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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN H.,

Defendant and Appellant.

A137707

(Contra Costa County  
Super. Ct. No. J1200946)

A wardship petition under Welfare and Institutions Code section 602, subdivision (a) for defendant was filed on July 13, 2012.<sup>1</sup> A jurisdictional hearing was held and the juvenile court found true the three misdemeanor offenses alleged in the section 602 petition. Subsequently, the court held a dispositional hearing and adjudged defendant a ward of the court and placed him with his mother under the supervision of a probation officer.

On appeal, defendant contends that the juvenile court did not recognize that it had the discretion to place him on nonwardship probation. Additionally, he claims that adjudging him a ward of the court was an abuse of discretion. Both of defendant's claims are forfeited because he never objected to the wardship in the juvenile court.

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<sup>1</sup> All further unspecified code sections refer to the Welfare and Institutions Code.

Additionally, even if we presume defendant's arguments were preserved, defendant cannot prevail on the merits. Accordingly, we affirm the juvenile court's orders.

### **BACKGROUND**

On July 13, 2012, a petition was filed against defendant pursuant to section 602, subdivision (a). It alleged that defendant committed a misdemeanor battery (Pen. Code, §§ 242 & 243.2, subd. (a)(1)), a misdemeanor for disturbing the peace of school by fighting (Pen. Code, § 415.5), and a misdemeanor for resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).

The juvenile court held a contested jurisdictional hearing on November 5 and 26, 2012. Officer Robert Iavao, a school resource officer at Richmond High School, testified about an incident that occurred at the school on March 8, 2012. About 12:50 p.m., Iavao was at the center of the school in an area known as "the mall" when he noticed a verbal argument between D.H. and Malik W., two students at Richmond High School. Malik walked away and Iavao went over to D.H. and spoke to him. D.H. told the officer that he had been accused of " 'talking shit' " about Malik's brother, who had been killed a year earlier. He denied making such statements and indicated that he would be interested in mediation with Malik.

Iavao looked to see where Malik had gone and noticed Malik returning with a few friends, including defendant. Iavao walked towards Malik; defendant walked "right past" Iavao, who was dressed in uniform. Defendant, according to Iavao, appeared angry and walked aggressively; he "was walking like a man with a purpose." Iavao observed that defendant's "hands were on his side [and] his fists were already balled up." Defendant stopped in front of D.H., leaned forward in an aggressive manner, and began arguing with D.H. Defendant's fists were slightly raised.

Iavao grabbed defendant's right arm and tried to separate him from D.H. He commanded both boys to stop arguing and for defendant to come with him. As Iavao was leading defendant away, defendant punched D.H. in the mouth with his left fist. D.H. suffered a laceration on his lip. Iavao told defendant at least two times to put his hands behind his back but defendant refused and tried to "yank" his arm away from

Iavao. Iavao used an arm bar to force defendant to the ground. At this point, according to Iavao, there were “easily over a hundred” people watching, and several of defendant’s friends were yelling at the officer to let defendant go.

Iavao testified that even after he forced defendant to the ground, defendant continued to resist. Defendant attempted to push himself up with his free arm. Iavao was finally able to handcuff defendant and take him into a school office. Defendant was later hospitalized as his head was bleeding “profusely” after Iavao forced him to the ground.

Defendant testified on his own behalf. Defendant stated that he argued with D.H. because D.H. had been saying things about him and called him “a punk ass White boy.” D.H. told defendant that it did not matter what he had said because defendant was not going to do anything about it. Defendant got angry and hit D.H. with his left hand. He maintained that he hit D.H. before Iavao grabbed his right arm.

Defendant did not recall Iavao’s asking him to put his hands behind his back. Defendant insisted that he did not resist once Iavao grabbed him and Iavao, according to defendant, “grabbed me and went straight to the floor with me.” As a result of the takedown, defendant suffered a scar to an area near his right eye, which was plainly visible a week or two after the incident. He also suffered a “light concussion.”

The defense introduced into evidence the video of the incident. The video showed defendant walking up to D.H., and Iavao approaching on defendant’s right. In the video, defendant was on the ground three to four seconds after striking D.H.<sup>2</sup>

At the end of the hearing, counsel for defendant stated that defendant admitted the first two counts, battery and disturbing school peace by fighting. He, however, was contesting count 3, resisting a peace officer. Counsel argued that Iavao had overreacted. After hearing counsel’s argument, the juvenile court sustained all three counts. The court noted that the video was not helpful because it “cut out right at the point that” defendant was taken to the ground. The court found Iavao’s testimony credible and concluded that defendant continued to resist once taken to the ground.

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<sup>2</sup> The video is not included in the record on appeal.

