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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

OMAR A.,

Defendant and Appellant.

A143977

(Contra Costa County  
Super. Ct. No. J12-00670)

On May 21, 2012, the Contra Costa District Attorney (District Attorney) filed a delinquency petition pursuant to section 602 of the Welfare and Institutions Code (Section 602), charging Omar A., a minor, with driving under the influence (Veh. Code, § 23152, subd. (a)); driving with a blood alcohol level of 0.08 or higher (Veh. Code, § 23152, subd. (b)); driving without a valid license (Veh. Code, § 12500, subd. (a)); hit-and-run causing property damage (Veh. Code, § 20002, subd. (a)); and driving a vehicle with a blood alcohol count of 0.05 or higher as a person under 21 years of age (Veh. Code, § 23140, subd. (a)). On October 25, 2012, Omar pled no contest to the second count—driving with a blood alcohol level of 0.08 or higher—and the juvenile court dismissed the remaining counts. At the dispositional hearing on November 27, 2012, the

juvenile court adjudged Omar a ward of the court, placed him on probation, and released him to the custody of his parents.

Thereafter, on August 6, 2014, the District Attorney filed a supplemental petition under Section 602, charging the minor with driving under the influence (Veh. Code, § 23152, subd. (a)) (Count 1); driving with a blood alcohol level of 0.08 or higher (Veh. Code, § 23152, subd. (b)) (Count 2); hit-and-run causing property damage (Veh. Code, § 20002, subd. (a)) (Count 3); resisting arrest (Pen. Code, § 148, subd. (a)) (Count 4); and driving with a suspended license (Veh. Code, § 14601.5) (Count 5). In addition, each of Counts 1 and 2 contained a special allegation that the minor had a blood alcohol count of .20 or more or refused to take a chemical test. (See Veh. Code, §§ 23538, subd. (b)(2) & 23556, subd. (b)(4).) These new charges stemmed from a February 7, 2014, incident in which the minor drove into a parked car and then fled the scene. When he was apprehended four blocks away, he denied driving, although he possessed a key that matched the description of the car involved, and the car, itself, was registered to his step-mother.

On November 18, 2014, the minor pled no contest to Count 2, including the related special allegation, and Count 3. The juvenile court dismissed Count 1, including the related special allegation, Count 4, and Count 5. At the dispositional hearing on January 8, 2015, Omar was continued as a juvenile court ward and ordered to serve eight days in juvenile hall followed by 60 days of home supervision. In addition, his license was suspended for one year and he was ordered to pay a fine of \$390 in connection with his driving under the influence (DUI) offense, pay a \$100 restitution fine, and participate in an adolescent DUI program. Omar filed a timely notice of appeal on January 9, 2015.

Omar's sole challenge on appeal involves the \$390 DUI fine. Specifically, the minor contends that the juvenile court was not aware that it had discretion in the imposition of this fine and that the court erred by imposing the fine without making an express finding regarding his ability to pay it. In addition, to the extent his first argument fails, Omar asserts that he was denied effective assistance of counsel. Seeing no error requiring reversal of the juvenile court's dispositional order, however, we affirm.

## I. DISCUSSION

### A. *Imposition of the DUI Fine*

At the January 2015 dispositional hearing, Omar's attorney argued that the \$390 DUI fine requested by the Probation Department pursuant to subdivision (a) of section 23536 of the Vehicle Code (section 23536) was inapplicable to juveniles. The probation officer did not know if imposition of the fine was appropriate, but stated that the Probation Department had been applying it in wardship proceedings. The prosecutor argued that the statute in question did not limit its reach to adults. After the matter was submitted, the juvenile court concluded: "In reviewing the Vehicle Code and the Welfare & Institutions Code, I am satisfied that the court has the authority to add the fine." The court then ordered Omar to pay a fine of \$390 pursuant to section 23536, subdivision (a), prior to the completion of his probation.

Pursuant to section 23536: "If a person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months, and by a fine of not less than three hundred ninety dollars (\$390), nor more than one thousand dollars (\$1,000)." In a similar vein, subdivision (a) of section 23540 of the Vehicle Code (section 23540) states: "If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of a separate violation of Section 23103, as specified in Sections 23103.5, 23152, or 23153, that resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the department pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550." As a second-time offender, Omar would more appropriately have paid the fine under section 23540, rather than section 23536. However, since both statutes authorize the same minimum fine, we do not find the court's inadvertent reference to the wrong statute to be fatal. Indeed, Omar does not argue that

the fine was improper on this basis. Rather, the operative question is whether a DUI fine under the Vehicle Code, applicable only to persons “convicted,” is properly applied in the context of a juvenile wardship proceeding, which is not criminal in nature. (See Welf. & Inst. Code, § 203 [“[a]n order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding”].)

