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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re L.R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

A143731

(Solano County
Super. Ct. No. J42719)

I.

INTRODUCTION

In October 2014, the Sacramento County juvenile court exercised delinquency jurisdiction over L.R. (appellant) pursuant to an original wardship petition filed under Welfare and Institutions Code section 602 (section 602).¹ Thereafter, appellant’s case was transferred to Solano County and, in November 2014, the juvenile court filed a disposition order declaring appellant a ward of the juvenile court. Subsequently, in March 2015, appellant’s delinquency case was converted to a dependency case.

This appeal is from the November 2014 disposition order. Appellant contends that order must be reversed because (1) the Sacramento court’s jurisdiction order was flawed in several respects; and (2) appellant was denied the effective assistance of counsel in

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

both Sacramento and Solano County. Alternatively, appellant contends that a restitution fine must be stricken and that clerical errors in two disposition reports must be corrected. We will affirm the disposition order but agree with appellant that the restitution fine must be stricken and that clerical errors in the disposition reports need to be corrected.

II.

STATEMENT OF FACTS

A. Proceedings In Sacramento County

On October 2, 2014, the Sacramento County District Attorney filed an original wardship petition alleging that 15-year-old appellant was a person described by section 602 because of her commission of (1) felony possession of amphetamine (Health & Saf. Code, § 11377, subd. (a)); and (2) misdemeanor possession of an opium pipe (Health & Saf. Code, § 11364).

The facts that gave rise to the petition were summarized in a juvenile intake report prepared by the county probation department. On September 30, 2014, police stopped appellant and two companions as suspected truants. Appellant's companions, who were adults on parole or probation, told the officer that appellant had "something on her." An officer searched appellant and found a small baggie of presumptive positive amphetamines in her pants pocket and a glass narcotics smoking pipe in her purse. A subsequent record search identified appellant as a missing person.

Appellant declined to make a statement about her arrest but she provided the probation officer information about herself and family history. Appellant was approximately seven years old when she was placed with her paternal grandparents (Grandparents) in Vacaville, after her parents abandoned her and her brother. Recently, appellant moved to Sacramento to live with her mother (Mother), but she ran away from Mother's home 16 days before she was arrested and had spent those days smoking methamphetamine and using crack cocaine. Appellant admitted that she smoked marijuana daily, drank alcohol on occasion, cut her wrists, and was angry and emotional. She had previously been hospitalized for suicidal ideation, and she suffered from bipolar disorder but had stopped taking her prescribed medication when she ran away from

Mother's home. She had also run away from Grandparents' home once before, and had been arrested for prostitution in two counties, but charges were never filed.

A check of the social services database disclosed five prior referrals regarding appellant's family. The only substantiated referral was for severe neglect by Mother while the family was living in Butte County. Butte County social services reported that appellant was adopted by her grandparents in 2012. The probation department had been unable to make contact with Mother or Grandparents. The intake officer recommended that appellant be detained and suggested her case be transferred to Solano County, her "county of legal residence."

The detention hearing was held on October 3, 2014. Grandfather was present and appellant was appointed counsel who submitted to the detention and requested a settlement conference. Expressing concern about appellant's serious drug abuse problem, runaway history and possible prostitution activity, the juvenile court found that detention was necessary for appellant's protection and was in her best interests. The court ordered the probation department to provide Grandparents services to facilitate returning appellant to their home.

On October 22, 2014, two days before a scheduled settlement conference hearing, the probation department filed a motion to transfer appellant's delinquency case out of Sacramento and into Solano County, where Grandparents lived. On October 24, the juvenile court held a combined settlement conference and transfer hearing (the October 24 hearing). Appellant and her grandfather (Grandfather) both attended.

At the beginning of the October 24 hearing, appellant's counsel advised the court that appellant had agreed to the following settlement: Appellant would admit the count one drug possession charge as a misdemeanor; the count two charge would be dismissed; and appellant would submit "on the transfer out to Solano County in custody." Appellant was then advised of her rights, which she waived before admitting the drug possession misdemeanor. The count two charge was dismissed in the interests of justice. The court found there was a factual basis for appellant's admission which was free and voluntary,

and made with the consent of counsel. It then found that appellant fell within the court's jurisdiction under section 602.

