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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re K.S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.S.,

Defendant and Appellant.

C067378

(Super. Ct. No. 65946)

The minor K.S. admitted to misdemeanor possession of a firearm by a minor (Pen. Code, § 12101, subd. (a)). He was declared a ward of the juvenile court and placed on probation. The juvenile court set a maximum term of confinement of six months, imposed three days' confinement in juvenile hall with three days' credit, ordered that the minor serve an additional 30 days on the electronic monitoring program (EMP), and imposed various fines and fees.

On appeal, the minor contends; (1) the disposition order improperly granted discretion to the probation officer to commit him to juvenile hall, (2) the juvenile court was not authorized to declare a maximum period of confinement or issue orders regarding his removal from custody, (3) various penalty assessments are unauthorized, and (4) the fine collection fee should be modified. We affirm the judgment.

We need not set forth the facts underlying this offense as they are unnecessary to the resolution of this appeal.

DISCUSSION

I

Improper Delegation of Authority

The dispositional form signed by the juvenile court reads in pertinent part: "If minor fails to complete . . . EMP . . . in a satisfactory manner, he/she may be returned to Court for further disposition JJC to serve the remaining as straight time." The box next to the phrase "JJC to serve the remaining as straight time" was checked and the other box was not checked.

The minor contends the juvenile court's order improperly delegates the authority to place him in juvenile hall to the probation department. He asserts the order allows him to be placed in juvenile hall without the court having first conducted a "particularized assessment" of his suitability for this disposition, a violation of his due process rights.

In order to increase the custody level of a ward, a petition must be filed pursuant to either section 777 of the

Welfare and Institutions Code (a supplemental petition) (unless otherwise set forth, all subsequent statutory references are to the Welfare and Institutions code), section 602 (an original or subsequent petition) or by a combination of sections 602 and 777 (a unitary petition). (*In re Michael B.* (1980) 28 Cal.3d 548, 554; see *id.* at pp. 552-555.) Therefore, the minor could not be placed in juvenile hall after failing to complete EMP without a juvenile court hearing on the subsequent or supplemental petition. (§ 777 ["[a]n order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . and directing . . . commitment to a county institution . . . shall be made only after a noticed hearing".].)

While a juvenile court cannot authorize a probation department to increase the minor's custody level without another petition and hearing, we do not read this order as authorizing such a procedure. Instead, the order simply notifies the minor that, as a possible consequence of his failure to complete EMP, he "may be returned" to juvenile hall. In the absence of evidence to the contrary, we presume the juvenile court was aware of and followed the applicable law. (*In re Julian R.* (2009) 47 Cal.4th 487, 499 (*Julian R.*).) The minor's reading of the order presumes error where none is apparent.

II

Removal from Parental Custody

The juvenile court declared the minor a ward and placed him on probation. The juvenile court also made findings that the minor's welfare required that he be temporarily taken from his

parents and placed in the care of the probation officer pending disposition and further order of the court. The court also found that reasonable efforts had been made to prevent removal. Regarding the EMP program, the juvenile court found that: "Continuance in the home of the parent or legal guardian would be contrary to the child's welfare." The minor was released to the shared custody of his parents and placed on probation, subject to three days of juvenile hall with three days' credit, and 30 days of EMP. The maximum confinement was set at six months.

The minor contends that those orders relating to removal of the minor from his parents' custody were unauthorized.

Before the juvenile court can remove a minor from the parents' custody, the court must find, pursuant to section 726, that the parent or guardian has not, or cannot "provide proper maintenance, training, and education for the minor," the minor failed to reform on probation, and the minor's welfare requires removal from the parents or guardian. (§ 726, subd. (a)(1)-(3).) When removing the minor from the parents' custody, the juvenile court must also set a maximum term of confinement not to exceed the maximum term of imprisonment which could be imposed on an adult convicted of the same offense. (§ 726, subd. (c).) Physical confinement is: "placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the [Department of Juvenile Justice]." (*Ibid.*)

The minor asserts that since he was never removed from his parents' custody, the finding and orders regarding his removal were unauthorized.

We agree with the minor that he was never removed from his parents' custody. While the juvenile court ordered the minor to serve three days in juvenile hall, this was offset by the days' credit for time served. Therefore, the orders and findings related to the minors' removal--that the minor's welfare requires removal and he is to be temporarily removed from his parents' custody--were unnecessary.

The juvenile court's order setting a maximum term of confinement is similarly unnecessary. In *In re Ali A.* (2006) 139 Cal.App.4th 569, this court concluded that, "[w]hen a juvenile ward is allowed to remain in his parents' custody, there is no physical confinement and therefore no need to set a maximum term of confinement. Consequently, the maximum term of confinement included in the dispositional order here is of no legal effect." (*Id.* at p. 571.) Because the minor was not prejudiced by the presence of the term, we concluded "there is no basis for reversal or remand in this case." (*Id.* at p. 574.)

The same result applies here. While the juvenile court's orders were erroneous and have no legal effect, they did not prejudice the minor. Applying our decision in *Ali A.*, we conclude the juvenile court's orders constitute harmless error.

III

Fines and Fees

The juvenile court imposed a \$25 restitution fine (§ 730.6, subd. (b)(2)), a 10 percent collection fee on that fine "not to exceed \$25," a \$25 fine payable to the San Joaquin County general fund (§ 731, subd. (a)(1)), and various assessments equal to \$22.75 for every \$10 imposed, for a total of \$56.88.

The minor first contends the assessments were improperly imposed because the restitution fine is not subject to the various assessments imposed by the codes. (See § 730.6, subd. (f).)

While the restitution fine is not subject to assessments, the section 731 fine is subject to assessments. Although the juvenile court did not indicate which fine it was applying the assessments to, it is clear that the assessment was imposed on only one of the two fines. Presuming the juvenile court knew and understood the law (*Julian R.*, *supra*, 47 Cal.4th at p. 499), we conclude the assessment was imposed on the section 731 fine. (*Julian R.*, *supra*, 47 Cal.4th at p. 499.)

The minor asserts this presumption is inapplicable because the juvenile court did not make the required finding that the minor or his parents had the ability to pay the fine.

The minor did not object to the imposition of the section 731 fine. The right to appellate review of a nonjurisdictional sentencing issue not raised in the trial court is forfeited. (*People v. Gonzalez* (2003) 31 Cal.4th 745, 751-755; *People v.*

Scott (1994) 9 Cal.4th 331, 356.) This rule of forfeiture has been repeatedly applied to the challenge of a fine or fee on appeal, including claims of insufficiency of evidence. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1069-1072; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469.) His failure to object forfeits any contention that the juvenile court failed to make the necessary findings regarding the ability to pay the fine.

Finally, the minor contends the order imposing a 10 percent collection fee on the restitution fine "not to exceed \$25.00" pursuant to section 730.6, subdivision (q) is improper.

Subdivision (q) of section 730.6 authorizes the imposition of a collection fee for the restitution fine, "not to exceed 10 percent of the amount ordered to be paid" The minor correctly points out that 10 percent of \$25 is \$2.50. But the minor misreads the order which says as to that fine: "Fine in the sum of \$25.00 payable to the Restitution Fund per . . . 730.6(b)(1) . . . [p]lus a 10% collection fee, not to exceed \$25.00." Read properly the court's order makes him subject to a \$2.50 collection fee which, mathematically, does not exceed \$25.00. There was no error.

DISPOSITION

The judgment is affirmed.

_____ HULL _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ DUARTE _____, J.