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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.A.,

Defendant and Appellant.

A143479

(Marin County
Super. Ct. No. JV26008A)

I.

INTRODUCTION

In September 2012, J.A. (appellant) was adjudged a dependent of the Contra Costa County juvenile court under Welfare and Institutions Code section 300.¹ In August 2013, appellant became the subject of a section 602 wardship petition after he was involved in a violent altercation in his group home. Although the original section 602 petition was resolved without changing appellant’s dependency status, numerous subsequent altercations led to a supplemental petition and an amendment to that petition pursuant to which appellant entered no contest pleas to misdemeanor and felony offenses. In October 2014, appellant’s case was transferred to Marin County for disposition. The Marin

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

County juvenile court found that appellant would be better served under the delinquency system, adjudged appellant a ward of the court, and placed him on probation.

Appellant contends the disposition order must be reversed because the Contra Costa and Marin County juvenile courts made numerous reversible errors. Alternatively, appellant contends that even if his wardship disposition is affirmed, other provisions in the disposition order must be corrected by this court or pursuant to a remand with instructions. We will remand this matter so the juvenile court can correct several errors in its order, but otherwise affirm the judgment.

II.

STATEMENT OF FACTS

A. The Dependency Petition

In July 2012, the Contra Costa County Director of Children and Family Services filed a juvenile dependency petition on behalf of appellant, who was 14 years old at the time. The petition alleged that appellant came within the jurisdiction of the juvenile court under section 300, subdivision (b) [failure to protect] because appellant's mother (mother) was unable to care for him due to her mental health issues. The petition also alleged that appellant was within the court's jurisdiction under section 300, subdivision (g) [no provision for care], because mother refused to allow appellant back into her home for two reasons: first, on July 12, 2012, appellant threatened mother and his cousin with a knife, and physically assaulted his cousin; and second, appellant refused to take prescribed medication to treat his own mental health problems.

In August 2012, the petition was amended to dismiss the section 300, subdivision (b) allegation, and the juvenile court exercised jurisdiction over appellant under section 300, subdivision (g). On September 5, appellant was adjudged a dependent, removed from mother, and placed in the care of the social services department.

B. The Original Section 602 Petition

1. Background

On August 27, 2013, the Contra Costa County District Attorney filed a section 602 petition alleging that appellant committed three misdemeanors: (1) assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)); (2) assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)); and (3) criminal threats (Pen. Code, § 422). According to the probation department report, the petition arose out of a fight appellant had with another resident of his group home. The boys had an argument at the YMCA and when they returned home appellant challenged the other boy to a fight. The victim attempted to leave, but appellant jumped on the boy, bit him, punched him, threw pieces of brick at him, and threatened to kill him.

2. September 2013 Jurisdiction Order

A jurisdiction hearing was held on September 19, 2013. At the hearing, the petition was amended to allege that appellant committed misdemeanor battery (Pen. Code, §§ 242, 243, subd. (a)). Appellant admitted the new allegation and the other three misdemeanor counts were dismissed. The court's findings were memorialized in a minute order which stated, among other things, that appellant "comes within section 602." The court also ordered the probation and social services departments to prepare a report under section 241.1 to address whether appellant's case should be treated as a dependency case or a wardship case, and then continued the matter for disposition.

3. Section 241.1 Assessment

On September 30, 2013, a dual jurisdiction meeting was conducted pursuant to section 241.1 and the probation and social services departments agreed to jointly recommend that social services continue to work with appellant. The agencies determined that appellant's problems were consistent with his life experiences culminating in the dependency. Prior to the dependency, appellant's biological father was absent from the home, his stepfather had been violent and accused of sexually abusing a minor sibling, and appellant had been hospitalized for mental health problems. In July 2012, mother refused to take appellant back into the home after he was

hospitalized under section 5150, and there was no other available relative placement. Appellant had already been in three different placements while in the custody of social services. Because appellant's mental health issues were also the source of his delinquency behavior, the agencies concluded that he would be better served if he retained his dependency status.

4. Disposition

A disposition hearing was held on October 24, 2013. The district attorney submitted on the section 241.1 recommendation to continue appellant's dependency status. The People expressed concern about the nature of appellant's offenses but ultimately agreed with the agencies that giving appellant increased services under section 300 was the best option for him. The court adopted the section 241.1 recommendation and filed a disposition order which maintained appellant's dependency status and imposed six months formal nonwardship probation. (§ 725.)

C. The Probation Violation

On February 6, 2014, the probation department filed a section 777 notice that appellant committed a probation violation by failing to "obey [the] rules of a County Institution." A hearing on the probation violation was set for February 11.

According to the probation department's report, the alleged violation arose out of a January 23, 2014 incident at appellant's group home. Appellant took condiments to his room and refused to return them, barricaded himself in the staff office, yelled at one resident and bit another, and fled the facility after threatening to harm everyone there. The department reported that there had been "several" other incidents in which appellant had "viciously attacked other residents or staff," and that appellant had also left the group home on other occasions, refused to get in the van when it was time to return from outings, and refused to attend school. In its report, the probation department recommended that a probation violation be found true and that another section 241.1 hearing be scheduled.

In anticipation of the hearing on the alleged probation violation, the social services department filed a report in order to update the court regarding appellant's progress in

treatment, and to “respectfully recommend that the Court consider the appropriateness of a new 241.1 meeting, in light of the minor’s continued escalating behaviors.” The social worker reported that, despite the provision of intensive services, appellant continued to make poor decisions, which jeopardized his own safety and the safety of others. The report documented the “chronicity of incidents” that had occurred despite the fact that appellant was on formal probation which included: four incidents when he was “AWOL”; two incidents of property destruction; six incidents of threats of physical harm to others; four physical altercations; and, five acts of violence and/or harm against others. The social worker also reported that appellant had refused to attend school, that many of his angry outbursts were reactions to “basic group home rules,” and that he lashed out at staff and attempted to provoke others into physical altercations.

Regarding social services’ request for a change of appellant’s section 241.1 status, the report stated: “At the time of the original 241.1 meeting (September 30, 2013), it was not determinable if [appellant] had a sufficient amount of time to stabilize in an appropriate placement with all the services he necessitated in place. It is clear at the present time the minor has been wrapped with a multitude of mental health services and supports. Yet, the minor’s behavior continues to deteriorate. A distinction may be made between behavior that reflects an unmet mental health care need and behavior that is delinquent and deviant in nature.”

Appellant’s social worker further reported that *every* other resident at appellant’s group home had expressed concern about their safety and a need for protection from appellant. Social services was also very concerned about the risk appellant posed and opined that appellant “appears to be in need of external measures of control that the [social services department] is not capable of providing or enforcing.” For all of these reasons, the social services department recommended that the probation department be designated the lead agency for appellant’s case.

At the February 11, 2014 hearing, appellant denied the probation violation and requested a continuance to prepare for a contest. There was no objection to the continuance, but the probation department recommended that appellant be detained at

juvenile hall pending resolution of the matter, citing his escalating behavior problems. Appellant's counsel opposed detention, arguing that appellant had not been detained initially and, although his behavior problems were serious, he was placed in a "Level 14 residential home," where behavior problems were "par [for] the course." The court characterized the matter as "borderline for detention at the Hall" because appellant's conduct was endangering the health and safety of others. The court then ordered social services and probation to hold another section 241.1 meeting to "take another look at what's going on here and see which should be the lead agency." Urging appellant to accept the help that was being offered to him and figure out how to control his anger, the court ruled that appellant would not be detained pending completion of the section 241.1 review.