Turning to the transfer motion, the court found that Solano County was appellant's legal residence, and that services were available to her there. Therefore, the court ordered an in-custody transfer to Solano County for final disposition. At the conclusion of the hearing, the court inquired whether Grandfather had any questions about the proceedings. Grandfather said he did not, but he expressed disappointment about what had happened. The court opined that Solano County would work with appellant and her family to get her the support she needed "to be safe and the be healthy and to move forward."

B. Proceedings in Solano County

A "transfer-in" hearing was set for October 30, 2014. The Solano County probation department report that was filed that day advised the court that on October 29, Grandfather notified the department that he and his wife had decided they wanted to "relinquish their legal guardianship." Grandfather reported that Grandparents had been appellant's legal guardian since she was six, but they had not adopted her. He explained that appellant's behavior was beyond their control and that she had mental problems which caused her to be violent in the past. She had punched holes in the wall and once set her room on fire. In addition, Grandparents had not previously been aware of appellant's illegal drug use. The probation department recommended that appellant be detained in juvenile hall pending a determination about where she would reside. The report highlighted facts about appellant's poor school attendance, history of alcohol and drug use, mental and emotional problems, and prior arrests for prostitution. The department also noted that when appellant was arrested in Sacramento she gave police a false name and she was in the company of a pimp and a prostitute.

At the October 30 hearing, the juvenile court accepted the transfer of appellant's case, and appointed counsel for her. Appellant's counsel advised the court that she had spoken with Grandfather, who was also present at the hearing, and he confirmed that Grandparents had decided to give up the guardianship. Therefore, counsel opined that

the “next step” was to set the matter for a section 241.1 report, to determine whether appellant should be treated as a ward or a dependent of the juvenile court. The People agreed. The court ordered a section 241.1 report and continued the matter to November 21 for disposition.

On November 14, 2014, the Solano County probation and social services departments completed an “Agreed Joint Assessment Report” pursuant to section 241.1 (the section 241.1 report) which recommended that appellant be declared a dependent of the juvenile court under section 300.

The disposition hearing commenced on November 21, 2014, and was held over the course of three days. On November 21, the People objected to the joint recommendation to treat appellant’s case as a dependency matter, taking the view that the section 600 “system” was preferable because it could provide all of the services available in a section 300 case and also afforded the option to issue a bench warrant if appellant ran away, which seemed likely. They argued that in light of appellant’s pattern of running away and engaging in dangerous behaviors, like drug use and prostitution, the best way to keep her safe was to declare her a ward of the court. A representative from the probation department was not present at the hearing, but appellant and social services supported the recommendation in the section 241.1 report to treat the matter as a dependency case. The court opined that the determinative factor was which system could place appellant in the best program for her needs and noted that, either way, there was going to be an issue about where to place appellant after she completed a residential program. The court continued the matter for briefing and further consultation with the probation department.

At the continued hearing on November 24, 2014, appellant renewed her request that the matter proceed under section 300. But the social services department changed its recommendation and requested that the court treat the matter as a delinquency case, citing several reasons. First, the two residential treatment programs that had agreed to accept appellant expressed a preference for the section 600 system because it afforded the ability to impose consequences and to seek a bench warrant if the child ran away. Second, the probation department could provide family maintenance and reunification services, and if

appellant was not ready or able to return to Grandparents' home after completing her program, the matter could be converted to a dependency case at that time. Third, Grandfather approved of the idea of imposing consequences and indicated he was willing to work toward reunification if appellant made progress in her program. And finally, if the wardship was continued, rehabilitation would be a mandated goal of appellant's treatment plan which would not be true in a dependency case. The juvenile court continued the matter to the next day so appellant could address the social service department's new recommendation and consider calling appellant's probation officer as a witness.

