case, would most likely face harsher punishment following the jurisdictional and dispositional hearings than he would receive if he were able to accept the prosecution's offer. There would be no way for the minor to avoid this result if the attorney did not consent to the minor's acceptance of the plea bargain. The minor's attorney alone would effectively control whether a case was resolved through plea negotiations or through a contested jurisdictional hearing but the minor would be forced to suffer the consequences of counsel's decision. Such an interpretation violates the right of the individual to make the ultimate decision of how the case is resolved. (See *In re Alvernaz, supra*, 2 Cal.4th 924, 933; *People v. Frierson, supra*, 39 Cal.3d 803, 814 .)

The serious and detrimental consequences of forcing a minor who wishes to accept a prosecution plea bargain into a contested jurisdictional hearing are shown by this case. Here, Alonzo J. was detained in juvenile hall for almost four months before his jurisdictional hearing due to various

continuances. (See ART 16-17; 1 CT 72, 74, 91-92, 100, 112, 117-118; 1 RT 3, 11, 16, 20-24, 30-33, 75; .) He was detained almost three months before the *Marsden* hearings where he told the juvenile court that he wished to accept the prosecution's plea bargain offer to plead to a single felony violation of Penal Code section 245, subdivision (a)(1) but his attorney would not let him. (See 1 RT 39-56; 64-74; 1 CT 114-115.) Following the contested jurisdictional hearing, the juvenile court sustained the petition in full, finding true two felony violations of Penal Code section 245, subdivision (a)(1) and a misdemeanor violation of Penal Code section 594, subdivision (b)(2)(A). (1 CT 117-120; 1 RT 276-282.) Instead of being allowed to accept the prosecution's offer to plead to a single felony and go home, Alonzo J. was committed to the care, custody, and supervision of probation for suitable Level A placement pursuant to standing order 98-003 of the juvenile court. (2 RT 361.) Alonzo J.'s maximum term of confinement also increased based on the additional felony violation of Penal Code section 245, subdivision (a)(1) and misdemeanor violation of Penal Code section 594, subdivision (b)(2)(A). (2 RT 374-375.) This case illustrates how a minor may potentially receive a harsher punishment and outcome when the "safeguard" of section 657, subdivision (b) is used to preclude a minor from accepting a prosecution plea bargain offer without

the consent of counsel.

Rather than undermining a minor's constitutional rights, allowing a minor to plead no contest without the consent of counsel will preserve a minor's right to make the fundamental decision to accept or reject a prosecution plea bargain offer.

E. Because rule 5.778(e) is not inconsistent with section 657 and furthers a minor's constitutional rights, it has the force of a statute and is a determination that a juvenile court may accept a plea of no contest without the consent of counsel.

As explained above, rule 5.778(e) allows a minor to plead no contest in juvenile court without the consent of counsel. This interpretation of the rule is not inconsistent with section 657, subdivision (b) and protects a minor's constitutional right to make the fundamental decision to accept a prosecution plea bargain offer. Because the rule is consistent with section 657 and the U.S. and California Constitutions, it has the force of a statute. (*Sara M. v. Superior Court, supra*, 36 Cal.4th 998, 1011.) Based on this, a juvenile court may follow the procedure outlined in rule 5.778 and accept a no contest plea from a minor without the minor's attorney's consent.

If this Court concludes that a minor may not enter a no contest plea without the consent of counsel, appellant requests that the Court's holding be applied prospectively only and that he be given the benefit of accepting

the prosecution's more favorable plea bargain offer without the consent of his attorney. (See *People v. Simon* (2001) 25 Cal.4th 1082, 1108.) It would be unfair to apply such a rule prospectively in Alonzo J.'s case to bar him from accepting a favorable plea bargain offer because the language of rule 5.778(e) can reasonably be construed to allow a minor to enter a plea without the consent of his attorney and appellate counsel has been unable to find any case undermining this interpretation. (See *Claxton v. Waters* (2004) 34 Cal.4th 367, 378-379.)

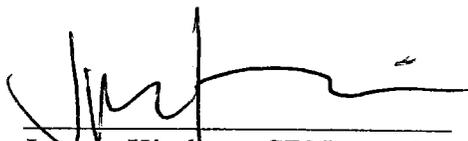
CONCLUSION

For the reasons stated in this brief, the decision of the Third District Court of Appeal should be affirmed.

Date: June 21, 2013

Respectfully submitted,

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**Certificate of Appellate Counsel
Pursuant to Rules 8.412(a), 8.204(c)(1), and 8.360(b)
of the California Rules of Court**

I, Joanne M. Kirchner, appointed counsel for appellant, certify pursuant to rule 8.204(c)(1) of the California Rules of Court, that I prepared this opening brief on behalf of my client, and that the word count for this opening brief is 11,050.

This brief complies with the rule that limits a brief to 25,500 words, including footnotes. I certify that I prepared this document in WordPerfect 15 and that this is the word count WordPerfect generated for this document.

DATED: June 21, 2013



JOANNE M. KIRCHNER
Attorney for Appellant

DECLARATION OF SERVICE

Case No. S206720

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 2407 J Street, Suite 301, Sacramento, CA 95816.

On June 24, 2013, I served the attached:

● **APPELLANT'S ANSWER BRIEF ON THE MERITS**

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed

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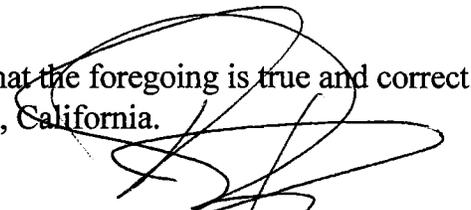
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 24, 2013, at Sacramento, California.



Sheila Brown