Pretrial hearings on the probation violation were held in February and March of 2014. Both times the court continued the matter in order to provide appellant with more time to stabilize his behavior within the social services system. At the March hearing, the court ordered the probation and social services departments to update their section 241.1 report for the next hearing, which was set for June 27, 2014, in order to coincide with a review hearing that had already been scheduled in appellant's dependency case. The court also stated that, since the section 241.1 inquiry had been ordered in appellant's dependency case, the social services department would provide the updated report.

D. The Supplemental Section 602 Petition

1. New Allegations and Detention at Juvenile Hall

On April 2, 2014, the Contra Costa County District Attorney filed a supplemental section 602 petition alleging that appellant committed the offenses of (1) felony assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)); (2) misdemeanor exhibiting a deadly weapon (Pen. Code, § 417, subd. (a)(1)); and (3) misdemeanor resisting or obstructing a police officer (Pen. Code, § 148, subd. (a)(1)).

The allegations related to a March 28, 2014 incident at appellant's group home. According to the probation report, appellant bit a fellow resident and attempted to attack a staff member with a large metal fork. When police arrived, appellant remained

combative and refused to drop the fork, but he was eventually subdued. Appellant was arrested and detained at juvenile hall.

A detention hearing was held on April 3, 2014, but had to be continued until April 7 because appellant was in “great mental distress,” and could not be contained. The hearing transcript reflects that, after a bailiff removed appellant from the courtroom, he could be heard “through the wall, screaming that he wanted to take his own life.” Outside the courtroom appellant tried to hit a deputy and reached for the officer’s gun.

At the April 7, 2014 detention hearing, appellant denied the allegations in the supplemental petition. The court detained appellant and scheduled a pretrial and contested jurisdiction hearing. At an April 17 pretrial hearing, appellant’s counsel requested additional time to prepare for the jurisdiction contest, but refused to waive time because of a concern that appellant’s ongoing detention at juvenile hall would adversely impact his mental health. The contest was scheduled for May 13, with the pending probation violation matter to trail.

At an April 28, 2014 pretrial hearing, the court stated that it had conducted an in-chambers conference with the parties. The court then confirmed the May 13, 2014 contested hearing date and stated for the record that it had advised the parties that it would not accept a misdemeanor plea to the charges alleged in the supplemental petition. Appellant’s counsel expressed concern that her client was “decompensat[ing]” in juvenile hall and requested that he be released to the social worker handling his dependency case so that he could be in an appropriate placement. The court denied that request, expressing concern about the “dangerousness of this minor to others.” Appellant’s counsel then stated that she had heard appellant was exhibiting mental health problems in juvenile hall and requested that the court order that she be formally notified of any future incidents. The court granted that request and also gave permission for appellant’s therapist to meet with him at juvenile hall.

2. May 2014 Jurisdiction Order

At the jurisdiction hearing on May 13, 2014, the court stated that it had an informal discussion with the parties “trying to fashion what is the best result for all

concerned.” The court further stated that a section 241.1 meeting had been conducted in February and that it had the 241.1 report. However, the court was not “comfortable” changing the status of appellant’s case to a delinquency matter because county counsel was not present to represent the social services department.

Turning to the contest, the court stated that the parties had reached the following agreement: (1) appellant would enter a plea to the misdemeanor offense alleged in the supplemental petition; (2) a disposition hearing would be set; and (3) time would be waived for resolving the other contested jurisdiction allegations. The court further stated that the section 241.1 matter would be addressed at the disposition hearing, and that county counsel and all the attorneys were to appear.

Before proceeding with the stipulated resolution, appellant’s counsel requested that appellant be released from juvenile hall that day. When the court pointed out that social services was technically still the lead agency and was not represented at the hearing, appellant’s counsel proposed that the court authorize the probation department to release appellant to social services and that social services could then return him to his group home. A representative from appellant’s group home who was present at the hearing confirmed for the court that appellant would be accepted back into that placement, noting that appellant had made progress there notwithstanding his recent setbacks. The court decided that, since it had postponed ruling on the section 241.1 recommendation to change appellant’s status and the social services department was still the lead agency, it would “order that Probation has the authority to release the minor to the social worker for delivery to a Level 14 placement and get him the services.”

Returning to the jurisdiction issues, the court accepted appellant’s plea of no contest to the allegation in the supplemental petition that appellant committed the misdemeanor offense of exhibiting a deadly weapon. In accepting that plea, the court made numerous findings, including that there was a factual basis for the plea; the plea was made freely and voluntarily; the allegations in Count 2 of the petition were true; the degree of the offense was a misdemeanor; and appellant was “a person described pursuant to W[elfare] & I[nstitutions] Code section 602.” The court then scheduled a

“joint meeting” with the social services and probation departments for June 27, 2014, with a disposition hearing on the misdemeanor count set for July 15, 2014. The court ordered that the contest on the remaining counts in the supplemental petition and the probation violation charge would trail, and dates for that contest would be set at the disposition hearing.

3. Section 241.1 Hearing

On June 27, 2014, the juvenile court conducted a section 241.1 inquiry as part of a status review in appellant’s dependency case. County counsel submitted the matter on the status report which recommended that long term foster care continue until the probation department took over as lead, at which point the dependency should be vacated.

Appellant’s dependency counsel opposed the section 241.1 recommendation to make the probation department the lead agency. Complaining that she had only just heard about the section 241.1 meeting and received the new report, dependency counsel expressed surprise by the recommendation because, in her opinion, appellant had begun to make significant progress in the section 300 system.

Appellant’s delinquency counsel was also present at the hearing, and she too opposed the section 241.1 recommendation. However, she asked the court to wait until the pending disposition hearing on the supplemental section 602 petition to make a final decision. The district attorney agreed that the court should postpone its section 241.1 decision. The People took the view that they needed more information before they could take a position on the matter.

Ultimately, the juvenile court agreed to wait until the disposition hearing at which time it would “listen to all the parties’ positions,” and then decide whether probation should take the lead in this case or not.

4. Disposition

At the July 15, 2014 disposition hearing, the court stated that it had read and considered the section 241.1 report “prepared for February 25th,” a follow-up report prepared by the probation department, and a “last-minute two-page letter memo prepared

for today's date." The court also stated there had been an in-chambers conference with the parties about the matter. After considering the position of the parties, the court shared its "indicated resolution," which was to continue the matter as a dependency case so that appellant could continue to receive services through his group home placement where he appeared to be making progress. The court would then "do a non-wardship disposition" of the misdemeanor that appellant had admitted and continue the two "open charges" to be decided later. After all parties stipulated to that result, the court continued appellant's case as a section 300 matter, placed appellant on six months nonwardship probation, and set a pretrial conference on the remaining charges and the probation violation for December 2014.

E. The Amended Supplemental Section 602 Petition

1. New Allegations and Another Juvenile Hall Detention

On July 25, 2014, the Contra Costa County District Attorney filed an amended supplemental section 602 petition which alleged that appellant had admitted the count two misdemeanor offense of exhibiting a deadly weapon, and had subsequently committed the following felony offenses alleged as counts four through six of the supplemental petition: assault by force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)); elder abuse (Pen. Code, § 368, subd. (b)(1)); and, making criminal threats (Pen. Code, § 422).

