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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

A134217

(Contra Costa County
Super. Ct. No. J1101079)

INTRODUCTION

The propriety of a \$50 fine is the sole issue in this appeal. Defendant and appellant M.M. was charged with battery and stalking, both misdemeanors. The juvenile court sustained the petition on both counts, ordered her placed in a court-approved home or institution, and ordered her to pay a \$50 restitution fine. M.M. acknowledges a fine was mandatory under Welfare and Institutions Code¹ section 730.6, but claims the court abused its discretion in setting that amount. She also admits her attorney made no objection to the fine, but claims that constituted ineffective assistance of counsel. Lastly, M.M. asserts section 730.6 violated her equal protection rights because it mandates a fine, albeit with no minimum, for juvenile misdemeanor offenses, while the fine may be

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

waived for juvenile felonies and, similarly under Penal Code section 1202.4, for adult misdemeanor and felony offenses. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

We set forth only those facts necessary to address the single issue on appeal.

The Contra Costa County District Attorney filed a petition alleging M.M., then 14 years old, stalked and battered E.L., a classmate at her high school. (Pen. Code, §§ 646.9, subd. (a), 242.) The evidence showed during a period of several weeks in June and July 2011, M.M. telephoned E.L. approximately 90 times per day, came to her home uninvited, and left notes and gifts at her home. One of the notes depicted a drawing of two stick figures labeled M.M. and E.L., showing M.M. shooting a gun. On July 26, 2011, M.M. hit E.L. in the face with her fist and a water balloon. During the altercation, E.L.'s acrylic nail was "pulled out from the nail bud." Following a contested jurisdictional hearing, at which both M.M. and E.L. testified, the court sustained both counts as misdemeanors.

At the dispositional hearing, the court adjudged M.M. a ward of the court, found her welfare required she be removed from her parents' custody, and ordered her placed in a court-approved home or institution in order to receive the mental health services she needed. The court also ordered she pay a restitution fine of \$50.

This court granted M.M.'s request for relief from default in late filing of her notice of appeal, and ordered the superior court to allow her to file the notice of appeal.

DISCUSSION

M.M. asserts the juvenile court abused its discretion in imposing a \$50 restitution fine under section 730.6. She acknowledges her trial counsel made no objection to the restitution fine, but contends counsel was ineffective in failing to do so.

Section 730.6 provides in relevant part: "(a) [¶] . . . [¶] (2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court *shall* order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following: [¶] (A) A restitution fine in accordance with subdivision (b). [¶] (B) Restitution to the

victim or victims, if any, in accordance with subdivision (h). [¶] (b) In every case where a minor is found to be a person described in Section 602, the court *shall* impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense” (§ 730.6, subds. (a)(2), (b), italics added.)

The statute provides for two different ranges of fines depending on whether the minor committed a felony or a misdemeanor. “(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000). . . . [¶] (2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars (\$100). . . .” (§ 730.6, subd. (b).)

Prior to the disposition hearing, the probation department prepared a report in which it recommended a restitution fine of \$100. The juvenile court instead imposed restitution of \$50. M.M.’s counsel made no objection to either the imposition or amount of the restitution fine.

A defendant’s failure to object to a restitution fine, after having been apprised of the possibility of such a fine in the probation report, forfeits an appellate challenge to the fine. (*People v. McMahan* (1992) 3 Cal.App.4th 740, 750; see *People v. Scott* (1994) 9 Cal.4th 331, 352-353, fn. 15.) “The purpose of the waiver doctrine is to bring errors to the attention of the trial court so they may be corrected or avoided. [Citation.] The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law.” (*People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468.) “[T]hese considerations are fully applicable to hearings at which conditions of juvenile probation are determined. In both adult and juvenile cases, the time to object is at the pertinent hearing, not for the first time on appeal. [Citation.] . . . Objection and waiver principles ‘encourage prompt detection and correction of error, and . . . reduce the number of unnecessary appellate claims.’ ”

(*In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 971, quoting *People v. Scott, supra*, 9 Cal.4th at p. 351.) If “the order for restitution was within the sentencing court’s statutory authority, and defendant [did not raise] an objection to the amount . . . we do not decide whether the court abused its discretion in determining the amount.” (*People v. Brasure* (2008) 42 Cal.4th 1037, 1075.)

