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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

D061875

(Super. Ct. No. J230728)

APPEAL from a judgment of the Superior Court of San Diego County, Carlos O. Armour and Richard R. Monroy, Judges. Affirmed.

Appellant, A.B. (Minor), was accused in a petition filed in the juvenile court of assault with force likely to produce great bodily injury (Pen. Code,¹ § 245, subd. (a)(4)) and battery with serious bodily injury (§ 243, subd. (d)). It was further alleged that the Minor personally inflicted great bodily injury on the victim (§ 12022.7).

¹ All further statutory references are to the Penal Code unless otherwise specified.

Following a contested hearing, the court found all counts and allegations to be true. The Minor was later declared a ward of the juvenile court and placed in the home of her mother.

The Minor appeals contending the case must be remanded because the trial court failed to exercise its discretion to declare the offenses to be felonies or misdemeanors. We find the record does not support the Minor's contention and affirm.

The Minor does not challenge the admissibility or the sufficiency of the evidence to support the true findings on the petition. Accordingly, we will omit any discussion of the facts of the underlying offenses.

DISCUSSION

The Minor contends the trial court did not properly declare whether the "wobbler" offenses she was found to have committed were felonies or misdemeanors. She argues the record does not show the court was aware of its statutory duty to exercise its discretion and thus the case should be remanded for the court to make such decision.

After the completion of the contested hearing, the court made a true finding on the petition. The court then went on to say the following:

"So I am going to find these counts to be true, the allegations to be true. And I will fix them--they are both felonies. They are I believe to be 654, so I am going to fix the term on Count 1 [§ 245, subd. (a)(4)] as a maximum term of four years, adding to that the 12022.7 allegation of seven years, and I believe Count 2 is actually barred by 654, so I won't fix an additional term on that, so the total term of exposure on this case is seven years as potential punishment."

Welfare and Institutions Code section 702 provides, in part, that when a minor "is found to have committed an offense which would in the case of an adult be punishable

alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or a felony." (See also Cal. Rules of Court, rule 5.780(e)(5).)

The Supreme Court in *In re Manzy W.* (1997) 14 Cal.4th 1199 (*Manzy W.*) held that juvenile courts are required to make a formal declaration as to whether a wobbler offense in any case is deemed to be a misdemeanor or a felony. Such declaration serves the purpose of ensuring that the court understands and exercises its discretion. (*Id.* at pp. 1204, 1210.) The court also said, however, that the entire record must be examined to determine if the trial court was aware of, and exercised its discretion, even if there was no "formal declaration" by the court. (*Id.* at p. 1209.)

Here the trial court did address the felony/misdemeanor issue. The court expressly said it was going to "fix" the two offenses as felonies. The court then "fixed" the term for count 1 and the allegation at a felony level.

The Minor argues that such statements are not enough to demonstrate the court was aware of its discretion and exercised it. We disagree.

The court could have been more formal and could have declared it was complying with the statute and *Manzy W.*, *supra*, 14 Cal.4th 1199. While that would have been clearer, the court's statement sufficiently demonstrates compliance with the statute. We note the court reviewed the offenses at length in making the true finding. It explained how the fact of the injury made the offenses more serious. In its final statements, the use of the word "fix" must be interpreted as meaning the court decided to exercise its discretion to determine the offenses to be felonies, as opposed to misdemeanors. We note the court also used the word "fix" to set the term of possible punishment for count 1 and

for the allegation. Thus, we believe the only rational interpretation of the record is that the court understood the difference between making an offense a felony or making it a misdemeanor. The court declared its decision on that issue with sufficient clarity to satisfy the Supreme Court's direction in *Manzy W.* We find no error on this record.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.