The new counts in the amended supplemental petition arose out of a July 23, 2014 incident. Appellant became angry when a 70-year-old caretaker at his group home told him to turn down his loud music. When the caretaker started to walk away, appellant pushed him down, grabbed his throat, and threatened to kill him, stating that his only consequence would be juvenile hall. Appellant sprayed air freshener in the caretaker's face, and when the man instructed another resident to call the police, appellant responded that if he was going to have to go to juvenile hall "then it might as well be for a reason."

On July 29, 2014, the court ordered appellant to be detained at juvenile hall and set a date for a contested jurisdiction hearing.

On August 4, 2014, appellant's counsel expressed a doubt about appellant's competency, and the court suspended proceedings and appointed a doctor to evaluate appellant. At an August 25 hearing, the court stated that it had received the doctor's report which concluded that appellant was competent to stand trial. Appellant's counsel submitted the matter, the court found that appellant was competent, and scheduled a contested jurisdiction hearing.

2. September 2014 Jurisdiction Order

On September 12, 2014, the parties presented the court with a "resolution" of the jurisdiction contest. First, the district attorney would move to amend the elder abuse count to state that the victim suffered "mental" harm. Second, appellant would enter no contest pleas to the charges of felony elder abuse and making criminal threats. Third, the parties would stipulate that the elder abuse offense did not fall within the provisions of section 707, subdivision (b).

The court advised appellant of his rights, asked for waivers, and proceeded to take appellant's pleas. While questioning appellant about his pleas, the court asked appellant what city he lived in. Appellant responded that he used to live in Richmond but his mom had since moved to San Rafael. Appellant's counsel added that mother had gone to live with an aunt in San Rafael, and "so far" that had been considered a temporary residence. Counsel was unsure about whether a transfer out would be appropriate. After the court accepted appellant's pleas, dismissed the remaining charges and scheduled a disposition hearing, appellant asked to be released to home supervision that day. The court denied that request.

3. Transfer in Lieu of Disposition

The disposition hearing was held on September 26, 2014. The probation department submitted a report recommending that appellant's case be transferred to Marin County for disposition. According to that report, another section 241.1 hearing had been conducted on September 18, which resulted in a determination that wardship was necessary because of appellant's inability to adjust to nonwardship probation and for the safety and well-being of those who worked with appellant. However, since

appellant's mother and siblings had been living in Marin County for several months, the department recommended that Marin County exercise wardship jurisdiction over appellant.

At the hearing, the court stated that there had been an in-chambers discussion and then asked appellant's counsel to address the transfer issue. Counsel responded that mother had been staying with appellant's aunt who lived in Marin, there had been discussion about transferring the case, and appellant was submitting the matter. However, appellant's counsel requested the court refrain from deciding whether to convert appellant's case to a delinquency, arguing that decision would be better made in Marin County. Pursuant to that request, the court stated it would not make a ruling under section 241.1. It then explained to appellant that his case was going to be transferred because his mother lived in Marin, he could be cared for there, and it was closer to where mother lived. The court concluded, "that would be better for everybody I think." The court then accepted a thank you card that appellant had prepared, offered words of encouragement, and wished him well.

On October 2, 2014, the Contra Costa court dismissed the pending probation violation matter.

On October 3, 2014, the court filed "Juvenile Court Transfer Orders" for appellant's case. The Judicial Council form used to record those orders reflected that appellant's case was being transferred for disposition of a section 300 dependency and for disposition of a section 602 wardship. By checking boxes and filling in dates, the Contra Costa court also advised the Marin County court of its prior orders, including that (1) appellant was a child found to be described by section 300, subdivision (g); (2) dependency was declared on September 5, 2012; (3) appellant was a child found to be described by section 602 on September 12, 2014; and (4) a wardship had not been declared.

F. Proceedings in Marin County

1. Transfer-In and Detention

On October 7, 2014, the Marin County juvenile court conducted a transfer-in hearing. The court stated that it had reviewed the documents submitted from Contra Costa and accepted transfer of the case. The court ordered that appellant was to be detained at juvenile hall and scheduled a disposition hearing on the three counts in the amended supplemental section 602 petition that appellant had admitted while his case was in Contra Costa County.

2. Disposition

On October 21, 2014, the Marin County juvenile probation department filed a disposition report recommending that appellant be adjudged a ward pursuant to section 602, and that the court order an out-of-home placement due to appellant's mental health needs; the absence of a family member who was presently willing and able to provide the level of care required; and appellant's violent criminal history.

The lengthy disposition report summarized proceedings in appellant's Contra Costa case. In an "Analysis" section of the report, the probation department stated that social services took custody of appellant in July 2012 after mother refused to take him back into her home, that he was terminated from several placements, and that his "pattern of criminal behavior" brought him to "the attention of the juvenile justice system." According to the report: "Dual-jurisdiction exists in Contra Costa County, and Children and Family Services was the lead agency; however, during a 241.1 teleconference on June 11, 2014, an agreement was reached in which both departments would recommend W&I 300 dependency be vacated and W&I 602 wardship be adopted. Due to [mother's] move to Marin County in June 2014, the case was transferred."

The disposition report also provided additional pertinent information about appellant and his family history. Mother was 17 years old and living in Mexico when she gave birth to appellant. Appellant's father was much older than mother and was verbally and emotionally abusive. When mother was 18 she was diagnosed with schizophrenia, an illness which she reported was hereditary. Around that time, mother separated from

father. Several months later she relocated to the San Francisco Bay Area, taking appellant and his younger sister with her. The family migrated between Richmond and Marin until mother married appellant's stepfather and had a third child in 2008. Stepfather was physically, verbally and emotionally abusive of mother and appellant and ultimately fled to Mexico after he was accused of sexually abusing appellant's sister. Since that time, mother had moved back and forth between family members and was currently living with her sister's family in Marin because she did not get along with a niece who lived in the family's Richmond home.

The probation department reported that there was a strong bond between appellant and mother and both hoped to live together some day. However, mother felt that appellant had to demonstrate his ability to control his violent and defiant behavior before she could take him back, and appellant respected his mother's position. During the time appellant had been detained in Marin County juvenile hall, he had maintained his composure and sought assistance to avoid conflict. The probation officer was of the opinion that appellant understood the seriousness of his situation and that he did not want to jeopardize his future.

At the October 21, 2014 disposition hearing, appellant's probation officer argued in support of the probation department recommendation while appellant's counsel advocated for a continuation of the dependency status. Appellant's counsel emphasized that the Contra Costa juvenile court judge had "specifically decided [and] ruled" that the Marin court should make the determination whether to convert appellant's case from a section 300 to a section 602. Appellant's counsel also expressed special concern about the type of services that appellant needs and his "horrific background and his trauma." Counsel underscored that the social services system had afforded valuable services in Contra Costa County, and opined that the same level of services should be provided in Marin County.

Before making its ruling, the juvenile court stated that it had considered the arguments that had been presented about whether appellant should "be placed as a 300 case or with a 600 case," and that it had also considered the facts in the disposition report

and other “various reports.” Ultimately, the court concluded that appellant’s case was more “suitable” to be a section 602 case rather than a section 300 case. In reaching this conclusion, the court disagreed with characterizing the issue as a “battle” between services under the two systems. The court expressed its “expectation” that appellant would “receive any and all services that he needs” under the section 600 system. Accordingly, appellant was adjudged a ward of the court, an out of home placement was ordered, and the court imposed a term of indefinite probation with specified conditions.