On November 25, 2014, the court heard testimony from appellant's probation officer, Nakia Walker, who collaborated with the social services department to prepare the section 241.1 report recommending that this matter be treated as a dependency case. Walker testified that the primary reason for the recommendation was "caretaker absence" and the concern that the probation department would have difficulty finding an appropriate placement for appellant after she completed a residential treatment program. However, Walker acknowledged that the probation department could refer appellant to the dependency system after she completed a residential program. Walker testified that if appellant was declared a ward, she would be placed at New Foundations because she was a "high flight risk" and that program would address her mental health and substance abuse issues. Walker had discussed this plan with Grandfather and he agreed to consider taking appellant back into his home if she successfully completed the program. The juvenile court elected to proceed under section 602, removed appellant from the custody of her guardians, and issued a general placement order which was stayed pending completion of a program at New Foundations.

On December 5, 2014, appellant filed a notice of appeal. Thereafter, the appellate record was augmented with documentation regarding a hearing that was held in this case on March 17, 2015, shortly before appellant completed her residential program at New Foundations. A transcript of the hearing indicates that another section 241.1 report was prepared for appellant. The court stated that at "first blush" the case seemed better suited

“as a 602,” but appellant only had 10 days of custody left, which was not enough time to provide the care she needed. The court found that a prima facie showing for dependency had been made because appellant faced substantial danger if she was returned to the home of her parents, and a relative who was able, willing and approved was not available. Grandfather was once again present at the hearing and the court appointed counsel for him before referring the case to the dependency court for further proceedings.

III.

DISCUSSION

A. The Sacramento Court’s Jurisdiction Order

In her first set of arguments, appellant seeks reversal of the Solano County November 2014 disposition order by challenging the validity of the October 24, 2014 jurisdiction order that was made in Sacramento County. Specifically, appellant contends that the Sacramento juvenile court (1) violated section 241.1 by failing to consider exercising dependency jurisdiction over appellant; (2) failed to consider whether appellant was eligible for deferred entry of judgment (DEJ) under section 790 et seq.; and (3) accepted an admission from appellant that was not knowing, intelligent and voluntarily made.

1. Section 241.1

“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.]” (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1505 (*M.V.*).

“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 (*Marcus G.*))

As reflected in our factual summary, the Solano County court conducted a section 241.1 inquiry in November 2014 and concluded that appellant would be better served as a ward of the court. Appellant does not challenge that ruling, but argues instead that her constitutional due process rights were violated because the section 241.1 inquiry was not conducted earlier, by the Sacramento court. Appellant argues that when the original petition was filed, she appeared to fall within the juvenile court’s jurisdiction under both the dependency statute (§ 300) and the delinquency statute (§ 602). Thus, in her view, a mandatory duty to conduct a dual jurisdiction inquiry arose at that time in her case.

To support her argument, appellant relies on language in the first sentence of section 241.1, subdivision (a), which states: “*Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society.*” (Italics added.) Appellant takes the position that she *appeared* to be a dual jurisdiction minor before the Sacramento court made its jurisdiction finding at the October 24 hearing.

Appellant did not raise this issue below, either in Sacramento or Solano County. On appeal she contends the forfeiture rule does not apply because the Sacramento court’s failure to consider exercising dependency jurisdiction resulted in a due process violation. This court rejected a similar argument in *M.V.*, *supra*, 225 Cal.App.4th at page 1508. In that case, a dual jurisdiction minor appealed an order declaring her a juvenile court ward on the ground that the section 241.1 report was not completed until after the jurisdiction hearing. This court found that the report should have been prepared earlier in the proceeding, but concluded that appellant “forfeited any right to complain about the timeliness of the assessment by failing to object in the juvenile court to the lateness of its preparation.” (*M.V.*, at p. 1508, fn. omitted.) In reaching this conclusion, we found that

“neither due process nor any other argument advanced by the minor” excepted him from the forfeiture rule. (*Id.* at p. 1511.)

Appellant contends that *M.V.*, *supra*, 225 Cal.App.4th 1495 is inapposite because in that case the court and parties made a conscious decision to postpone the section 241.1 inquiry until the disposition hearing. Here, she argues, the Sacramento court was ignorant of its obligation under section 241.1 and thus its failure to exercise discretion mandated by law constituted a violation of due process. (Citing *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-1182 [failure to exercise discretion conferred and compelled by law constitutes denial of a fair hearing and deprivation of procedural due process].) However, the record does not support appellant’s factual premise that the Sacramento court was required to make a determination under section 241.1.

