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

**In re O.A., a Person Coming Under the
Juvenile Court Law.**

A137857

THE PEOPLE,

**(Sonoma County
Super. Ct. No. J37351)**

Plaintiff and Respondent,

v.

O.A.,

Defendant and Appellant.

_____ /

Appellant O.A. (the minor) contends the juvenile court erred by withdrawing approval of a plea agreement and reinstating the counts in the original Welfare and Institutions Code section 602 petition (petition).

We affirm. We conclude the court properly withdrew approval of the plea agreement pursuant to the principles underlying Penal Code section 1192.5 and its inherent authority to prevent abuse of its process.¹

¹ Unless otherwise noted, all further statutory references are to the Penal Code. All “rule” references are to the California Rules of Court. By separate order filed this date, we deny the minor’s related petition for writ of habeas corpus (A138378) raising an ineffective assistance of counsel claim.

FACTUAL AND PROCEDURAL BACKGROUND

A Rohnert Park police officer arrested the minor after a boy from the minor's school claimed the minor attempted to stab him with a knife at a park. The People filed a petition alleging the minor committed felony assault with a deadly weapon (§ 245, subd. (a)(1)), made a felony criminal threat (§ 422), and brandished a deadly weapon, a misdemeanor (§ 417, subd. (a)(1)). The petition also alleged the criminal threat allegation was a serious felony under section 1192.7, the minor was eligible for commitment to the Division of Juvenile Facilities (Welf. & Inst. Code, § 707, subd. (b)(18)), and the minor personally used a deadly weapon in the commission of the criminal threat (§ 12022, subd. (b)(1)).

Pursuant to a plea agreement, the minor admitted the section 422 criminal threat allegation as a "12-month misdemeanor." The People struck the notice language as to that allegation and dismissed the remaining allegations in the petition. The court determined the minor understood and waived his constitutional rights and entered into the plea knowingly, intelligently, freely, and voluntarily. When the court asked defense counsel whether there was a "factual basis for [the minor's] admission[.]" counsel responded, "[t]here appears to be, based on the police report and the discovery provided[.]" The court concluded there was a factual basis for the admission.

A probation officer interviewed the minor. During the interview, the minor "insisted that he did not have a knife" on the day of the incident and "claimed he did not know why [the victim] would make the accusations outlined in the crime report[.]" "When asked why he admitted to the sustained offense given his contention that he did not commit any of the acts alleged in the petition, the minor said he felt he would lose at trial since the police officer would testify he had acknowledged threatening [the victim] with the knife, and those statements would be used against him. However, [the minor] claimed he only made those admissions because the officer put pressure on the handcuffs he was wearing, causing him pain that left bruises, and would not let go until he said he did it." The minor's parents told the probation officer the victim provoked the minor, but they claimed their son "confessed only because the police officer 'told him to say exactly

what the other kid said' while painfully tightening the handcuffs he was wearing. They stated the officer promised to let [the minor] go if he admitted to what he was accused of, and the minor 'got scared, so he said what they wanted.'" According to the probation officer, the minor "essentially denied any responsibility for the offense, and his parents went a step further by blaming everything on the victim." The probation officer recommended declaring the minor a ward of the court in his parents' home.

At the dispositional hearing, the court withdrew the plea agreement, stating, "I have read and considered the report from the probation department. It's going to be admitted into the record, and I'm withdrawing the plea. [The minor's] plea is withdrawn. I'll set it for trial. He's completely denying the crime." Neither party objected. The matter was transferred to a different judge, who reinstated the allegations in the petition; after waiving formal arraignment, the minor pled not guilty. Following a contested jurisdictional hearing, the court sustained the allegations in the petition. The court declared the minor a ward of the court and committed him to the Division of Juvenile Facilities for a 90-day diagnostic evaluation.

The minor filed a request to change court order and to reinstate his admission to the misdemeanor criminal threat allegation; he also filed a "Motion to Vacate Court Orders [], Non-Statutory Motion for New Trial [and] Request that Minor Be Present at Hearing on This Motion." The People opposed the motion. Following a hearing, the court denied the motion, concluding "any alleged error was waived by the minor's failure to object to the Court's order vacating the plea." It explained, "[t]he ends of justice are not served by allowing the minor to roll the dice at trial and then, if convicted, turn around and argue that the original plea agreement must be reinstated because the trial court erred by vacating the plea when no objection was made to the trial court's order or to the matter proceeding to trial."