III.

DISCUSSION

A. Preliminary Matters

Appellant raises a panoply of issues in his more than 150 pages of appellate briefs. His claims are not presented in chronologic order and many are not tied to a specific version of the section 602 petition or to a specific county. We preface our discussion of these claims with two observations. First, for the sake of clarity, we have divided appellant’s arguments into four categories and we discuss them in a different order than appellant presents them. We endeavor to address every substantive claim of error necessary to resolve this appeal; we do not address unnecessary or undeveloped theories.

Second, appellant contends that he may challenge the Contra Costa court’s jurisdiction findings pursuant to this appeal from the Marin court’s dispositional order. (Citing *In re James J.* (1986) 187 Cal.App.3d 1339, 1342-1343.) We agree, but with one important qualification. The Contra Costa court made three jurisdiction orders corresponding to the three versions of the section 602 petition. The September 2013 jurisdiction order resulted in an October 2013 disposition ruling which fully resolved all of the allegations in the original section 602 petition. Since appellant did not appeal the October 2013 disposition order, he cannot now challenge the jurisdiction findings the Contra Costa court made in September 2013. (See *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1137-1138; § 800.) Thus, we limit our appellate review of the jurisdiction findings to those made by the Contra Costa court in connection with the supplemental section 602 petition. With this caveat, we turn to the merits of this appeal.

B. The Contra Costa Juvenile Court Rulings

The Contra Costa court filed two jurisdiction orders in connection with the supplemental section 602 petition, the first in May 2014, and the second in September 2014. Appellant contends these orders must be reversed because (1) his no contest pleas were invalid; (2) the proceedings were conducted to facilitate an unsupported transfer; and (3) he was denied the effective assistance of counsel.

1. The No Contest Pleas

Appellant contends both jurisdiction orders are dependent on invalid no contest pleas. “[A] plea is valid if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances. [Citations.]” (*People v. Howard* (1992) 1 Cal.4th 1132, 1175.) The record must affirmatively demonstrate that the plea was valid under the totality of the circumstances standard. (*Id.* at p. 1178.) Here, instead of separately addressing each of his pleas, appellant identifies problems that allegedly apply to all of them.

a. Effects of Medication

First, appellant argues that the juvenile court’s findings that each of his pleas was voluntary is not supported by substantial evidence because the record shows that he was under the influence of “psychotropic medication, the very purpose of which is to affect the workings of the mind, that he was drowsy, and that he was possibly being overmedicated.”

To support this argument, appellant provides record citations which show that (1) he was prescribed medication during the period that his dependency case was in Contra Costa, and (2) during a July 10, 2014 meeting at appellant’s school, appellant told a probation officer that he felt like he was in a “good space,” but that he often felt drowsy because of his medication. This evidence is insufficient to invalidate appellant’s pleas because it does not show that he was actually affected by his medication in a way which interfered with his ability to enter a knowing and voluntary plea on the specific dates that pleas were entered in this case.

Regarding his September 2014 pleas to felony elder abuse and making criminal threats, appellant contends that several circumstances required the court to conduct a more probing inquiry to determine whether he was in control of his mental faculties that day. First, he points out that four days before he entered these particular pleas, appellant's mother advised the court that she was concerned that appellant was "taking too many medicines" and "overmedicating." However, in response to this concern, the juvenile court ordered a "medication assessment" to "double-check" and "make sure" appellant was receiving the correct type and amount of medication. Thus, this incident reduced rather than increased concern about whether medication affected the voluntariness of appellant's September 2014 pleas. Appellant also highlights the fact that his trial counsel doubted his competency "just weeks" before he entered his September 2014 pleas. Again though, this factor does not further appellant's argument because it led to a competency evaluation which established that appellant was competent to stand trial notwithstanding the fact that he was taking prescribed medication.

Finally, appellant contends the court should have been concerned about appellant's mental state at the September 2014 jurisdiction hearing because he told the judge that he was not under the influence of any drugs when in fact he was still taking "four psychotropic medications." Again, the evidence upon which appellant relies does not address what medication he took on the day he entered his pleas, or how that medication affected him. Furthermore, appellant did not deny that he was taking his prescribed medication when he was questioned at the September 2014 hearing, but instead denied that he was under the "influence" of that medication when entering his pleas.² When viewed as a whole, the court's inquiry regarding the voluntariness of appellant's pleas, which included verification that appellant understood his rights and had

² We note that when appellant entered his no contest plea in May 2014, he was also asked whether he was under the influence of alcohol, drugs, narcotics or medicines that day. Appellant responded "I take medicine at night." In response to further questions, appellant stated that his medication did not "affect [his] ability to understand," and that he did understand everything that the judge said to him.

consulted with his counsel, did not raise a concern about whether appellant was “in control of his mental faculties,” as appellant contends on appeal.

b. *Immigration Consequences*

Appellant argues all of his pleas were unknowing because he was never adequately advised about the immigration consequences of those pleas.

On July 31, 2013, when the dependency court terminated reunification services to mother and adopted a plan of long-term foster care for appellant, it also ordered that appellant be afforded an immigration attorney. Thus, substantial evidence shows that when the original section 602 petition was filed the following month, in August 2013, appellant had already secured legal advice from an immigration attorney. In September 2013, May 2014, and September 2014, when appellant entered no contest pleas to offenses alleged in the section 602 petition, he told the court that he had sufficient time to discuss the matter with his attorney before entering his pleas. Furthermore, before accepting appellant’s pleas in May 2014 and September 2014, the court asked whether appellant understood there could be immigration consequences to entering a plea and appellant acknowledged that he did.

The Attorney General contends these circumstances establish that appellant was “well aware” of the immigration consequences of his pleas. Appellant disagrees and further contends there is a presumption the advisements were inadequate because the juvenile court never complied with Penal Code section 1016.5, subdivision (a), which states: “Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

Neither party cites authority addressing whether Penal Code section 1016.5 applies in a juvenile matter. If it does, appellant fails to establish prejudice. Because this

advisement is not constitutionally compelled, any error in failing to give it would require reversal only if it is reasonably probable a result more favorable to appellant would have been reached if the advisement had been given. (*People v. Dakin* (1988) 200 Cal.App.3d 1026, 1033.) We find no such probability here.

c. *Factual Basis for Pleas*

Appellant next contends that his pleas were involuntary because the juvenile court erred by finding there was a factual basis for them. In fashioning this claim, appellant weaves together several distinct issues, arguing that (1) he did not understand the charges that resulted in his pleas; (2) the record does not show that he committed the charged offenses, and (3) he was not given adequate legal advice.

As to the first prong of appellant’s argument, when a juvenile court accepts a plea of no contest, it is required to make several findings, including that the minor “understands the nature of the conduct alleged in the petition.” (Cal. Rules of Court, rule 5.778(f)(4).)³ In this case, each of appellant’s pleas was supported by an express finding by the court that appellant understood the nature of the allegations. Nothing in the record compels a contrary conclusion. Nor does appellant cite evidence supportive of his suggestion that his mental health issues prevented him from understanding these matters.