Appellant came to the attention of the Sacramento juvenile court because she was stopped by police for truancy, arrested for possession of illegal drugs and drug paraphernalia, and identified as a runaway. When the section 602 petition was filed on October 2, 2014, appellant was not a current or former dependent of the juvenile court. Thus, at that juncture in the proceeding, there was no concrete circumstance mandating an inquiry under section 241.1. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1124 [because minor was not a ward when the court assumed jurisdiction over her as a dependent child, “there was no basis for a section 241.1 report”]; *Los Angeles County Dept. of Children & Fam. Services v. Superior Court* (2001) 87 Cal.App.4th 320, 325 [“Where the potential for dual jurisdiction arises because a second petition is filed regarding a minor already within the juvenile court’s jurisdiction, the court presented with the second petition shall make the necessary determination.”]; *Marcus G.*, *supra*, 73 Cal.App.4th at p. 1013 [section 241.1 assessment is to be conducted by court adjudicating a second petition that creates a dual jurisdiction problem].)

Three weeks later, at the October 24 hearing, the following facts were known to the Sacramento court: Grandparents, not Mother, were appellant’s legal guardians and they lived in Solano County. Grandfather had expressed serious misgivings about taking appellant back into the home, but he had appeared at each of her hearings, and the

probation department had been ordered to provide him with services to facilitate returning appellant to his home. Appellant did not have a delinquency history but her problems were serious and escalating: she engaged in dangerous behavior; she was a flight risk; she was difficult to control; and her mental health problems needed to be addressed. Furthermore, appellant's criminal behavior was the source of Grandparents' misgivings about whether to continue the guardianship.

All of these circumstances were consistent with exercising delinquency jurisdiction over appellant. Appellant does not identify any circumstance that was presented to the Sacramento court which indicated that she was also subject to the court's dependency jurisdiction at that juncture in her case. The probation department was aware that Grandfather was considering terminating the guardianship, but he had not made that decision. Instead, he participated in appellant's hearings and was offered services. Furthermore, there was no evidence that Grandparents were incompetent guardians or otherwise incapable of providing appellant with a stable home. Beyond that, the section 602 matter was presented to the juvenile court as a *fait accompli*; appellant had reached a settlement pursuant to which she admitted the misdemeanor drug charge, a second charge was dismissed and appellant agreed to an in-custody transfer of her case to Solano County where Grandparents lived. When viewed as a whole, the case presented to the Sacramento County juvenile court did not require the court to assess appellant for dependency jurisdiction as a possible alternative to the settlement the parties had reached.

Arguing for a contrary conclusion, appellant contends the Sacramento court was required to conduct a section 241.1 inquiry because her background suggested that she was a commercially sexually exploited child (CSEC) under Penal Code section 236.1. According to appellant, evidence that she had been "connected to pimps who forced her to prostitute herself since June 2014 and had been held captive by one" required that the court treat her as a victim and to refrain from characterizing her prostitution related conduct as a crime.

First, the section 602 petition did not allege prostitution as a ground for exercising delinquency jurisdiction over appellant. Although the Sacramento court expressed

concern about appellant's possible connection to prostitution, nothing in this record supports appellant's theory that the court sought to punish her for engaging in prostitution. Second, evidence that appellant had possibly been abused by a pimp in a different county did not surface until after the case was transferred to Solano County. Finally, the circumstance most relevant and damaging to appellant's claim is that we find no basis in the record before the Sacramento court for concluding that appellant's experience with prostitution was a ground for removing her from Grandparents' custody by exercising dependency jurisdiction over her.

In her reply brief, appellant argues that her case fell squarely within the Sacramento court's dependency jurisdiction because her "guardian's actions" left her without a home. The record shows that while this case was in Sacramento, Grandfather contemplated terminating the guardianship, but did not make that decision. It was not until October 29, after the case was transferred to Solano County, that Grandfather notified the probation department that Grandparents had decided to "relinquish their legal guardianship." Furthermore, we do not agree with the characterization of Grandparents' conduct as manifesting a "desire" to terminate appellant's guardianship; throughout these proceedings, Grandfather remained actively involved in appellant's case and, as far as we can tell, he has still not made the ultimate decision about whether to terminate the guardianship.