The answer to this inquiry lies in section 730.5 of the Welfare and Institutions Code (section 730.5). Although section 23540 applies by its terms to persons “convicted,” section 730.5 permits the juvenile court to impose fines on juveniles who have not suffered a conviction, but who have been found by the juvenile court to have committed an offense which could result in a fine for an adult. Specifically, section 730.5 provides in relevant part: “When a minor is adjudged a ward of the court on the ground that he or she is a person described in Section 602, in addition to any of the orders authorized by Section 726, 727, 730, or 731, *the court may levy a fine against the minor up to the amount that could be imposed on an adult for the same offense, if the court finds that the minor has the financial ability to pay the fine* (italics added).”

On appeal, Omar argues that section 730.5 makes the DUI fine at issue discretionary, and the juvenile court did not indicate that it was aware that it had any discretion in imposing the fine. He also claims that the juvenile court erroneously failed to determine his ability to pay as required by section 730.5. As a preliminary matter, we conclude that Omar has forfeited any argument regarding his ability to pay the fine by failing to object on that basis in the trial court. (*People v. Partida* (2005) 37 Cal.4th 428, 435 [“[a] party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct”]; see also *People v. Aguilar* (2015) 60 Cal.4th 862, 864 [defendant’s failure to challenge fees in the trial court precludes appellate review]; *People v. McCullough* (2013) 56 Cal.4th 589, 591 [defendant who failed to contest booking fee on the ground that evidence was insufficient to support a finding of his ability to pay forfeited the right to challenge the fee on appeal].) Indeed, the minor concedes that an objection was necessary to preserve this issue.

With respect to the juvenile court’s exercise of discretion, we note the fundamental tenet of appellate review that “a trial court is presumed to have been aware of and followed the applicable law.” (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1517.) Omar argues here that nothing in the record indicates that the court (or any of the parties) was aware of section 730.5 and its requirements. Thus, the minor concludes, “we cannot say that the juvenile court knew it had discretion to impose the fine and it exercised it.” However, there is nothing in this record that affirmatively shows the juvenile court misunderstood its role. (See *People v. Alvarez* (1996) 49 Cal.App.4th 679, 695 [an appellate court cannot conclude that a trial court misunderstood the scope of its sentencing discretion in the absence of an affirmative showing that it misunderstood].) In fact, after hearing argument from the parties on the applicability of the DUI fine to juveniles, the court stated: “In reviewing the Vehicle Code and the Welfare & Institutions Code, I am satisfied that the court has the authority to add the fine.” Thus, the court expressly indicated that it considered the juvenile court law, not just the DUI statute, in rendering its decision. Moreover, the court’s statement that it had the “authority” rather than the obligation to impose the fine also supports the conclusion that the juvenile court understood it possessed discretion in the matter. We therefore conclude that the record adequately supports the juvenile court’s exercise of discretion with respect to the DUI fine.

**B. *Ineffective Assistance of Counsel***

As described above, Omar’s trial counsel objected to the imposition of the DUI fine at issue, arguing that the authorizing statute was only applicable to adult offenders. She did not, however, object to the juvenile court’s failure to determine on the record whether Omar had the ability to pay the fine in accordance with section 730.5. The minor next argues that, if this court concludes that an objection was required to preserve the issue of ability to pay—as we have—he was provided with ineffective assistance of counsel in that his trial counsel failed to so object.

The due process right to effective assistance of counsel extends to minors in juvenile delinquency proceedings. (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th

847, 857.) To demonstrate that he received ineffective assistance of counsel, Omar “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.” (*In re Angel R.* (2008) 163 Cal.App.4th 905, 909, citing *Strickland v. Washington* (1984) 466 U.S. 668, 694.) However, “[r]eviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a ‘strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.’” (*People v. Lucas* (1995) 12 Cal.4th 415, 436.) Thus, “[w]hen 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.” (*People v. Anderson* (2001) 25 Cal.4th 543, 569 (*Anderson*); see also *Lucas, supra*, 12 Cal.4th at p. 437 [reversal on direct appeal for inadequate counsel appropriate “ ‘if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for [the] act or omission” ’ ”].)

Here, the record is silent as to why Omar’s trial counsel declined to object to the fine at issue on the grounds that the minor did not have the ability to pay it. Thus, we must affirm the juvenile court’s determination unless there could be “no satisfactory explanation” for this omission. (*Anderson, supra*, 25 Cal.4th at p. 569.) Of course, the most obvious explanation is that trial counsel did not object because she was aware that the minor and/or his parents had the ability to pay. Counsel never raised the issue of financial hardship with respect to either fine imposed. And the record reflects that the minor was currently doing well in college and was thinking of becoming an engineer like his father. Thus, it is reasonable to assume the family was able to afford the \$390 fine. (See Welf. & Inst. Code, § 730.7 [where the minor “is ordered to pay fines and penalty assessments under any provision of this code, a parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable with the minor . . . subject to the court’s consideration of the parent’s or guardian’s inability to pay”].) As we can easily identify a plausible explanation for counsel’s actions, Omar’s claim of ineffective assistance must fail.

## **II. DISPOSITION**

The judgment is affirmed.

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Reardon, Acting P.J.

We concur:

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Rivera, J.

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Streeter, J.

A143977 *In re Omar A.*