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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re N. G., a Person Coming Under the  
Juvenile Court Law.

B240997  
(Los Angeles County  
Super. Ct. No. MJ20977)

THE PEOPLE,

Plaintiff and Respondent,

v.

N. G.,

Defendant and Appellant.

THE COURT:\*

Minor N.G. appeals from the order denying her March 6, 2012 demurrer motion and sustaining a petition charging her with burglary. At an adjudication hearing on the same date, in accordance with a plea agreement, minor admitted one count of second degree burglary in violation of Penal Code section 459. The juvenile court declared the offense a felony and stated that the maximum confinement time was three years. The juvenile court declared minor a person described by section 602 of the Welfare and Institutions Code and a ward of the court. The juvenile court placed minor under the

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\* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

supervision of the probation department with the minor to remain in the home of her mother under terms and conditions of probation.

We appointed counsel to represent minor on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that she had been unable to find any arguable issues. On August 27, 2012, we advised minor that she had 30 days within which to personally submit any contentions or issues that she wished us to consider. No response has been received to date.

According to the probation report, on January 20, 2012, the minor allegedly entered her mother’s locked bedroom without her mother’s permission and removed two laptops. Argument at the hearing on the demurrer revealed that the victim, the minor’s mother had installed a new lock on her bedroom door and informed minor numerous times that she was not allowed in that room. The mother hid a computer in her room before leaving the minor at home without an adult. When the mother returned she saw minor on the couch with the computer. Another daughter saw the minor descending the stairs with the computer. The lock on the door of the mother’s room was broken, and the computer was gone from that room.

Defense counsel filed a motion for demurrer under Penal Code section 1004, subdivisions 2, 4, and 5, alleging that the facts as stated on the petition and incident reports did not constitute a public offense and that the pleading contained matters which, if true, would constitute a legal justification or excuse of the offense charged.<sup>1</sup> Defense counsel urged that the police reports should be considered as part of the pleading. The motion stated that the police reports showed that the victim was the minor’s mother, and that minor lived at the mother’s home, the place allegedly burgled. Counsel asserted that

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<sup>1</sup> Penal Code section 1004 provides in pertinent part: “The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either: [¶] . . . [¶] 2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information; [¶] . . . [¶] 4. That the facts stated do not constitute a public offense; [¶] 5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.”

a person cannot burglarize his or her own home as long as she has an unconditional possessory right of entry. Defense counsel made the same arguments at the hearing on the motion before the juvenile court.

The prosecutor argued against the court considering the police report as part of the pleading. The prosecutor contended that, although case law states that one cannot burglarize one's own home, the law also states that if one does not have an unconditional possessory interest in the home, one can commit a burglary. The prosecutor argued that the issues were relevant for adjudication by the trier of fact and not the proper subject of a demurrer.

The juvenile court denied the demurrer and found no defect on the face of the petition.<sup>2</sup> The court stated that, even if it were to consider the police report, it would still deny the demurrer. The court found that the facts stated in the petition met the requirements of Welfare and Institutions Code section 656, subdivision (f).<sup>3</sup>

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<sup>2</sup> The petition stated that, “[o]n or about 01/20/2012 within the County of Los Angeles, the crime of FIRST DEGREE RESIDENTIAL BURGLARY, in violation of PENAL CODE 459, a Felony, was committed by said minor, who did enter an inhabited dwelling house and trailer coach and inhabited portion of a building occupied by [mother], with the intent to commit larceny and any felony.”

<sup>3</sup> Welfare and Institutions Code, section 656 provides that “[a] petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following; [¶] . . . [¶] (f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.” (Welf. & Inst. Code, § 656, subd. (f).)

We have examined the entire record and are satisfied that minor's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order appealed from is affirmed.

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