For all these reasons, we reject appellant's contention that the circumstances presented to the Sacramento juvenile court triggered an obligation to conduct a section 241.1 inquiry before exercising jurisdiction over appellant under section 602.

2. Deferred Entry of Judgment

Appellant next contends the jurisdiction order must be reversed because the Sacramento prosecutor and court erred by failing to consider her for the statutory deferred entry of judgment (DEJ) program. (§ 790 et seq.)

a. *The DEJ Program*

"The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The

sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

“The determination of whether to grant DEJ requires consideration of ‘two distinct essential elements of the [DEJ] program,’ viz., ‘eligibility’ and ‘suitability.’ [Citation.] Under section 790, the prosecuting attorney is required to determine whether the minor is eligible for DEJ.” (*In re C.W.* (2012) 208 Cal.App.4th 654, 659 (*C.W.*).

A minor who is alleged to be a person described in section 602 because of the commission of a felony is eligible for consideration for DEJ “if all of the following circumstances apply: [¶] (1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. [¶] (4) The minor’s record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶] (6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code. [¶] (7) The offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code when the victim was prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim was at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and that was known or reasonably should have been known to the minor at the time of the offense.” (§ 790, subd. (a).)

“Upon determining that a minor is eligible for DEJ, the prosecuting attorney ‘shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney.’ (§ 790, subd. (b).) The form designed for this purpose is a form JV-750, the completion of which requires the prosecutor to indicate findings as to the eligibility requirements by checking, or not checking, corresponding boxes. (Cal. Rules of Court, rule 5.800(b).) If a minor is found eligible for DEJ, form JV-751, entitled ‘Citation and Written Notification for Deferred Entry of Judgment—Juvenile,’ is used to notify the minor and his or her parent or guardian. There is a box to check on the form JV-750 indicating that the form JV-751 is attached.” (*C.W., supra*, 208 Cal.App.4th at p. 659.)

“Once the threshold determination of eligibility is made, the juvenile trial court has the ultimate discretion to rule on the minor’s suitability for DEJ. [Citation.] Suitability for DEJ is within the court’s discretion after consideration of the factors specified by statute and rule of court, and based upon the standard of whether the minor will derive benefit from ‘ “ “education, treatment, and rehabilitation” ’ ’ rather than a more restrictive commitment. [Citation.]” (*C.W., supra*, 208 Cal.App.4th at p. 660.)

b. Procedural Background

As the People concede on appeal, the Sacramento prosecutor failed to comply with his duties under the DEJ program. On October 1, 2014, the prosecutor filed the required form JV-750, but the boxes that were checked on the form indicated that appellant was not eligible for DEJ because it had not been alleged that she committed at least one felony. This statement was erroneous; although appellant ultimately admitted a misdemeanor drug charge, the petition alleged that she was a person described in section 602 because of the commission of a felony. Because of this error, the prosecutor also failed to provide appellant and Grandfather with notice of appellant’s DEJ eligibility. Furthermore, at the October 3, 2014 detention hearing, the Sacramento juvenile court also stated that appellant was not eligible for DEJ because she had only been charged with misdemeanors.

Prior to the jurisdiction hearing, however, the Sacramento probation department informed the juvenile court that appellant was in fact eligible for DEJ. In its October 20, 2014 report, the department advised the court that appellant was eligible for DEJ because of the pending felony drug charge. The department opined, however, that appellant was not suitable for DEJ because of the nature of her behavior within the home and her “numerous absconds.” Therefore, the department recommended that the court find that appellant was eligible but not suitable for DEJ.