Turning to the second prong of appellant’s claim, the juvenile court was also required to find that “[t]here is a factual basis for the admission or plea of no contest.” (Rule 5.778(f)(6).) Here, each of appellant’s no contest pleas was accompanied by an express stipulation from appellant’s counsel that there was a factual basis for appellant’s admission. As appellant concedes, the factual basis requirement can be satisfied by a stipulation from counsel. “[T]he trial court may satisfy its statutory duty by accepting a stipulation from counsel that a factual basis for the plea exists without also requiring counsel to recite facts or refer to a document in the record where . . . the plea colloquy reveals that the defendant has discussed the elements of the crime and any defenses with

³ All subsequent rule references are to the California Rules of Court.

his or her counsel and is satisfied with counsel's advice." (*People v. Palmer* (2013) 58 Cal.4th 110, 118.) Appellant suggests that his trial counsel's stipulation should be deemed inadequate here because there is insufficient evidence in the record that he committed the offenses of elder abuse and making criminal threats. However, these poorly veiled sufficiency of the evidence arguments are not cognizable on appeal from a plea of guilty or no contest. (*Id.* at p. 115.)

Finally, appellant contends that he did not have adequate discussions with his attorney about the elements of the crimes and any possible defenses before entering his pleas. This contention is belied by the record of each hearing which shows that appellant expressly confirmed that he did have the opportunity to do just that, and that he was satisfied with the advice he received.

d. *Mental Health Treatment*

Appellant contends that the no contest plea he entered in May 2014 was "the very definition of involuntary" because the reason he entered that plea was so that he could obtain mental health treatment. We disagree with appellant's recollection of that event.

There were two distinct matters pending before the court at the May 2014 jurisdiction hearing: (1) whether to convert appellant's dependency to a wardship; and (2) whether to hold a contest on the new jurisdiction allegations. After the first issue was resolved, and the court decided to postpone ruling on the section 241.1 matter, appellant's counsel requested that appellant be released from juvenile hall because he needed services that were not readily available there. In light of that concern, and because the section 241.1 matter had been continued, the court granted appellant's request to authorize the probation department to release appellant to the custody of social services so he could be returned to his group home.

But there is no evidence of any connection between the court's decision to release appellant from juvenile hall and appellant's decision to enter a plea to the misdemeanor charge at the May 2014 hearing. Rather, appellant's plea was entered pursuant to a separate previously negotiated agreement of the parties. Furthermore, the court made an

unconditional order for appellant's release from juvenile hall before it proceeded to entertain appellant's plea.

For all these reasons, we reject appellant's challenge to the jurisdiction findings on the ground that they were premised on invalid pleas.

2. The Transfer Order

Appellant challenges the jurisdictional findings on the separate ground that they were made to facilitate an improper transfer of his case from Contra Costa to Marin County. First, appellant fails to identify any evidence in this record to support his idea that the jurisdiction findings facilitated the transfer to Marin County. Second, and in any event, appellant fails to establish that the transfer order was improper.

Rule 5.610 provides for the transfer of a minor's case to the county of his or her residence. Under that rule, the child's residence is the residence of the person who has the legal right to physical custody of the child. (Rule 5.610(a); see also § 17.1.) A juvenile court may transfer a case to the county of the child's residence after making its jurisdictional finding, but if it elects to do so, the transfer must occur before the disposition hearing is commenced. (Rule 5.610(c).)

Subdivision (e) of rule 5.610 further provides: "After the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest." (Rule 5.610(e).) Thus, "[a]t a transfer-out hearing, the transferring court is required to make findings not only as to the child's residence, but also as to whether the transfer is in the child's best interests." (*In re R.D.* (2008) 163 Cal.App.4th 679, 687.)

In the present case, the motion to transfer appellant's case to Marin County was unopposed, and in granting that motion the juvenile court made express written findings that appellant's residence was mother's home in San Rafael and that the transfer was in the minor's best interest. Despite these circumstances, appellant now contends the court committed a reversible error by failing to conduct a more thorough assessment of his residency.

First, appellant forfeited this claim by failing to raise any objection to the transfer in the lower court. (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1508 (*M.V.*.) Second, appellant's claim fails on its merits. A juvenile court's transfer order is reviewed for abuse of discretion. (*In re Andrew J.* (2013) 213 Cal.App.4th 678, 692.) "The court acted within its discretion unless the ruling exceeds the bounds of reason. If the ruling is based on an inference that reasonably could be made from the facts, the existence of other reasonable inferences does not give us authority to substitute our decision for that of the trial court. [Citation.]" (*Ibid.*)

In the present case, substantial evidence supports the juvenile court's finding that appellant's residence was his mother's home. Appellant was removed from mother's home when he was adjudged a dependent, but her parental rights were not terminated and the long term plan was always to return appellant to mother's home. Therefore, appellant's residence was in the county where mother lived. (Rule 5.610(a) [the child's residence is the county of the person who has the legal right to physical custody of the child.]) Substantial evidence also establishes that mother's home was in San Rafael. Mother moved there to live with her sister and had lived there for several months. There is no evidence she had any plan to return to Contra Costa.

The court's finding that the transfer was in appellant's best interest because it would keep him near his mother is also amply supported by the record evidence. Appellant's suggestion now that he did not have a close relationship with mother, made for the first time on appeal, is inconsistent with evidence demonstrating the strong bond between appellant and mother and their shared desire to live together as a family.

3. Effective Assistance of Counsel

Finally, appellant contends that the section 602 jurisdiction findings must be reversed because he was denied the effective assistance of counsel in Contra Costa County.

"The due process right to effective assistance of counsel extends to minors in juvenile delinquency proceedings. [Citation.]" (*M.V.*, *supra*, 225 Cal.App.4th at p. 1528.) To demonstrate that he was denied the effective assistance of counsel,

appellant “ ’bears the two-pronged burden of showing that [his] counsel’s representation fell below prevailing professional norms and that [he] was prejudiced by that deficiency.’ [Citation.] ‘When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel’s challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation.’ [Citation.]” (*Ibid.*)

Here, appellant contends that all of the errors that the Contra Costa court allegedly made could have been avoided if appellant had been afforded the effective assistance of counsel. In light of our analysis and conclusions above, this approach necessarily fails. Appellant further complains that counsel should have advocated harder for the provision of additional mental health services. In our opinion, the record demonstrates that counsel’s advocacy efforts were substantive, extensive and more than sufficient to satisfy prevailing professional norms. Appellant also complains that his trial counsel performed deficiently by failing to “ensure that the court’s order for an immigration attorney was effectuated.” But, appellant fails to establish that the order for an immigration attorney was not effectuated.

Appellant asserts further that his trial counsel rendered ineffective assistance in the way she handled his competency evaluation. As appellant concedes, that evaluation was held because his counsel requested it. Nevertheless, he faults his attorney for failing to “conscientiously review” the doctor’s report, and for failing to question the qualifications of the doctor who evaluated him. The record does not contain evidence justifying appellant’s assumption that his Contra Costa counsel failed to conscientiously review the report, or that the doctor was not qualified to conduct the evaluation. Most important, appellant does not challenge the conclusion that he was competent to stand trial. Thus, these alleged errors were not prejudicial.

Finally, appellant argues that he “was prejudiced by the ineffective assistance because he suffered criminal adjudications and is subject to immigration consequences that likely could have been avoided with zealous advocacy.” This argument is unsupported by factual evidence or sound analysis. Appellant has failed to establish that

more zealous advocacy would have changed the outcome of any proceeding conducted in Contra Costa County.