At the dispositional hearing, the court declared the minor a ward of the court, removed him from his parents' home, and placed him under the supervision of the probation department. (Welf. & Inst. Code, § 727, subd. (a).)

DISCUSSION

I.

The Court Properly Withdrew Approval of the Minor's Plea Agreement Pursuant to the Principles Underlying Section 1192.5

The minor claims the court's withdrawal of approval of the plea agreement "was void for lack of jurisdiction," violated his constitutional due process rights, and resulted from ineffective assistance of counsel. The People contend the minor forfeited these claims by failing to object in the juvenile court; they also argue the court correctly withdrew approval of the plea agreement. We address the minor's claims on the merits and reject them.²

To place the issues in context, we first discuss the statutory scheme. "At the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of [Welfare and Institutions Code] . . . 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).) Rule 5.778 governs the process whereby a juvenile may admit, or enter a no contest plea to, the allegations of a Welfare and Institutions Code section 602 petition.

Rule 5.778 provides in relevant part:

"(a) Petition read and explained ([Welf. & Inst. Code,] § 700) [¶] At the beginning of the jurisdiction hearing, the petition must be read to those present. . . . [¶] **(b) Rights explained** ([Welf. & Inst. Code,] § 702.5) [¶] After giving the advisement required by rule 5.534, the court must advise those present of each of the following rights of the child. . . . [¶] **(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

² Accordingly, we need not address the People's forfeiture argument, nor the minor's claim that trial counsel rendered ineffective assistance of counsel by failing to object when the court withdrew approval of the plea agreement.

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).”

Rule 5.778(d) through (g) pertain to admission and no contest pleas, and the findings required for such pleas: “**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. [¶] **(f) Findings of the court** ([Welf. & Inst. Code,] § 702) [¶] On an admission or plea of no contest, the court must make the following findings noted in the minutes of the court:

“(1) Notice has been given as required by law;

“(2) The birthdate and county of residence of the child;

“(3) The child has knowingly and intelligently waived the right to a hearing on the issues by the court, the 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;

“(4) The child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or plea of no contest;

“(5) The admission or plea of no contest is freely and voluntarily made;

“(6) There is a factual basis for the admission or plea of no contest;

“(7) Those allegations of the petition as admitted are true as alleged;

“(8) The child is described by [Welf. & Inst. Code] section 601 or 602; and

“(9) In a [Welf. & Inst. Code] section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.” Rule 5.778(g), provides: “**(g) Disposition** [¶] After accepting an admission or

plea of no contest, the court must proceed to disposition hearing under rules 5.782 and 5.785.”

As the minor concedes, Rule 5.778 is analogous to section 1192.5, which governs the trial court’s acceptance of a defendant’s guilty or no contest plea in an adult case. (See *In re Michael B.* (1980) 28 Cal.3d 548, 554-560; *Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 791.) Section 1192.5 provides in relevant part: “Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, . . . the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it. [¶] Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea. . . . [] If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea. [¶] If the plea is not . . . approved by the court, the plea shall be deemed withdrawn and the defendant may then enter the plea or pleas as would otherwise have been available.”

“Section 1192.5 formalizes the procedures to be followed by the trial courts in dealing with negotiated pleas, commonly known as plea bargaining.” (*People v. Johnson* (1974) 10 Cal.3d 868, 871.) It gives trial courts authority to approve — and to agree to exercise their powers regarding — negotiated plea agreements in criminal proceedings, including broad discretionary authority to withdraw approval in “light of further consideration of the matter” prior to sentencing. (§ 1192.5.) Under section 1192.5, the

court's approval of a negotiated plea is preliminary and subject to its broad discretion to reconsider and withdraw approval of the plea at any time prior to sentencing. "[I]mplicit in the language of section 1192.5 is the premise that the court, upon sentencing, has broad discretion to withdraw its prior approval of a negotiated plea.' [Citation.] Such withdrawal is permitted, for example, in those instances where the court becomes more fully informed about the case [citation], or where, after further consideration, the court concludes that the bargain is not in the best interests of society." (*People v. Superior Court (Gifford)* (1997) 53 Cal.App.4th 1333, 1338.)