At the October 24 hearing, the Sacramento court had the probation department’s recommendation against DEJ before it, but the court never ruled on the matter because, at the outset of the hearing, the parties presented the court with a settlement pursuant to which the only felony alleged in the section 602 petition was reduced to a misdemeanor. Once the felony drug charge was reduced to a misdemeanor, appellant was no longer eligible for DEJ treatment. (See § 790.)

c. Analysis

Appellant contends that the Sacramento prosecutor’s and court’s failure to comply strictly with DEJ procedures constitutes per se reversible error and, under the circumstances presented here, she “is entitled to have the jurisdictional finding reversed outright, without a remand for further proceedings.” To support her demand for this remedy, appellant relies on *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123 (*Luis B.*) and *C.W.*, *supra*, 208 Cal.App.4th at pp. 660-662.

In *Luis B.*, *supra*, 142 Cal.App.4th 1117, a wardship petition alleged that the minor committed a felony and a misdemeanor offense. After a contested jurisdiction hearing, the court found the minor committed both offenses and he was subsequently adjudged a ward of the court. On appeal, the *Luis B.* court reversed the jurisdiction finding because DEJ procedures had not been followed and remanded the case with the direction that the juvenile court properly consider the minor for DEJ. (*Id.* at p. 1120.) In *C.W.*, *supra*, 208 Cal.App.4th 654, the minor’s wardship petition charged her with five felonies. (*Id.* at p. 658.) After a contested jurisdiction hearing, the court sustained four of the five felony counts and the minor was subsequently adjudged a ward of court. (*Id.*

at pp. 658-659.) On appeal, this court set aside the juvenile court's findings and disposition order and remanded the case with directions to comply with the requirements for determining whether the minor was eligible, and if so, suitable for DEJ. (*Id.* at p. 663.)

The present case is similar to *Luis B.* and *C.W.* in two respects: appellant's wardship petition alleged a felony which made her eligible for DEJ; and there was a failure to comply with DEJ procedures. However, in contrast to those cases, there was no contested jurisdiction hearing in this case and the juvenile court never sustained a petition allegation that appellant committed a felony. Instead, the felony alleged in count one of appellant's section 602 petition was reduced to a misdemeanor pursuant to a negotiated settlement. That occurrence not only eliminated the need for a contested hearing, it rendered appellant ineligible for DEJ. Indeed, if appellant had elected to contest jurisdiction on the felony count rather than admit the reduced misdemeanor charge, the court had before it a report which explicitly stated that appellant was eligible for DEJ.

The October 20 probation report also recommended that if the court were to proceed with a jurisdiction hearing it should find that appellant was eligible but not suitable for DEJ. We have little doubt that the court would have followed that recommendation since the primary concern of everyone involved in this case was that appellant needed to be in a restrictive placement for her own safety. In any event, because appellant admitted the reduced misdemeanor charge, the juvenile court never reached the question whether appellant was suitable for DEJ. That turn of events also rendered harmless the earlier errors with respect to the initial assessment of appellant's eligibility for DEJ.

Appellant contends that the only way to provide her with effective relief from the prejudicial effects of the court's and prosecutor's failure to satisfy their DEJ duties is to vacate the October 24, 2014 jurisdiction order. Tellingly, appellant does not identify any concrete prejudicial effect resulting from those errors. Although appellant was eligible for DEJ when the original petition was filed, the probation department recommended that she be found unsuitable for that program and, before the court reached that jurisdictional

issue, appellant became ineligible for DEJ relief. Under these circumstances, the erroneous failure to follow DEJ procedure was harmless error.

3. Appellant's Admission

Appellant next contends that her admission to the misdemeanor drug charge was not knowing and voluntary. “[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 (*Howard*)). The record must affirmatively demonstrate that the plea was valid under the totality of the circumstances standard. (*Id.* at p. 1178.)

Here, appellant contends that her admission to the misdemeanor drug offense was not knowing and voluntary because her trial counsel was “misinformed” that she had been charged with possession of methamphetamine when in fact she was charged with possession of amphetamine. Appellant draws this conclusion from a statement that her trial counsel made at the October 24 hearing. While summarizing the terms of the settlement for the court, appellant’s trial counsel stated that appellant was prepared to admit to “the possession of methamphetamine as a misdemeanor.” Because the section 602 petition alleged felony possession of amphetamine, appellant contends that her Sacramento attorney’s use of the word “methamphetamine” establishes that counsel misinformed appellant about what the petition actually alleged and what she was admitting to have done.