B. The Disposition Order Was Not Based On Erroneous Information

Next we turn to a set of claims challenging the reliability of the October 2014 disposition order. Appellant contends that order must be reversed because the Marin County court relied on erroneous information that had been provided to it by the Contra Costa County court. There are several steps to this argument. First, appellant posits that the Contra Costa court's rulings at the September 2014 jurisdiction hearing were incomplete and thus ineffectual to exercise jurisdiction over appellant. Second, appellant argues that the transfer order was inaccurate to the extent it stated that the Contra Costa court exercised section 602 jurisdiction over appellant in September 2014. And third, appellant concludes that the disposition order must be reversed because the Marin court improperly relied on the September 2014 jurisdiction findings sustaining allegations that appellant committed the offenses of elder abuse and making criminal threats.

1. The September 2014 Jurisdiction Order Was Valid

The first prong of appellant's claim is that the Contra Costa court did not exercise section 602 jurisdiction over him at the September 2014 hearing because it failed to make a mandatory finding required by section 702 when it accepted appellant's pleas to the allegations in the amended supplemental petition that he committed the offenses of elder abuse and making criminal threats.

Section 702 states in pertinent part: "After hearing the evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Section 300, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly, and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor."

Emphasizing the use of the word "shall," appellant contends that the first sentence of section 702 imposes a mandatory obligation on the juvenile court to make an express

finding on the record that the minor is a person described in either section 300, 601, or 602 when it sustains a jurisdictional allegation in a dependency or delinquency petition. Even if we accept this proposition, the record does not support appellant's apparent assumption that the Contra Costa juvenile court failed to comply with the first sentence of section 702.

When the original section 602 petition was filed in August 2013, appellant was already under the juvenile court's jurisdiction pursuant to section 300. At the September 2013 jurisdiction hearing on the original section 602 petition, the court made an express finding in the minutes that appellant was also a person described in section 602. It made that finding again in May 2014 at the first jurisdiction hearing on the supplemental section 602 petition. However, before all of the jurisdictional allegations in the supplemental petition were adjudicated, appellant reoffended, necessitating an amendment to the supplemental petition which added three new felony allegations. Thus, at the continued jurisdiction hearing in September 2014, the court did not entertain a new petition or a new supplemental petition, but instead addressed amended allegations in the supplemental petition that potentially established additional grounds in support of the court's prior conclusion that appellant was a person described in section 602. Under these circumstances, the September 2014 findings that allegations in the amended supplemental petition were true were sufficient to expand the court's section 602 jurisdiction to include consideration of the additional offenses.

Appellant appears to suggest that section 702 requires that the juvenile court make an express finding that a minor is a person described in section 602 with respect to each and every jurisdictional allegation in a section 602 petition that the court ultimately sustains. But, he provides neither authority nor sound reason for imposing such a requirement. Indeed, under the circumstances of this case, that finding would have been redundant. Appellant also intimates that because the finding required by the first sentence of section 702 is mandatory, it is a jurisdictional requirement. We find no authority supporting such a proposition. In any case, as discussed above, the Contra Costa court clearly did make an express finding that appellant was a person described in

section 602 at the first jurisdiction hearing on the supplemental wardship petition in May 2014.

2. The Transfer Order Was Substantially Accurate

The second prong of appellant's argument is that the October 3, 2014 transfer order contained materially false information regarding the status of appellant's case. In this regard, appellant argues: "Appellant was transferred as a dependent since wardship had never been declared. The transfer order erroneously states that the transfer [was] for disposition of wardship and that appellant was found to be described by section 602 on September 12, 2014."

We agree with appellant that his case was transferred as a dependency case, a fact that was clearly conveyed in the transfer order. However, contrary to appellant's argument here, his case was *also* transferred for disposition of a section 602 wardship petition. The Contra Costa juvenile court made two jurisdiction orders sustaining allegations in the supplemental section 602 petition. However, before a final disposition was reached, there was an unopposed motion to transfer appellant's case to Marin County. Therefore, the Contra Costa court followed the procedure set forth in rule 5.610 and transferred appellant's case to Marin County for disposition of supplemental section 602 petition.

Thus, we are left with appellant's objection to the statement in the transfer order that appellant was "found to be described by section 602 on September 12, 2014." As discussed above, the original finding that appellant was a person described in section 602 was made at the September 2013 jurisdiction hearing on the original petition. The court made another express finding under section 602 in May 2014 when it issued its first jurisdiction order on the supplemental petition. Thus, the statement in the transfer order identifying September 12, 2014, as the date appellant was found to be person described in section 602 was technically inaccurate. However, appellant fails to explain why this error was consequential. Furthermore, the accurate dates and pertinent circumstances were fully explained in the documents that were transferred to Marin County. Therefore,

the record belies appellant's supposition that the Marin court was misled by information in the transfer order.

3. The Felony Admissions Were Properly Considered In Marin County

From the two flawed premises discussed above, appellant concludes that the "elder abuse and criminal threats offenses were not available for the Marin County court to use in determining whether to declare him a ward, and they should be stricken from the dispositional order."

Even if there was some technical violation of section 702, and even if the transfer order contained an incorrect date, appellant fails to explain why those procedural errors would preclude the Marin court from considering the elder abuse and criminal threats offenses when it made its disposition ruling. As discussed, appellant entered valid pleas to those two offenses and the Contra Costa juvenile court made express jurisdictional findings that the petition allegations pertaining to those crimes were true. Furthermore, the court had already previously found that appellant was a person described in section 602 at the May 2014 jurisdiction hearing. Thus, these offenses were properly considered by the Marin court when it made its disposition ruling.

C. Section 241.1

The third set of issues we address on appeal pertain to appellant's status as a dual jurisdiction minor under section 241.1. Appellant contends that the disposition order must be reversed because the Contra Costa and Marin courts both failed to follow procedures set forth in section 241.1.

1. Statutory Procedure

"A child who has been abused or neglected falls within the juvenile court's protective jurisdiction under section 300 as a 'dependent' child of the court. In contrast, a juvenile court may take jurisdiction over a minor as a 'ward' of the court under section 602 when the child engages in criminal behavior. [Citations.] As a general rule, a child who qualifies as both a dependent and a ward of the juvenile court cannot be both. [Citations.]" (*M.V.*, *supra*, 225 Cal.App.4th at p. 1505.)

“In section 241.1 the Legislature has set forth a procedure for handling cases with potential dual jurisdiction. First, the probation department and the welfare department of the county must assess the minor, pursuant to a jointly developed written protocol, to determine ‘which status will serve the best interests of the minor and the protection of society.’ Then the recommendations of both departments must be presented to the juvenile court for its determination of the status appropriate for the minor. [Citation.]” (*In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012-1013, fn. omitted.)

“[S]ection 241.1 does not require the juvenile court to conduct a hearing; instead, it requires [Child Welfare Services] and the probation department to prepare a joint assessment report and the juvenile court to make a finding whether to treat a minor as either a dependent child or delinquent ward.” (*In re Henry S.* (2006) 140 Cal.App.4th 248, 257.) The court, however, must make a determination regarding the appropriate status of the minor and must state its reasons on the record or in a written order. (Rule 5.512(g).)

“We review the juvenile court’s determination under section 241.1 for abuse of discretion. [Citation.] ‘To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.’ [Citation.] Throughout our analysis, we will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them. [Citation.]” (*M.V.*, *supra*, 225 Cal.App.4th at p. 1507.)