The principles set forth in section 1192.5 apply to juvenile proceedings. (*In re Jermaine B.* (1999) 69 Cal.App.4th 634, 640; see also *In re Matthew N.* (2013) 216 Cal.App.4th 1412, 1420 [principles underlying section 1018, which governs standards for withdrawal of a plea in adult cases, apply to delinquency proceedings].) Pursuant to the principles underlying section 1192.5, the juvenile court properly withdrew approval of the plea agreement and reinstated the original allegations in the petition. At the initial dispositional hearing, the juvenile court indicated it was withdrawing approval of the plea agreement in light of statements made by the minor contesting his guilt. Under the circumstances, the court could reasonably conclude it was in society's best interest to withdraw approval of the plea agreement in light of the minor's contestation of his guilt. In addition, the terms of section 1192.5 indicate a court must find there is a factual basis for the plea. (See also rule 5.778(f)(6).) Here, defense counsel's statement at the plea hearing that "there appear[ed] to be" a factual basis for plea "based on the police report and the discovery provided" was, essentially, the only factual basis upon which the court relied to approve the plea agreement, since no other facts were considered on the record. At the initial dispositional hearing, the court could reasonably conclude — based on the minor's later denial of guilt — that the requisite factual basis for the plea was lacking.

The circumstances here are similar to those discussed in *People v. Thomas* (1994) 25 Cal.App.4th 921 (*Thomas*). There, the trial court withdrew approval of a negotiated plea pursuant to section 1192.5 after reviewing the defendant's record with the Department of Motor Vehicles prior to sentencing, and learning the defendant had been

found guilty of three, not two, prior drunk driving charges. (*Thomas, supra*, 25 Cal.App.4th at p. 926.) Citing section 1192.5, the appellate court affirmed, noting: “[t]he very facts of this case illustrate why the trial court, before judgment is final, retains the power to withdraw its approval and vacate the guilty plea sua sponte.” (*Thomas, supra*, at p. 926.) Here as in *Thomas*, the juvenile court approved the plea agreement and then learned the minor continued to contest his guilt after he had entered his plea and had acknowledged a factual basis existed for that plea. The court, having learned of this new information after initially approving the agreement, changed its views about the plea agreement and was entitled to withdraw its approval sua sponte.

Relying on *People v. Mikhail* (1993) 13 Cal.App.4th 846 (*Mikhail*) and *In re Stanley* (1976) 62 Cal.App.3d 71 (*Stanley*), the minor contends the principles underlying section 1192.5 do not apply because his plea was “unconditional” — i.e., once accepted it was binding on the court.³ We disagree. As discussed above, Rule 5.778 contemplates an admission or, with the approval of the court, a plea of no contest to the allegations in a petition. (Rule 5.778(c), (e).) Rule 5.778(e) provides, “[t]he child may enter a plea of no contest to the allegations, subject to the approval of the court.” Although Rule 5.778 does not specifically mention an admission coupled with a claim of innocence, we see no reason to treat such an admission differently from a no contest plea. (See *North Carolina v. Alford* (1970) 400 U.S. 25, 36-37 (*Alford*) [noting the similarity of a no contest plea to a plea of guilty coupled with a claim of innocence, and finding no “constitutional significance” in the distinction].) Like a plea of no contest, an admission coupled with a claim of innocence may be entered “subject to the approval of the court” regardless of

³ At oral argument, counsel for appellant differentiated charge bargaining from sentence bargaining. Counsel claimed that once the prosecutor commits to a charge bargain, the court has no power to unwind the plea bargain. Counsel, however, failed to develop this argument in appellant’s opening brief and, as a result, we reject it. (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1554, fn. 9 [“We do not consider arguments that are raised for the first time at oral argument”].)

whether “conditions” were imposed before the court accepted the plea agreement. (Rule 5.778(e).)

In any event, the minor’s reliance on *Mikhail* does not assist him. In *Mikhail*, the prosecution charged the defendant with murder, attempted murder, and assault with a deadly weapon; he pleaded guilty to the lesser included offense of voluntary manslaughter in exchange for the dismissal of the remaining charges. The plea included no restrictions on the court’s sentencing power. The trial court took the plea, granted the motion to dismiss the other charges, and set the matter for sentencing before another judge. (*Mikhail, supra*, 13 Cal.App.4th at pp. 850-851.) The sentencing judge stated he believed the voluntary manslaughter charge was too light and that a jury should decide the matter. (*Id.* at p. 851.) Over the prosecutor’s objection, the judge reinstated the original charges; following a trial, the jury convicted the defendant of second degree murder and other charges. (*Id.* at p. 852.) The *Mikhail* court determined the sentencing judge violated the separation of powers doctrine and the defendant’s due process rights by repudiating an unconditional negotiated plea which had already been approved by another judge and referred to the second judge for sentencing. (*Id.* at pp. 856-857.)