We conclude that the fact that appellant’s Sacramento attorney used the word “methamphetamine” instead of “amphetamine” when she described the misdemeanor offense appellant was prepared to admit did not render appellant’s admission involuntary. Almost immediately after that misstatement was made, the court directly addressed appellant and confirmed that she understood she would be admitting a charge of misdemeanor possession of *amphetamine*. Throughout the remainder of the proceeding, nothing that was said suggested there was any confusion about the nature of the offenses alleged in the section 602 petition or the nature of the misdemeanor that appellant ultimately admitted. Thus, under the totality of the circumstances, the initial

misstatement by appellant's trial counsel did not render her admission unknowing or involuntary.

Appellant separately contends her admission was involuntary because the juvenile court failed to admonish her that her plea would almost certainly result in a one-year delay in issuance of her driver's license. (See Veh. Code, § 13202.5, subd. (a).) Because this advisement was 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 possibility here.

Finally, appellant contends that her admission was involuntary because the trial court abused its discretion by failing to consider whether a transfer of the case to Solano County was in her best interest. First, appellant fails to adequately explain how the transfer order (which she stipulated to) affected the voluntariness of her plea to a misdemeanor drug charge. Second, appellant has not demonstrated that the Sacramento court abused its discretion by transferring appellant's case to Solano County.

California Rules of Court, 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).) 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.)

Here, appellant acknowledges the record supports the Sacramento court's finding that Solano was appellant's county of residence, but argues "there is no support for the conclusion that transfer was in her best interests." We disagree. Grandparents have been appellant's legal guardians for more than eight years; they care for her siblings; and they are the only family members who have a demonstrated commitment to appellant's well-being. Although there was doubt about whether appellant could return to Grandparents' home, there was no doubt that home was the only potential family placement available to appellant. Thus, having appellant receive services in the county where her Grandparents lived was in her best interest.

Even if the transfer order had some bearing on the voluntariness of appellant's plea, that order was sound and did not undermine the validity of appellant's admission that she committed the misdemeanor drug offense. For this and other reasons discussed above, appellant has failed to convince us that the Sacramento juvenile court's jurisdiction findings must be set aside.

B. Effective Assistance of Counsel

Appellant attacks the November 2014 disposition order on the independent ground that she was denied the effective assistance of counsel in both Sacramento and Solano Counties.

"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 she was denied the effective assistance of counsel, appellant " 'bears the two-pronged burden of showing that [her] counsel's representation fell below prevailing professional norms and that [she] 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.]" (*Id.* at p. 1528.)

Appellant contends that she was denied the effective assistance of counsel in Sacramento County because reasonably competent counsel would have (1) requested a

section 241.1 assessment at the outset of the case; (2) objected to the failure to comply with DEJ requirements; (3) objected to the transfer to Solano county; and (4) advised appellant not to admit the misdemeanor drug charge.

First, appellant's Sacramento counsel did not perform deficiently by failing to request a section 241.1 report. As discussed above, the dual jurisdiction problem arose in the case on October 29, 2014, after the case was transferred to Solano County, when Grandfather notified the probation department of Grandparents' decision to terminate the guardianship. Even then, Grandfather expressed misgivings about terminating and a willingness to reconsider if appellant made progress in a treatment program.

Second, the failure to comply with DEJ procedures was a moot issue once appellant made the decision to admit the misdemeanor drug charge. Appellant has failed to demonstrate why Sacramento counsel's decision to pursue a negotiated settlement in lieu of the DEJ program was unsound, particularly in light of the strong evidence that appellant was not a suitable candidate for DEJ treatment.

Third, Sacramento counsel could reasonably have concluded that transferring appellant's case to Solano County was in her best interest. Appellant fails to substantiate her claim that she would have been better served if her case had not been transferred out of Sacramento.

