

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO Q.,

Defendant and Appellant.

A141837

(Contra Costa County
Super. Ct. No. J12-01596)

This is an appeal from the disposition of a juvenile probation violation (Welf. & Inst. Code,¹ § 777) in which the minor’s appointed counsel on appeal filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We have reviewed the record, find no issues that require briefing, and therefore affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about November 8, 2011, Antonio Q., then 14 years old, allegedly pushed a school teacher from behind, which resulted in a juvenile wardship petition under section 602 being filed more than a year later, alleging battery on a school employee. (Pen.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Code, §§ 242, 243.6.) A hearing was scheduled for December 14, 2012, but Antonio failed to appear and a bench warrant issued.

On January 1, 2013, while the bench warrant was outstanding, Antonio and three other young males were burglarizing a house when the owners came home. One of the others fled, but the owners physically restrained Antonio and two of his companions and then called the police, who responded and arrested Antonio.

On January 3, 2013, the district attorney filed an amended wardship petition, adding charges that Antonio violated Penal Code section 459 (residential burglary) with an enhancement allegation under Penal Code section 667.5, subdivision (c)(21) (nonaccomplice present during burglary). Following a contested hearing on January 28, 2013, the juvenile court found true the burglary allegation with the enhancement allegation. The court granted a defense motion to dismiss the battery allegation on statute of limitations grounds.

When interviewed by the probation officer, Antonio admitted his involvement in the burglary and expressed remorse. The probation department calculated his maximum term of confinement at seven years.² On February 7, 2013, the juvenile court adjudged Antonio a ward of the court and ordered him detained in the Orin Allen Youth Rehabilitation Facility (OAYRF) for nine months, with standard conditions of probation upon release, including a stay-away order from the crime partners who participated in the burglary with him.

Antonio's adjustment at OAYRF was good. Although he graduated from the program on August 9, 2013, 86 days early, things took a turn for the worse a few weeks later. On September 18, 2013, a notice of probation violation was issued based on Antonio's having missed school on several occasions and having violated curfew. The

² The maximum term for an adult offender for a violation of Penal Code section 459 is six years. (Pen. Code, § 461, subd. (a).) Although there was a finding under Penal Code section 667.5, subdivision (c)(21), that finding alone, without a prior prison commitment, would not add any time to an adult's maximum term. If Antonio is later sent to the Division of Juvenile Facilities, the juvenile court will review this calculation. (§ 731, subd. (c); *In re Julian R.* (2009) 47 Cal.4th 487, 495.)

notice was later amended to add an allegation that Antonio tested positive for THC on October 4, 2013. On October 18, 2013, Judge Rebecca C. Hardie, sitting in Department 5, dismissed the allegation of curfew violation but sustained the other allegations, which had been admitted by Antonio.

The probation department recommended that Antonio be returned to OAYRF for the remaining 86 days of his initial commitment. On November 8, 2013, Judge Hardie ordered Antonio returned to OAYRF pending a contested dispositional hearing on January 10, 2014. By the time of the dispositional hearing, Antonio had already spent 99 additional days at OAYRF, and the probation department recommended that he be sentenced to time served and discharged from OAYRF forthwith. Judge Hardie followed this recommendation and returned Antonio to his mother's home.

Within a short time, Antonio started missing school frequently. His mother also reported that he had been disobedient, disrespectful and had violated his curfew. On February 1, 2014, Contra Costa County Sheriff's deputies stopped a car with expired registration tags and found Antonio inside with the two individuals who participated in the earlier burglary with him. Antonio's association with these crime partners violated his stay-away order. When questioned, Antonio admitted to the deputy that he was a member of the Norteños.

On February 21, 2014, the probation department filed a probation violation notice under section 777, alleging Antonio had failed to attend school, missed an appointment with his probation officer, violated curfew, and violated the stay-away order. A probation revocation hearing was scheduled for March 4, 2014, but Antonio failed to appear. Judge Hardie issued a bench warrant, and Antonio was arrested on April 22, 2014.

On April 24, 2014, Antonio admitted the probation violations in Department 194 before Judge John C. Minney. Antonio stated there had been no promises made to induce his admissions. After Antonio's counsel indicated his unwillingness to waive his *Arbuckle* rights for disposition, the court questioned whether an *Arbuckle* waiver was

required in juvenile probation hearings.³ Antonio did not waive his *Arbuckle* rights, so the judge set the disposition hearing in Department 194. Four days later, Judge Minney ruled that *Arbuckle* did not apply to juveniles admitting probation violations, citing *People v. Beaudrie* (1983) 147 Cal.App.3d 686, and further finding that *Arbuckle* also does not apply in this case because there was no plea bargain. He then transferred the disposition hearing to Judge Hardie's department.