The probation department filed its report on January 22, 2013. It recommended that the juvenile court adjudge defendant a ward of the court with placement in his mother's home under the supervision of the probation officer. The report stated that defendant and "his mother are very close." It noted that defendant had returned to school "after a successful mediation with school officials." Defendant had stayed away from the victim since the incident in March 2012. The report noted that defendant had no history of being detained at juvenile hall or being placed on home supervision.

Applying the Juvenile Assessment and Intervention System, the probation department classified defendant as having a low risk level for offending again. It stated that the goals of defendant's supervision included: "Resolve the external stressor"; "[r]e-establish non-delinquent coping skills"; "[r]esolve neurotic problems"; "[r]eturn to school"; and "[r]eturn to non-delinquent peers and activities[.]"

The report mentioned defendant's becoming involved in a dispute that "was not his business to resolve, and is now paying the price for it." It commented that defendant appeared to understand the relationship between his actions and the current court proceedings. Since the incident, defendant, according to the report, "has adjusted his behavior towards conflict resolution, and adhered to the school requirements." Further, the report pointed out that defendant was "on track to graduate and has made goals for his future." The report added: Defendant "has a good relationship with his mother and brother, and takes pride in his improved anger management, and his mental and physical fitness. As he progresses into adulthood, it is necessary for [defendant] to acknowledge how fury can affect more than those immediately around him."

The report advised the court that defendant would benefit from wardship and probation supervision "that includes an anger management program . . . ." It also stated that counseling for defendant and his mother would "strengthen their relationship and support improved communication."

The juvenile court held the dispositional hearing on January 22, 2013. Defense counsel requested a change to a probation condition related to defendant's weekend curfew hours. Counsel noted defendant's progress and remarked that defendant

understood his need to address anger management issues. No additional evidence was submitted at the hearing.

The juvenile court agreed that defendant was doing well. The court found: “[B]ased on the report [that defendant’s] relationship with his mother [is good] and the fact that probation seems to have correctly balanced all of the requirements, I’m going to go ahead and adopt the recommendations.” The court adjudged defendant a ward of the court with no termination date. The court stated that defendant was to reside in the home of his mother and have probation supervision.

Defendant filed a timely notice of appeal.

## **DISCUSSION**

### ***I. Defendant Has Not Demonstrated the Court’s Failure to Exercise Its Discretion***

Defendant contends that the juvenile court failed to exercise its discretion and did not recognize it could have placed him on probation without adjudging him a ward of the court. He asserts that the record does not show that the court ever considered this option.

Section 725, subdivision (a) permits the juvenile court to place a section 602 minor, i.e., one who has committed a criminal act, on probation for six months without declaring the minor a ward of the court. Subdivision (b) of section 725 permits the court to declare such a minor a ward of the court, a condition that generally continues until the minor’s 21st birthday. (§ 607, subd. (a).) The purpose of section 607 “is to enable the juvenile court to carry out its program of rehabilitation and training without interference” from a parent or others. (See *People v. Price* (1969) 1 Cal.App.3d 982, 987.)

In determining the appropriate disposition for a minor found to be a ward of the court, the court must focus on both the need for public protection and the best interests of the minor. (§ 202, see also *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) In making this determination, the court must consider, “in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.)

The juvenile court is not required to make specific findings on the record. (*In re John F.* (1983) 150 Cal.App.3d 182, 185.) Remand is required only when the juvenile court has demonstrably shown that it misunderstood the scope of its discretion. (*In re Michael G.* (1977) 76 Cal.App.3d 872, 875.) When the record is silent and contains no evidence to the contrary, a court is presumed to have been aware of and followed the applicable law and considered all the relevant facts. (Evid. Code, § 664; see also *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913; *In re Julian R.* (2009) 47 Cal.4th 487, 498-499.) Furthermore, in the absence of evidence to the contrary, “ ‘[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, we presume that the juvenile court understood its duty, unless defendant offers evidence overcoming the presumption by a preponderance of evidence. (Evid. Code, §§ 115, 600, subd. (a), & 606.)

At the dispositional hearing, defendant argued that his hours of curfew should be modified but otherwise submitted on the probation officer’s recommendation. Defendant did not object to the recommendation of wardship with probation and has forfeited the right to claim that the juvenile court failed to exercise its discretion. (See *People v. Welch* (1993) 5 Cal.4th 228, 237; *In re Josue S.* (1999) 72 Cal.App.4th 168, 170-171.)

Even if we presume that defendant’s claim is not forfeited, defendant’s argument fails on its merits.<sup>3</sup> Defendant argues that the juvenile court never mentioned the option of a nonwardship. It also noted that the probation report mentioned the factors set forth in section 725.5, but defendant emphasizes that neither the probation report nor the court expressly weighed these factors.