Mikhail is inapposite for at least two reasons. First, the plea bargain in that case fixed the degree of the crime and was governed by sections 1192.1 and 1192.4, not section 1192.5. (*Mikhail, supra*, 13 Cal.App.4th at pp. 855-856, 857, 858, fn. 5.) Second, in *Mikhail*, no new facts were presented after the plea and before sentencing; the sentencing judge simply believed the defendant deserved a greater sentence. Here, the judge who accepted the plea did not know all of the facts, specifically the minor’s claim to the probation officer that he was innocent and felt coerced into confessing. (See *People v. Olea* (1997) 59 Cal.App.4th 1289, 1299 [describing *Mikhail* as depending on “‘very special’ circumstances involving no changes between plea and sentencing”].) Accordingly, *Mikhail* has no application here. For these same reasons, the minor’s reliance on *Stanley, supra*, 62 Cal.App.3d 71 is also misplaced.

Relying on *Alford*, the minor seems to suggest the court had no authority to bar entry of his plea. In *Alford*, the United States Supreme Court held a defendant could

knowingly, voluntarily, and intelligently enter a guilty plea despite his accompanying claim that he was innocent. *Alford* does not assist the minor because it concerned a defendant who sought relief from his guilty plea, while the minor here seeks to have his plea reinstated. The *Alford* court expressly acknowledged its holding did “not mean that a trial judge must accept every constitutionally valid guilty plea merely because a defendant wishes so to plead.” (*Alford, supra*, 400 U.S. at p. 38, fn. 11.)

Although California courts have held “a claim of innocence is not necessarily inconsistent with a plea of guilty” (*In re Alvernaz* (1992) 2 Cal.4th 924, 951) and have determined nothing prevents a defendant from seeking to enter a plea of guilty “even though he protests his innocence” (*People v. Watts* (1977) 67 Cal.App.3d 173, 180), a court is not *required* to accept such a plea, since “[a] criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court. . . .” (*Alford, supra*, 400 U.S. at p. 38, fn. 11.) Here, the minor was entitled to protest his innocence while admitting the misdemeanor criminal threat allegation, but the court was equally entitled to act on its concern that the minor had not accepted responsibility for his actions and claimed he was coerced into confessing. As discussed above, the court was entitled to reconsider its approval of the plea when it became aware the minor continued to contest his guilt after the plea hearing.

Finally, the minor argues the court’s withdrawal of his plea violated his due process rights and Welfare and Institutions Code sections 775 and 776 because he did not receive notice or an opportunity to be heard before the court withdrew its approval of the plea agreement. Under Welfare and Institutions Code section 775, the juvenile court can set aside “[a]ny order” regarding a person subject to its jurisdiction “as the judge deems meet and proper,” but only subject “to such procedural requirements as are imposed by this article.” Welfare and Institutions Code section 776 provides that “[n]o order changing, modifying, or setting aside a previous order of the juvenile court shall be made . . . unless prior notice of the application” has been given to probation, the People, and the minor’s attorney.

The minor's argument fails because neither statute applies here. The juvenile court's approvals relating to the plea agreement were of a preliminary nature, akin to tentative rulings, pursuant to the principles underlying section 1192.5. The court had no need to invoke its powers under Welfare and Institutions Code section 775 or elsewhere, because it had not yet finally approved the plea agreement when it withdrew its approval.⁴

II.

The Court Properly Withdrew Approval of the Minor's Plea Pursuant to Its Inherent Authority to Prevent Abuse of Process

As the People correctly argue, the juvenile court had a second basis to withdraw approval of the plea agreement: the court's inherent authority to prevent abuse of its process. "Every court has inherent power to prevent abuse of its process and to conform its procedures to the fundamentals of due process." (*People v. Thompson* (1970) 10 Cal.App.3d 129, 134, quoting *People v. Clark* (1968) 264 Cal.App.2d 44, 46-47; see also *Thomas, supra*, 25 Cal.App.4th at p. 925 ["[i]n taking a guilty plea and approving a