A minor forfeits the right to complain about the court’s failure to follow the procedures outlined in section 241.1 by his or her failure to object. (*M.V.*, *supra*, 225 Cal.App.4th at p. 1508.) “[T]he fact that section 241.1 imposes a ‘mandatory’ statutory duty does not preclude the application of the forfeiture rule. [Citations.] Rather, courts have repeatedly held that a party’s failure to object forfeits appellate review of the adequacy of—or the failure to prepare—mandatory assessment reports in juvenile proceedings. [Citations.] Indeed, ‘[a]s some of these courts have noted, any other rule

would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable.’ [Citation.]” (*M.V.*, at pp. 1508-1509.)

2. The Contra Costa Court

Appellant contends the Contra Costa court failed to follow section 241.1 procedures because it did not (1) order a section 241.1 report and hold a hearing on the joint assessment before it conducted the jurisdiction hearing on the original section 602 petition; or (2) order new section 241.1 reports before making jurisdiction findings with respect to the supplemental and amended supplemental petitions.

First, appellant forfeited these claims by failing to raise them in the lower court. (*M.V.*, *supra*, 225 Cal.App.4th at p. 1508.) Second, although the section 241.1 report normally should be prepared as early as possible (rule 5.512(a)(2)), there may be situations in which the best interests of the minor are served more by a postponement of the dual jurisdiction resolution until after the jurisdiction hearing takes place. (*M.V.*, *supra*, 225 Cal.App.4th at p. 1507, fn. 4). In this case, for example, it appears that the court and parties all agreed that, although a wardship was necessary for the safety of appellant and the people around him, it was in appellant’s best interest to postpone that status change for as long as possible. Furthermore, when the last opportunity for the Contra Costa court to make that change arose at September 26, 2014 hearing, appellant requested that the court leave the matter for the Marin County court to decide after the case was transferred there. If the Contra Costa court erred by granting that request and deferring the section 241.1 decision until the disposition hearing, appellant invited the error and also clearly benefited from it. Therefore, he may not now complain about it on appeal. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 49; *People v. Seaton* (2001) 26 Cal.4th 598, 668.)

3. The Marin Court

Appellant contends that the Marin Court’s section 241.1 status determination must be reversed because it was made “without the benefit of a section 241.1 report.” Pertinent case law establishes that a court abuses its discretion under section 241.1 by

selecting the status of a dual jurisdiction minor without even considering a section 241.1 report. (*In re Joey G.* (2012) 206 Cal.App.4th 343 (*Joey G.*)) Here, appellant contends that a section 241.1 report was never actually prepared by either county. In contrast to appellant's other section 241.1 arguments, this claim of error was not forfeited by failing to object below because when a "report is required prior to the making of a dependency decision, and it is completely omitted, due process may be implicated." (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 413, italics omitted; *M.V.*, *supra*, 225 Cal.App.4th at p. 1510.)

Appellant's contention that a section 241.1 report was never prepared for his case is consistent with two factual circumstances. First, the appellate record does not contain a document that is identified as a section 241.1 report. Appellant's counsel on appeal went to great lengths to verify that all relevant documents in his Marin County juvenile court file were included in the appellant record and, indeed, made a specific request for section 241.1 reports. Despite that effort, there is no section 241.1 report in the appellate record. Second, although the transcript of the October 2014 disposition hearing demonstrates that the Marin County court was appraised of the section 241.1 issue and aware of the need for a status determination, that transcript does not contain any concrete reference to a section 241.1 report. If the Marin Court made its disposition ruling without considering the content of the reports, it abused its discretion. (*Joey G.*, *supra*, 206 Cal.App.4th 343.)

On the other hand, the appellate record does contain reports, hearing transcripts and orders from the Contra Costa proceedings which expressly refer to section 241.1 reports that were prepared on appellant's behalf. Because the record supports the conclusion that one or more section 241.1 reports clearly were prepared in Contra Costa County as referenced throughout those proceedings, we reject appellant's claim that a section 241.1 report was never prepared. It very well may be that those reports were maintained in a separate Contra Costa dependency case file since the social services department was designated as appellant's lead agency in that county. That could

potentially explain why the reports were not transferred when section 602 documentation was sent to Marin.

But, we need not speculate further about the matter because even if the Marin court did not review a formal section 241.1 report, that error was harmless. (See *In re Celine R.* (2003) 31 Cal.4th 45, 60–61 [harmless error doctrine applies in dependency cases].) Two circumstances lead us to conclude that the Marin court would have reached the same conclusion whether or not it considered a formal section 241.1 report.⁴

First, the evidence in this voluminous record demonstrates that the Marin court had all of the pertinent information before it when it decided which type of jurisdiction to exercise over appellant. The Contra Costa social services and probation departments were intimately familiar with appellant and his circumstances, and their joint recommendations were discussed in numerous reports and hearing transcripts that were all before the Marin court and that were also summarized in the Marin County disposition report. Furthermore, the matter was thoroughly addressed at the disposition hearing, where appellant’s counsel forcefully argued in favor of maintaining dependency status.

Second, the Marin court’s ruling under section 241.1 was neither equivocal nor uninformed. The court explicitly addressed the primary factor driving the dual jurisdiction decision, i.e., which system could provide the level of services that appellant needed. The court’s conclusion that appellant would be better served by the section 602 system was not only consistent with the most recent joint recommendation from Contra Costa, it was supported by overwhelming evidence that despite the provision of intensive dependency services, appellant continued to engage in increasingly dangerous delinquency behavior which the dependency system was not designed or equipped to address.

⁴ In light of this conclusion, we need not address appellant’s argument that his Marin counsel was ineffective for failing to ensure compliance with section 241.1.

For all these reasons, we conclude that the alleged failure to follow section 241.1 procedures during the course of this case does not require us to reverse the disposition order adjudging appellant a ward of the court.

D. Matters for the Marin Court to Address On Remand

Finally, we turn to appellant's alternative theories that, even if the wardship disposition is affirmed, this case must be remanded so the juvenile court can correct several errors in the October 2014 disposition order.

1. Section 702

Appellant contends that the record fails to establish that the juvenile court in either county exercised its discretion under section 702 to declare whether the elder abuse and criminal threats offenses were to be treated as felonies or misdemeanors.

As pertinent here, section 702 states: "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." Section 702 requires an express judicial declaration whether a so-called wobbler offense is a felony or misdemeanor. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1209 (*Manzy W.*.) This section 702 determination may be made at the jurisdiction hearing or "deferred until the disposition hearing." (Rule 5.778(f)(9).) Furthermore, the failure to make a formal declaration is harmless error if the record shows that the court was aware of and exercised its discretion to treat the offense as one or the other. (*Manzy W.*, at p. 1209.)

In this case, the parties agree that the Contra Costa court did not make a determination whether the elder abuse and criminal threat offenses should be treated as misdemeanors or felonies. But they disagree about whether the Marin court made that requisite finding.

The disposition findings were recorded on a Judicial Council form attached to the court's minute order. That form stated that, to the extent the issues were not previously decided, the determination was being made that the elder abuse and criminal threats offenses were felonies. While during the disposition hearing, the Marin court stated that

the offenses were felonies, it did not make any reference to section 702 or otherwise indicate that it was aware of its discretion to declare otherwise.

Thus, despite these record references, we agree with appellant that the record does not show that the Marin court was aware of and exercised its discretion under section 702. The court's statement that appellant had entered pleas to felonies and its completion of a preprinted order form indicating that the wobbler offenses were felonies could both have been based on a misimpression that the Contra Costa court had already made the discretionary call to treat the elder abuse and criminal threats offenses as felonies. Because the record does not foreclose this possibility, this case will be remanded so the Marin court can make the express declaration required by section 702.