Defendant’s attempt to argue that the silent record establishes the juvenile court’s failure to exercise its discretion is unpersuasive. The court was not entirely silent. It

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<sup>3</sup> The People did not raise forfeiture as to this argument, but did maintain that defendant forfeited his claim that the court abused its discretion in adjudging him a ward of the court.

noted that defendant was doing well and that his relationship with his mother was good. Furthermore, it noted that the probation report seemed to have correctly balanced all of the requirements.

Even if the record is essentially silent, we must presume that the court considered the appropriate factors in exercising its discretion. (*In re Fred J.* (1979) 89 Cal.App.3d 168, 174-175.) Here, the juvenile court had no reason to mention nonwardship or the factors supporting wardship since defendant's counsel did not object to the probation officer's recommendation of a wardship. The court made no comment indicating a lack of understanding of the options available to it. (Cf. *In re Michael G.*, *supra*, 76 Cal.App.3d at p. 875 [record showed that the "trial court was under an erroneous belief that it could not impose conditions upon probation unless [the minor] was declared a ward of the court"].)

Defendant cites *In re Manzy W.* (1997) 14 Cal.4th 1199 (*Manzy*) and *In re C.W.* (2012) 208 Cal.App.4th 654 (*C.W.*) to support his argument that a silent record may rebut the presumption that the juvenile court followed the applicable law. In *Manzy*, the Supreme Court held that the juvenile court erred when it did not comply with section 702 and failed to specify on the record whether the "wobbler" offense in the case was a felony or misdemeanor. (*Manzy*, at p. 1209.) Section 702 provides, in relevant part, "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court *shall declare* the offense to be a misdemeanor or felony." (§ 702, italics added.) Similarly, in *C.W.*, the minor was eligible for deferred entry of judgment (DEJ) and the record did not establish that the parent or guardian received notification of this eligibility. (*Id.* at p. 660.) Sections 791 and 792 require the prosecuting attorney to provide written notification of the minor's eligibility for DEJ and the appellate court held that the absence of any evidence indicating that the statutory advisements were made was sufficient to rebut the presumption that the minor was properly advised of her DEJ eligibility either by the prosecutor or the juvenile court. (*C.W.*, at p. 661.)

In contrast to *Manzy* and *C.W.*, here, the record does not show a failure to comply with the mandates of a statute. No statute requires the juvenile court to declare on the record its specific reasons for imposing wardship rather than nonwardship status. (See *In re John F.*, *supra*, 150 Cal.App.3d at p. 185.) “[W]hen ‘a statement of reasons is not required and the record is silent, a reviewing court will presume the trial court had a proper basis for a particular finding or order . . . .’ ” (See, e.g., *In re Julian R.*, *supra*, 47 Cal.4th at p. 499[.] We thus conclude that defendant’s reliance on *Manzy* and *C.W.* is misplaced.

Defendant maintains that the evidence in the record clearly supported a nonwardship and therefore the juvenile court must have failed to consider this option. He emphasizes that the court acknowledged his progress and the record demonstrated his good behavior after the incident in March 2012 until the dispositional hearing in January 2013. He points out that the court commented on his strong relationship with his mother and its finding that it was unnecessary to remove him from his mother’s home. Defendant highlights that he is on track to graduate from high school, is 17 years old, and has no history of juvenile delinquency. Given these facts and the court’s comments, defendant asserts that the court would have selected a nonwardship over a wardship if it appreciated that was an option.

Defendant points to the factors supporting nonwardship probation and completely disregards those factors supporting the adjudgment of wardship. Defendant ignores the circumstances and gravity of the offense committed. The probation report stated that defendant admitted that he had “ ‘tunnel vision’ when he confronted the victim, and struck him with his left fist.” He became so angry and out of control that he walked past a uniformed officer and confronted the victim. When the officer intervened, defendant still used his free hand to punch the victim. He refused to comply with the officer’s commands, and the officer had to force him to the ground. Once on the ground, defendant continued to resist and attempted to use his free hand to push himself up.

Defendant fails to mention his ongoing anger management problem. The probation report described an incident over the 2012 holidays—after the incident in

March 2012—“when [defendant] cleaned out the refrigerator, and his mother disapproved of the mess in the kitchen.” Defendant punched the refrigerator and walked away to “ ‘cool off.’ He used physical exercise and breathing to slow himself down and further control the outburst.” Defendant, himself, acknowledged that he still has anger issues. When describing how he handles anger, defendant stated that “he can become depressed and easily set off when he does not eat during the day.” He stated that he was “aware that he ‘blacks out,’ or makes his hands into fists when he feels his ‘blood boiling.’ ”

Defendant, according to the probation report, would benefit from wardship and probation supervision because then he would be required to enroll in an anger management program, have counseling sessions that involved his mother, and engage in community services. The report stated, “As [defendant] progresses into adulthood, it is necessary for [him] to acknowledge how fury can affect more than those immediately around him.”

