Filed 12/17/12 In re R.E. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re R.E., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. R.E., Defendant and Appellant.	A135532 (Solano County Super. Ct. No. J38620)

R.E. (appellant), born in February 1993, challenges the juvenile court's restitution order on the ground the court lacked jurisdiction to impose the order. For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We recently resolved appellant's prior appeal and habeas petition in a nonpublished opinion (Sept. 25, 2012, A133620, A134936). There, appellant challenged the juvenile court's dispositional order finding that he violated probation, and continuing him as a ward of the court. We affirmed the order.[1] The essential facts from the proceedings underlying the prior appeal are as follows.

[1] Appellant has filed an unopposed request for judicial notice of the transcripts from the prior appeal. To obtain context, maintain consistency and economize judicial resources, we shall take judicial notice of the entire record in the prior matter, as well as of our prior opinion. (See Evid. Code, § 451, subd. (a); see *In re Luke L.* (1996) 44 Cal.App.4th 670, 674, fn. 3.)

On August 15, 2011, appellant was on juvenile probation for battery with serious injury (Pen. Code, § 243, subd. (d)) when the Solano County District Attorney filed a petition alleging appellant violated probation by stealing a bicycle (Pen. Code, § 487). W.M. and J.S. had ridden their bikes to a 99 Cent Store when someone approached them outside and had a short conversation with W.M. W.M. and J.S. went inside the store for about five minutes; when they came out, their bikes were gone.

The next day, W.M.'s stepfather, K.M. (Mr. M.), went to the area to search for the bikes and saw an individual, who he identified in court as appellant, riding W.M.'s bike. A chase ensued, and appellant sped away "through the apartments" and got away. Mr. M. recognized the bike because it was a special "one of a kind" bike for which he and his wife had spent over $2,000, and which W.M. had custom built by putting together different parts from different vendors. Mr. M. told W.M. where he had seen the bike, and J.S. and W.M. went to an apartment complex to search for their bikes. There, on an apartment balcony, W.M. saw the person who had approached him and J.S. at the 99 Cent Store. A few days after the bikes were taken, J.S. saw two people riding bikes "just down the street from the 99 Cent Store." The bikes had been painted different colors, but J.S. knew they were his and W.M.'s because they had built the bikes themselves out of various "one-of-a-kind" parts, and he knew "everything" about the bikes. The police showed J.S. a photo lineup from which he selected appellant's photo as the person he thought he saw at the 99 Cent Store the day the bikes went missing, and the same person he later saw riding one of the bikes. The court found appellant violated his probation and continued him as a ward of the court.

Some time before December 19, 2011, a restitution claim was filed in the probation violation case.[2] At a May 23, 2012, restitution hearing, W.M. testified he built the bike that appellant stole using separate parts that he purchased and a bike frame his mother bought for him. He provided a list of the parts and their prices, showing a total price of $1,416.83. He testified the list did not show the "exact prices" but that the bike that was stolen cost approximately $1,400 to make. Defense counsel argued the court should not impose

[2] The minute order from a December 19, 2011, hearing states, "DA indicates restitution claim has been filed." However, the record does not show what date the claim was filed.

restitution because the testimony was unclear about the actual cost of the bike. The court ordered appellant to pay $1,400 in restitution, stating, "Restitution is ordered in the amount of $1,400. I'm ordering $1,400, because . . . it was essentially put up as an estimate, and his testimony . . . was it was around there, which is supported by the evidence of the list that was put forward." The court also stated, "it's not even taking into account the labor and other things that probably could have been counted in the bike itself, and [he] probably could have requested a higher amount, but this amount seems reasonable to replace a custom bicycle."

DISCUSSION

Welfare and Institutions Code section 730.6[3] provides in relevant part: "(a)(1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor. [¶] (a)(2) Upon a minor being found to be a person described in Section 602, the court shall . . . order the minor to pay, in addition to any other penalty provided or imposed under the law, . . . : [¶] . . . [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (h)." Subdivision (h) sets forth the methodology for calculating a victim's total loss.

Because section 730.6 "mandates that a minor must pay restitution where conduct *for which the minor is declared a ward of the court under section 602* results in economic loss to the victim," the statute does not authorize the juvenile court to impose restitution for conduct that was not alleged as part of a proceeding to declare a juvenile a ward of the court under section 602. (*In re T.C.* (2009) 173 Cal.App.4th 837, 844.) However, a juvenile court *does* have the authority to impose restitution for uncharged conduct *as a condition of probation*. (*Id.* at pp. 844-845; § 730, subd. (b) [the court " 'may impose and require any and all reasonable conditions [of probation] that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced' "].)

Here, the parties agree with the legal principles set forth above but disagree on whether the juvenile court in this case ordered appellant to pay restitution under

---

[3] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

section 730.6, or as a condition of probation. Appellant asserts the order was unauthorized because the court ordered restitution under section 730.6 for conduct that was charged as a probation violation, not as a violation of section 602; respondent asserts the order was authorized because the court ordered restitution as a condition of probation. We conclude the record supports respondent's position.

After the court found appellant in violation of his probation, it stated while discussing the conditions of probation, "[t]he issue of restitution will be reserved and determined by Probation. If there is any dispute as to that, it can be returned to the court for court hearing." In its written form order, the court checked the box for payment of restitution on a document entitled "TERMS AND CONDITIONS OF PROBATION . . . ."[4] Thus, the record shows the court ordered restitution *as a condition of probation*, with the amount of restitution to be determined by the probation department or the court at a later date. Accordingly, the court's subsequent order setting the amount of restitution was an authorized restitution order.

DISPOSITION

The order is affirmed.

_____
McGuiness, P.J.

We concur:

_____
Siggins, J.

_____
Jenkins, J.

[4] Although the written form order provides that appellant shall pay restitution as a condition of probation "as determined by the Probation Officer *per 730.6 W & I*," (italics added), we do not construe this to mean that restitution was ordered under section 730.6, but rather, that the Probation Officer is to determine the amount of restitution under section 730.6, subdivision (h), which sets forth the methodology for calculating a victim's total loss.