2. Maximum Term of Confinement

Although they analyze the issue differently, the parties agree that this case should be remanded so that the Marin County court can clarify several issues regarding its calculation of the maximum period of appellant's confinement under section 726. The parties also agree that the Marin County court failed to calculate appellant's custody credits. Rather than accept appellant's proposed calculation, we leave this matter for the lower court to decide on remand.

Additionally, appellant contends that the court should have stayed punishment on either the elder abuse offense or the criminal threats offense pursuant to Penal Code section 654. The People do not concede this last point, but they acknowledge the matter should be presented to the juvenile court on remand. (See *In re David H.* (2003) 106 Cal.App.4th 1131, 1137 ["The applicability of Penal Code section 654 is properly determined by the juvenile court that adjudicates and sustains a petition against a youth."].)

3. The Restitution Fine

At the October 2014 disposition hearing, the Marin court imposed a \$100 restitution fine under to section 730.6, subdivision (a)(2)(A). At appellant's request, the court converted that fine to a 10-hour community service requirement. A few months later, on January 1, 2015, an amendment to section 730.6 went into effect which added a

new subdivision (g). Section 730.6, subdivision (g)(2) now provides: “If the minor is a person described in subdivision (a) of Section 241.1, the court shall waive imposition of the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a).”

Appellant contends that because he is a person described in section 241.1, subdivision (a), he is entitled to the benefit of the section 730.6 amendment because it was adopted while this case was on appeal. (*In re Estrada* (1965) 63 Cal.2d 740, 744 (*Estrada*).

The *Estrada* rule states: “ ‘[W]here the amendatory statute mitigates punishment and there is no saving clause, . . . the amendment will operate retroactively so that the lighter punishment is imposed’ in all cases in which judgment was not yet final when the amendment took effect. [Citation.] Cases in which judgment is not yet final include those in which a conviction has been entered and sentence imposed but an appeal is pending when the amendment becomes effective. [Citations.] The *Estrada* rule has been applied to juvenile delinquency judgments. [Citation.]” (*In re N.D.* (2008) 167 Cal.App.4th 885, 891.)

We agree with appellant that he is entitled to the benefit of the section 730.6 subdivision (g) amendment pursuant to the *Estrada* rule. Therefore, the restitution fine must be stricken on remand.

4. The Probation Conditions

Appellant contends that four probation conditions imposed on him must be stricken or modified because they are unconstitutionally vague and/or overbroad.

“Under Welfare and Institutions Code section 730, subdivision (b), a juvenile court may impose ‘any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ In spite of the juvenile court’s broad discretion, ‘[a] probation condition “must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,” if it is to withstand a challenge on the ground of vagueness.’ [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the

purpose of the condition to avoid being invalidated as unconstitutionally overbroad.’ [Citation.] A defendant may contend for the first time on appeal that a probation condition is unconstitutionally vague or overbroad on its face when the challenge presents a pure question of law that the appellate court can resolve without reference to the sentencing record. [Citations.]” (*In re Kevin F.* (2015) 239 Cal.App.4th 351, 357 (*Kevin F.*))

a. Weapons Condition

The Marin court imposed the following probation condition: “You are not to possess any weapons or associate with anyone who is in possession of weapons.” Appellant contends this condition is vague because it does not expressly identify “the objects that may be encompassed,” and overbroad because innocuous objects can be used as weapons.

This court addressed a similar argument in *Kevin F.*, *supra*, 239 Cal.App.4th 351. In that case, we found that a probation condition prohibiting possession of weapons must include an express knowledge requirement so that it is clear what conduct is prohibited: “To provide adequate protection against unwitting violations, the probationer must engage in the proscribed conduct knowingly (i.e., with actual intent and understanding that he possesses something constituting a weapon). Particularly since there is a conditional liberty interest at stake, we think the addition of an express knowledge requirement making the scope of the prohibited conduct clear in advance to all who may be involved—to probationers, to law enforcement officers, to probation departments, and to juvenile courts—best comports with due process. [Citation.]” (*Id.* at pp. 365-366, italics omitted; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 912–913 (*Victor L.*))

Therefore, on remand the juvenile court is instructed to modify this probation condition to incorporate a knowledge requirement.

b. No Contact Condition

Another condition of appellant’s probation states: “You must have no contact in person, in writing, by telephone, or electronic means or directed to a third party with [M.A.] . . . [a]nd any other person that you know to be a victim of your offense.” First,

the Attorney General concedes that this condition is ambiguous to the extent it fails to explicitly identify appellant's "victims." (See *People v. Rodriguez* (2013) 222 Cal.App.4th 578, 594-595.) Second, for reasons discussed in connection with the weapons condition, this no-contact condition does not provide adequate protection against unwitting violations because it does not contain an express knowledge requirement. (*Kevin F.*, *supra*, 239 Cal.App.4th at pp. 365-366.) Thus modification is required to correct these problems.

c. Drug and Alcohol Condition

Appellant was ordered to "abstain from the use of alcohol and drugs, illicit drugs." We disagree with appellant's contention that this condition is unconstitutionally overbroad. A scienter requirement is reasonably implicit in this condition. (See *People v. Rodriguez*, *supra*, 22 Cal.App.4th at pp. 592-593.) "If a person believes an item he possesses or ingests is a controlled substance, it is no defense that he was wrong about which controlled substance it is. [Citations.] On the other hand, it is no crime to ingest a drug involuntarily, for example, if someone secretly spiked the punch at a party. [Citation.]" (*Id.* at p. 593.)

d. Work Condition

Appellant challenges a probation condition which requires him to "[s]eek and maintain employment as directed by the probation officer." Appellant contends that this condition is invalid because (1) he is not legally allowed to work; (2) it gives the probation officer unfettered discretion; and (3) it is not sufficiently tailored to appellant's particular circumstances.

Although preprinted forms listing a variety of potential probation conditions can be a useful tool, "thought must be given in each case to the specific language of the condition, the particular offense, and the background of the juvenile, so that the conditions are internally consistent, reasonably clear, and closely tailored to the rehabilitative needs of the individual before the court. As indicated in the California Judges Benchguides, Benchguide 119, Juvenile Delinquency Disposition Hearing (CJER 2009) section 119.2(10), page 119-7, 'If granting probation, [the court should] formulate

conditions related to the child’s situation and offense.’ (Italics omitted.) In the final analysis, ‘the court alone is empowered to determine the propriety of the proposed conditions and their applicability to the individual offender.’ [Citation.]” (*Victor L., supra*, 182 Cal.App.4th at p. 930.) On remand, the juvenile court is instructed to consider whether an employment condition is appropriate in light of appellant’s circumstances.

5. Clerical Error in the Disposition Reports

This court has the authority to order that clerical errors in the record be corrected. (*People v. Mitchell* (2001) 26 Cal.4th 181, 186-187.) Here, the parties agree that a correction must be made in the November 6, 2014 “Juvenile Detention Disposition Report” that was prepared by the Marin County Clerk. That report states that appellant was charged with felony resisting arrest in violation of Penal Code section 148, subdivision (a)(1), when in fact he was charged with a misdemeanor violation of that statute. Therefore, this error should be corrected on remand.

**IV.
DISPOSITION**

This matter is remanded and the juvenile court is directed to correct each of the errors discussed in Part III.D. of this decision. In all other respects, the judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.