

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re FERNANDO M., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO M.,

Defendant and Appellant.

D060635

(Super. Ct. No. J216558)

APPEAL from a judgment of the Superior Court of San Diego County, Dwayne K. Moring, Judge. Affirmed.

A petition filed in the juvenile court alleged Fernando M. came within the provisions of Welfare and Institutions Code section 602<sup>1</sup> based on the allegation of one

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

count of misdemeanor indecent exposure (Pen. Code, § 314, subd. (1)). After a trial on the issue, the court sustained the allegation.

At the disposition hearing, the court decided to "follow probation's recommendation[s]," which included: (1) continued wardship; (2) care, custody, and control of Fernando under the supervision of the probation officer; (3) detention in juvenile hall pending a Breaking Cycles reassessment; (4) a discretionary fine in the amount of \$60 (§ 730.5); and (5) a mandatory fine in the amount of \$50 (§ 730.6).

Fernando contends imposition of the \$60 fine was never orally pronounced by the court at the disposition hearing and should therefore be stricken. He further contends the imposition of the \$60 fine is in error because the court did not consider his ability to pay it. We conclude that the court did pronounce imposition of the fine because it was a part of the probation report's recommendations and Fernando forfeited his claim regarding his ability to pay the fine.

## FACTS

On August 11, 2011, Fernando was removed from the Juvenile Ranch Facility for sexually exposing himself to his support teacher, Maria Duenas. Duenas reported that Fernando tried to get her attention as he exposed and played with himself for about a minute during class. Duenas reported the incident to the teacher, and the teacher sent Fernando to the probation officer's office. The administrative staff read Fernando his *Miranda*<sup>2</sup> rights, took a statement from him, and moved him to another juvenile facility.

---

<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

Based on the incident, a petition was filed with the juvenile court alleging one count of indecent exposure. (Pen. Code, § 314, subd. (1).)

After a trial on the issue, the juvenile court sustained the petition. At the disposition hearing, the court stated it had received and reviewed the supplemental probation report and that it was "inclined to follow probation's recommendation." The court did not orally delineate all parts of the recommendation, but mentioned the continued wardship and the detention pending reassessment. After hearing statements from both parties, the court engaged in discussion regarding Fernando's commitment time and again stated it was "going to follow probation's recommendations" and concluded the hearing. The minute order from the hearing provides the recommendations from the probation report as the court's order, including the \$60 fine (§ 730.5).

## DISCUSSION

### I

Fernando contends the minute order's inclusion of the \$60 fine (§ 730.5) was in error because the court did not orally pronounce imposition of the fine at the disposition hearing. Fernando's argument is unsupported by the law and the record.

The conditions of probation "need not be spelled out in great detail in court as long as the defendant knows what they are." (*People v. Thrash* (1978) 80 Cal.App.3d 898, 901.) Recital of all of the conditions "is unnecessary in view of the fact the probation conditions are spelled out in detail on the probation order and the probationer has a probation officer who can explain to him the contents of the order." (*Id.* at pp. 901-902.)

It is counsel's responsibility to understand, advocate, and clarify permissible sentencing choices at the hearing. (*People v Scott* (1994) 9 Cal.4th 331, 353.)

A court's oral pronouncement that it will be "following the probation report's recommendation" is sufficient to show it intended to follow all conditions of the recommendation, regardless of specific recital. (See *People v. Arata* (2004) 118 Cal.App.4th 195, 202, fn. 7.) Here, the court stated several times that it would follow the recommendations of the probation report. Although it discussed only a few of the conditions in detail, it does not follow that it was limited to imposing only those conditions. The court's repeated reference to the recommendation shows that it intended to follow the recommendation in its entirety, and the decision of the clerk to record the entire recommendation in the minutes was not error. (*Ibid.*) If Fernando's counsel was unsure as to what the court meant when it said it would follow the recommendation, it was counsel's responsibility to request clarification. (*People v. Scott, supra*, 9 Cal.4th at p. 353.) We conclude that the minute order's inclusion of the \$60 fine accurately reflects the court's pronouncement at the hearing.

## II

Fernando also contends the court erred by imposing the \$60 fine without first determining his ability to pay. However, because Fernando did not object to the imposition of the fine at sentencing, he has forfeited the issue on appeal.

Currently, there is a split of authority on the issue of whether the forfeiture doctrine applies in the context of challenges to the imposition of fines. (*People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 [holding forfeiture doctrine applicable];

*People v Gibson* (1994) 27 Cal.App.4th 1466, 1467-1468 [holding forfeiture doctrine applicable]; *People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397 [holding doctrine inapplicable].) The issue is currently pending review in the California Supreme Court. (*People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513 [whether failure to object to imposition of a jail booking fine forfeited a sufficiency of the evidence of ability to pay claim on appeal].)

Without the Supreme Court's definitive decision on the matter, we follow the precedents holding that challenges to sentencing decisions must be made in the trial court and the underlying rationale that fairness and efficiency require defendants to make challenges initially in trial courts. (*People v. Hodges, supra*, 70 Cal.App.4th at p. 1357; *People v. Gibson, supra*, 27 Cal.App.4th at pp. 1467-1468.) "The purpose of the [forfeiture] doctrine is to bring errors to the attention of the trial court so they may be corrected or avoided" (*Gibson*, at p. 1468; *People v. Walker* (1991) 54 Cal.3d 1013, 1023), and it is especially important in situations involving fact-specific inquiries because the People should be afforded the opportunity at trial to provide more evidence. (*Gibson*, at p. 1468.) However, we also agree with courts that have followed a "narrow exception" to the doctrine by allowing claims regarding sentences that are unauthorized, void, excessive, or in excess of jurisdiction to be made for the first time on appeal. (*People v. Scott, supra*, 9 Cal.4th at p. 354; *People v. Smith* (2001) 24 Cal.4th 849, 852.)

Here, Fernando did not object to the imposition of the \$60 fine at trial, and the fine does not fall into the narrow unauthorized exception to the forfeiture doctrine. (*People v.*

*Scott, supra*, 9 Cal.4th at p. 354.) Therefore, we decline to consider his claim regarding his ability to pay the fine.

DISPOSITION

The judgment is affirmed.

McDONALD, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.