M.M. acknowledges failure to object to a restitution fine ordinarily forfeits the issue on appeal, but maintains her trial counsel was ineffective in failing to object. “ ‘It is a defendant’s burden to demonstrate the inadequacy of trial counsel. [Citation.] . . . “ ‘In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel’s performance was “deficient” because his “representation fell below an objective standard of reasonableness . . . under prevailing professional norms.” [Citations.] Second, he must also show prejudice flowing from counsel’s performance or lack thereof. [Citation.] Prejudice is shown when there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” ’ ’ [Citation.]’ ” (*People v. Vines* (2011) 51 Cal.4th 830, 875.)

“ ‘Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” [Citation.] Defendant’s burden is difficult to carry on direct appeal, as we have observed: “ ‘Reviewing courts will reverse convictions [on direct appeal] on the ground of inadequate counsel only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for [his or her] act or omission.’ ” [Citation.] [Citation.] If the record on appeal “ ‘ ‘sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,’ the claim on appeal must be rejected,” ’ and the ‘claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.’ ” (*People v. Vines, supra*, 51 Cal.4th at p. 876.)

A “satisfactory explanation” for counsel’s failure to object is readily apparent. The juvenile court reviewed the probation department’s recommendation that the fine be \$100, and reduced it by half. The juvenile court also gave M.M. one year to pay the \$50 restitution fine. It was entirely reasonable that M.M.’s attorney would choose to focus on challenging other probation conditions, rather than one in which the court had already shown lenience. M.M. has failed to demonstrate ineffective assistance of counsel.

Since we conclude M.M. has waived her challenge to the amount of the restitution fine by failing to object in the court below and there was no ineffective assistance of counsel in failing to object, we need not reach her constitutional objection to the fine. But even if we were to consider it, we would reject it. M.M. claims section 730.6 unconstitutionally abrogates her equal protection rights because it does not include a provision for waiver of the restitution fine for a misdemeanor offense, as the statute does for a felony offense (§ 730.6, subd. (g)), and as the statute relating to restitution fines for adults does for both misdemeanor and felony offenses (see Pen. Code, § 1202.4, subds. (b)-(c)). A rational basis for this distinction is apparent from the differing statutory provisions.

As we have noted, there is both a floor and ceiling for a juvenile restitution fine for a felony, namely the fine cannot be less than \$100, but cannot exceed \$1,000. In contrast, there is no floor for a restitution fine for a misdemeanor offense, there is only a ceiling of \$100. (§ 730.6, subd. (b)(1)-(2).) It is understandable, given that the statute imposes a \$100 floor on a felony restitution fine, that the Legislature would provide for a waiver of the fine in exceptional cases. Where a misdemeanor is involved, there is no floor, and the juvenile court can essentially abrogate the restitution fine by reducing it to \$1. The California Judges Benchguide notes this point in discussing section 730.6: “The restitution fine cannot be waived for misdemeanors, probably because there is no statutory minimum fine with respect to them.” (Cal. Judges Benchguide (CJER 2012) Restitution, § 83.8, pp. 83-13 to 83-14.) As for waivers of adult restitution fines, Penal Code section 1202.4 sets floors and ceilings for both misdemeanors and felonies. Thus, there is no ability, as there is under section 730.6, for the court to effectively abrogate the

fine in either instance by ordering only a nominal amount. Accordingly, it is again understandable, given the statutory floors, that the Legislature would provide for a waiver of both misdemeanor and felony adult restitution fines in exceptional cases.

DISPOSITION

The order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.