The record makes it clear that the juvenile court and probation department were concerned about defendant’s anger management and the possibility that his uncontrollable rage might result in violence in the future. A declaration of wardship is for the minor’s rehabilitation and the safety of the public (§ 202). Here, the record supported a finding that defendant would benefit from a wardship because his serious anger issues required the court to retain jurisdiction over him and impose probation for more than six months. (See § 607, subd. (a).)

We conclude that the evidence supported a finding of wardship and defendant has not demonstrated that the juvenile court did not recognize that it had the discretion to impose probation without making defendant a ward of the court.

## ***II. No Abuse of Discretion***

Defendant argues that the juvenile court abused its discretion in adjudging him a ward of the court because the record did not establish that a wardship offered a probable benefit to him or that nonwardship probation would be ineffective or inappropriate. With

regard to the latter, he claims that the juvenile court was obligated to choose the least restrictive alternative.

We review a juvenile court's dispositional order for abuse of discretion. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.) A court abuses its discretion when it makes a determination that is “ ‘ ‘arbitrary, capricious, or patently absurd.’ ’ ” (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.) We indulge all reasonable inferences to support the decision of the court and will not disturb its factual findings when there is substantial evidence to support them. (*In re Robert H.*, at p. 1330.) In determining the appropriate disposition for a minor found to be a ward of the court, the court must focus on both the need for public protection and the best interests of the minor. (§ 202, see also *In re Jimmy P.*, *supra*, 50 Cal.App.4th at p. 1684.) As already discussed, the court should consider, among other things, the age of the minor, the circumstances and gravity of the offense, and the minor's previous delinquent history. (§ 725.5.)

Defendant, as he forfeited his right to argue that the juvenile court did not exercise its discretion, has also forfeited his claim that the court abused its discretion when imposing a wardship. As also noted earlier, defendant did not object to this disposition in the lower court. “In general, the forfeiture rule applies in the context of sentencing as in other areas of criminal law. As a general rule neither party may initiate on appeal a claim that the trial court failed to make or articulate a ‘ ‘discretionary sentencing choice[ ].’ ’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 881.) An unauthorized sentence or an unconstitutionally vague or overbroad probation condition that is a pure question of law, is subject to correction by the reviewing court even when there is no objection in the lower court. (*Id.* at p. 882, fn. 3 & p. 888.) However, the narrow exception to the forfeiture rule does not apply in the present case as the imposition of a wardship was legally authorized under section 725.

Even if we presume that this issue has been preserved for appeal, for the same reasons discussed above, we conclude that the record does not demonstrate that imposing a wardship exceeded the bounds of reason. The only new issue raised by defendant that has not already been addressed is his argument that the juvenile court “must choose the

less restrictive alternative unless the minor's interests require a more restrictive alternative." Defendant contends that the record does not demonstrate that a less restrictive alternative would be ineffective or inappropriate and thus the juvenile court abused its discretion.

When arguing that the juvenile court had to consider less restrictive alternatives, defendant relies on *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396, superseded by statute on another issue, and *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576. Both of these cases are inapplicable as they involved a commitment to the California Youth Authority, which is now the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) (see § 731, subd. (a)(4)). Our Supreme Court has noted that the statutory scheme contemplates a progressively restrictive and punitive series of disposition orders in juvenile delinquency cases—" 'namely, home placement under supervision, foster home placement, placement in a local treatment facility and, as a last resort, [DJF] placement.' " (*In re Aline D.* (1975) 14 Cal.3d 557, 564, superseded by statute on another issue.) The requirement that the evidence show that less restrictive alternatives are ineffective or inappropriate applies to DJF commitments because they are the "last resort." (See *ibid.*) Defendant does not cite any case or authority that requires such a consideration when, as here, the minor is *not* committed to DJF.

We will not impose a new rule on juvenile courts to require them to set forth all possible less restrictive dispositions and then explain the reasons for rejecting them. Here, the court selected one of the least restrictive alternatives—wardship with home placement under supervision—and the court did not need to make a preliminary finding that nonwardship would be ineffective or inappropriate.

We agree with the juvenile court that defendant at the time of the dispositional hearing was doing well; he returned to school and was on track to graduate. We commend defendant for this behavior. Defendant, however, has failed to demonstrate that imposition of a wardship was arbitrary, capricious, or patently absurd. Thus he has failed to show an abuse of discretion by the juvenile court in declaring him a ward of the court.

**DISPOSITION**

We affirm the juvenile court's orders.

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Brick, J.\*

We concur:

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Haerle, Acting P.J.

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Richman, J.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.