⁴ In his reply brief and at oral argument, the minor claimed the court could not withdraw approval of the plea because it did not notify him pursuant to section 1192.5 that "(1) its approval is not binding, (2) it may . . . withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so." (§ 1192.5.) Assuming for purposes of argument such an advisement was required (cf. Rule 5.778(c), (f)), we reject the minor's argument pursuant to *People v. King* (1981) 123 Cal.App.3d 406, 408, where a division of this court rejected a similar argument that the trial court erred by refusing to approve a negotiated plea because the court "did *not*, as required by . . . section 1192.5 [], advise [the defendant] at the time the earlier plea was conditionally accepted and entered, that it might 'withdraw its approval in the light of further consideration of the matter, . . .'" (*Id.* at p. 408.) In rejecting the defendant's argument that the trial court "was without power to set aside the plea bargain" based on its failure to "follow the rule of [section] 1192.5," the *King* court explained, "we observe that the high court has expressed, . . . 'reluctance to create a right to specific performance of a plea bargain whenever the court has failed to advise a defendant of his rights under section 1192.5.' Thereafter the same court . . . stated: 'We have previously held that a defendant should not be entitled to enforce an agreement between himself and the prosecutor calling for a particular disposition against the trial court absent very special circumstances.' [Citation.] (We discern no "'very special circumstances" attending the case at hand.'") (*King, supra*, 123 Cal.App.3d at pp. 408-409.)

negotiated disposition, the trial court retains the inherent power to withdraw its approval at the time of sentencing”].) Here, the court’s concern it was pronouncing sentence on an innocent person was a sufficient ground for it to exercise its inherent power to prevent abuse of its process. As discussed above, nothing in *Alford, supra*, 400 U.S. 25, requires a court to approve a defendant’s guilty plea when he protests his innocence; to the contrary, *Alford* indicates a court should not proceed in such circumstances if there is not an independent factual basis provided for such a plea, as was the case here. (*Id.* at p. 38, fn. 10; see also *People v. Snyder* (1989) 208 Cal.App.3d 1141, 1146-1147.)

In re Ricardo C. (2013) 220 Cal.App.4th 688 (petn. for review pending, petn. filed Nov. 20, 2013, S214742) supports our conclusion. There, the minor admitted attempted robbery and criminal threat allegations in exchange for being placed in a Youthful Offender Program (YOP) at Juvenile Hall. The court, however, placed the minor in a less restrictive placement and the People appealed, contending the placement contravened the agreed-upon terms of the negotiated disposition. The *Ricardo C.* court agreed and reversed.

It held “the juvenile court properly adverted to its own inherent discretion and duty to select a disposition that was in the best interest of minor. The court was correct that the parties could not themselves create a bargain that would usurp the juvenile court’s discretion or bind the court to a disposition the court viewed as inconsistent with its duty. . . . ‘[T]he court, upon sentencing, has broad discretion to withdraw its prior approval of a negotiated plea.’ [Citation.] ‘Such withdrawal is permitted, for example, in those instances where the court becomes more fully informed about the case [citation], or where, after further consideration, the court concludes that the bargain is not in the best interests of society.’ [Citation.] In deciding whether or not to withdraw approval of a plea bargain, the court may of course ‘be expected to consult the probation report. . .’ [Citation.] That is evidently what occurred here. The juvenile court considered the probation report, including the probation department’s reasons for recommending a placement other than the agreed-upon assignment to YOP. The court exercised its independent discretion to select a placement at Twin Pines Ranch, rather than the agreed-

upon placement at YOP. Once it determined to do so, however, the juvenile court had effectively withdrawn its approval of the plea bargain. Under such circumstances, the court could not proceed to apply and enforce certain parts of the plea bargain, while ignoring the provision that had been material to the People's agreement to the bargain. The court was therefore constrained to reject the plea bargain and to restore the parties to their former positions. In other words, the court should have set aside the plea and reinstated all the allegations of the petitions filed against minor." (*Ricardo C.*, *supra*, 220 Cal.App.4th at p. 699.)

Here, the court considered the probation report and — pursuant to its inherent authority — withdrew its approval of the plea bargain, set aside the plea, and “reinstated all the allegations of the petitions filed against [the] minor.” (*Ricardo C.*, *supra*, 220 Cal.App.4th at p. 699.) We conclude — pursuant to the principles underlying section 1192.5 and the court's inherent power to prevent abuse of process — the juvenile court acted properly when, concerned by the minor's continued contestations of guilt, withdrew its preliminary approval of the plea agreement and reinstated the original charges in the petition.

DISPOSITION

The juvenile court's rulings are affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.