Finally, appellant contends that she should not have been counseled to admit to the misdemeanor drug charge because that admission did not benefit her in any way.² Appellant reasons that she made that admission only 11 days before Proposition 47 was passed by California voters and, since the drug offense alleged in appellant's section 602 petition was reduced to a misdemeanor by the provisions of Proposition 47, appellant contends that her Sacramento counsel performed deficiently by permitting appellant to

² Appellant also posits that, because Sacramento counsel was misinformed about the offenses alleged in the section 602 petition, she could not have properly advised appellant about them. We have already rejected the premise of this argument; the record does not demonstrate that Sacramento counsel was misinformed about the nature of the offenses that gave rise to the original petition.

admit to the misdemeanor. According to appellant, reasonably competent counsel would have known that the passage of Proposition 47 was “nearly a foregone conclusion,” and would have “utilized the time until the passage of Proposition 47 to advocate for dependency status” and to conduct legal research regarding the viability of the count 2 charge for possessing an opium pipe.

Selective hindsight distorts appellant’s assessment of her Sacramento counsel’s performance. Appellant criticizes her former attorney for failing to predict the outcome of a pending election. Furthermore, since there was no dual jurisdiction problem while this case was in Sacramento, we disagree with appellant that her counsel should have attempted to delay the proceedings by advocating for dependency jurisdiction. Finally, appellant’s post hoc benefits analysis ignores substantial evidence which supports the reasonable conclusion that admitting the count one charge as a misdemeanor and agreeing to the transfer did benefit appellant because it put her in a position to receive the type and level of services she needed for her own protection, and it gave her the best chance of returning to her Grandparents’ home.

Appellant separately contends that her Solano counsel performed deficiently by failing to file motions to (1) re-transfer the case to Sacramento County; and (2) withdraw appellant’s admission to the misdemeanor drug charge. In light of our conclusions above, these arguments necessarily fail.

Finally, to the extent any decision by appellant’s attorneys could be characterized as falling below prevailing professional standards, appellant has failed to establish prejudice. To meet that burden, appellant would have to demonstrate a reasonable probability that, but for a challenged action or claimed inaction, the result of the proceeding would have been more favorable to her. (See *In re Angel R.* (2008) 163 Cal.App.4th 905, 910.)

Appellant argues that if her case had not been transferred to Solano County and she had not admitted the misdemeanor drug offense, it is reasonably likely she would have been declared a dependent and never faced the “negative influences of juvenile hall.” We disagree for reasons we have already made clear. In addition, we reject

appellant's premise that the time she spent under the delinquency jurisdiction of the juvenile court was harmful and inappropriate. The evidence in this record substantially supports the conclusion that exercising delinquency jurisdiction over appellant was in her best interest. That decision was necessary for her own protection in light of her history of running away and engaging in extremely dangerous activities. That decision also gave her the best chance of reunifying with Grandparents, the only family that demonstrated any commitment to her well-being.

C. The Restitution Fine

When the Solano court adjudged appellant a ward of the juvenile court on November 25, 2014, it imposed a \$50 restitution fine pursuant to section 730.6, subdivision (a)(2)(A). Several weeks 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) 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 she is entitled to the benefit of the 2015 amendment to section 730.6 under the rule established by *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.)

The People do not dispute the general proposition that the *Estrada* rule applies to the section 730.6 amendment, but they argue that appellant does not meet the requirements of subdivision (g)(2) because she was not a person described in section 241.1 when the restitution fine was imposed. The People are mistaken. Although

appellant was not a dual status minor when the original section 602 petition was filed in Sacramento County, she definitely was a person described in section 241.1 when the disposition order was entered in November 2014, and the Solano County court determined that exercising delinquency jurisdiction over appellant was in her best interest at that juncture in the proceeding. Thus, we agree with appellant that the restitution fine must be stricken.

D. Clerical Errors 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 corrections must be made in two “Juvenile Detention Disposition Report[s]” that appear in appellant’s case file, one of which was prepared by the Sacramento County clerk and the other by the Solano County clerk. Both reports state that appellant admitted a felony drug offense when in fact she admitted a misdemeanor. Therefore, these errors should be corrected on remand.

IV.

DISPOSITION

The November 2014 disposition order is affirmed, but the case is remanded with directions that the juvenile court (1) strike the \$50 restitution fine it imposed under section 730.6; and (2) correct the Juvenile Detention Disposition Reports in appellant’s case file(s) to reflect that appellant’s adjudication was for a misdemeanor rather than a felony.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.