In the disposition report, the probation officer recommended home supervision for 90 days, three weekends in juvenile hall, and standard conditions of probation. During the disposition hearing on May 8, 2014, Judge Hardie asked Antonio's attorney why he had resisted Antonio's transfer into her department for disposition. Asserting an *Arbuckle* objection, he explained, "Because I didn't know that this department was going to follow [the probation report's] recommendation. In fact, my guess is that you would not, and I thought that there was a greater chance that Department 194 would."

Judge Hardie asked if there had been a negotiated disposition. When counsel said, "No," the court denied a request to transfer Antonio's case back to Judge Minney. She did, however, give Antonio the opportunity to withdraw his admissions if he so desired, and his attorney declined. Judge Hardie rejected the recommended disposition, finding "Court orders thus far have had very little impact" on Antonio. She expressed concerns about Antonio, including his association with gang members, disrespect for his mother's rules, and persistent failure to attend school. She found Antonio's mother's progress in alleviating the problems that led to his removal from the home was fair, but that Antonio's progress was poor. (§ 727.2, subd. (e)(4).)

After adjudging Antonio to be a ward of the court with no termination date, Judge Hardie removed custody from his mother, found continuance in his mother's home contrary to his welfare (§ 726, subd. (a)(3)), and placed him in the custody of the probation department in an approved placement, preferably Rite of Passage, Courage to

³ *People v. Arbuckle* (1978) 22 Cal.3d 749, 756-757 held that when a judge accepts a negotiated plea under which the court retains some sentencing discretion, "an implied term of the bargain is that sentence will be imposed by that judge."

Change, or Boys Republic. She described the Rite of Passage program as a “terrific” program for Antonio, in part because it was the closest program to Antonio’s home, and it provided parents with bus transportation for weekend visits. The placement was scheduled for review on October 24, 2014, and it was anticipated that Antonio could safely be returned home May 8, 2015.

Antonio filed a timely notice of appeal.

II. DISCUSSION

Antonio’s appointed counsel on appeal has asked that we undertake the full record review required by *Wende, supra*, 25 Cal.3d 436. Counsel advised Antonio that a *Wende* brief would be filed and that he could file a supplemental brief of his own within 30 days, but no such brief was filed.

Having conducted the required review, we note that Antonio was represented by counsel at all critical stages and that he was advised of his rights before his admissions were accepted. The disposition was lawful, the accompanying findings find support in the record evidence, and the judges who ruled on his case were fully familiar with the case. We find no procedural irregularities or other issues that would merit briefing.

With respect to the applicability of *Arbuckle, supra*, 22 Cal.3d 749, if we were to review the issue, we would employ a de novo standard of review because the issue presented involves the applicability of a legal rule to an undisputed set of facts, which is an issue of law subject to de novo review. (*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1367; *Estate of Kampen* (2011) 201 Cal.App.4th 971, 985.)

The *Arbuckle* issue that surfaced here does not require further briefing. *Arbuckle* applies generally in juvenile cases. (*In re Mark L.* (1983) 34 Cal.3d 171, 176–177; *In re Thomas S.* (1981) 124 Cal.App.3d 934, 940–942.) It has not, however, been extended to sentencing on probation violations. (*People v. Martinez* (2005) 127 Cal.App.4th 1156, 1159–1160 (*Martinez*); *People v. Beaudrie, supra*, 147 Cal.App.3d at pp. 693–694; *People v. Watson* (1982) 129 Cal.App.3d 5, 7–8.)

As Judge Minney pointed out, and as Judge Hardie clearly understood, *Arbuckle* applies only when the defendant has entered a plea bargain. (See *Martinez, supra*, 127 Cal.App.4th at p. 1159.) There was no bargain in this case. “*Arbuckle* was not premised on constitutional or statutory mandates, but rather on contract principles, speaking to a ‘defendant’s expectations and reliance on the plea bargain’s implied terms.’ ” (*People v. McIntosh* (2009) 177 Cal.App.4th 534, 541.) Because Antonio’s admission of the probation violation was not part of a negotiated disposition, the rationale underlying *Arbuckle* has no application.

III. DISPOSITION

The disposition order is affirmed.

Streeter, J.

We concur:

Ruvolo, P.J.

Rivera, J.