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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

F. B.,

Defendant and Appellant.

F061632

(Tulare Sup. Ct. No. JJD064628)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet Boccone, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Janet E. Neeley, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Kane, Acting P.J., Poochigian, J. and Detjen, J.

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F.B. claims his commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) must be reversed, and the matter remanded to the juvenile court to allow him to withdraw his admissions, because he was not advised he would be required to register as a sex offender for the rest of his life. For the reasons that follow, we will affirm.

PROCEDURAL HISTORY

On April 1, 2010, a first amended petition was filed, alleging that F.B. came within the provisions of Welfare and Institutions Code section 602 by virtue of his commission, against C.M., of forcible rape (Pen. Code,¹ § 261, subd. (a)(2); count 1), forcible lewd act on a child under the age of 14 (§ 288, subd. (b)(1); counts 2, 3, 4, 6, 8), forcible sexual penetration by a foreign object (§ 289, subd. (a)(1); count 5), attempted forcible sodomy (§§ 286, subd. (c)(2), 664; count 7), and attempted forcible oral copulation (§§ 288a, subd. (c)(2), 664; count 9); and his commission, against N.M., of forcible lewd act on a child under the age of 14 (§ 288, subd. (b)(1); counts 10, 11, 13, 14, 15), forcible rape (§ 261, subd. (a)(2); count 12), forcible oral copulation (§ 288a, subd. (c)(2); count 16), and attempted forcible sodomy (§§ 286, subd. (c)(2), 664; count 17). As to each count, it was further alleged F.B. committed an offense against more than one victim (§ 667.61, subd. (b)) and, as to counts 3, 4, 6, 8, 10, 11, 13, 14, and 15, that he engaged in substantial sexual conduct with the victim (§ 1203.066, subd. (a)(8)).²

On June 24, 2010, F.B. admitted counts 2, 3, 6, 11, and 15, and the attendant special allegations. The remaining counts were dismissed with the People retaining the right to discuss them for dispositional purposes. On November 16, 2010, following a contested disposition hearing, F.B. was declared a ward of the court and committed to

¹ Further statutory references are to the Penal Code unless otherwise stated.

² The facts underlying the offenses are not relevant to the issue raised on appeal.

DJJ for a maximum confinement time of 75 years to life. In pertinent part, the court ordered F.B. to register as a sex offender.

On December 1, 2010, F.B.'s attorney was relieved, and new counsel substituted, at F.B.'s request. Counsel subsequently requested that F.B. be held locally, as counsel believed there were grounds for a Welfare and Institutions Code section 778/779 petition, and F.B. "should be withdrawing" his admissions.³ The request was denied. No such petition was filed, or request to withdraw admissions made, prior to the timely notice of appeal.⁴

DISCUSSION

"When a criminal defendant chooses to plead guilty ..., both the United States Supreme Court and [the California Supreme Court] have required that the defendant be advised on the record that, by pleading, the defendant forfeits the constitutional rights to a jury trial, to confront and cross-examine the People's witnesses, and to be free from compelled self-incrimination. [Citations.] In addition, [the California Supreme Court] has required, as a judicially declared rule of state criminal procedure, that a pleading defendant also be advised of the direct consequences of his plea. [Citations.] If the consequence is only collateral, no advisement is required." (*People v. Gurule* (2002) 28 Cal.4th 557, 633-634.) Except for the right to a jury trial, the procedural safeguards accorded an accused in a juvenile proceeding are identical. (*In re Ronald E.* (1977) 19

³ Welfare and Institutions Code section 778 permits the filing of a petition to change, modify, or set aside any previously made order of the court, or to terminate the court's jurisdiction, on the grounds of change of circumstance or new evidence. Welfare and Institutions Code section 779 permits a court committing a ward to DJJ to thereafter change, modify, or set aside the order of commitment.

⁴ A minor who has admitted allegations in a Welfare and Institutions Code section 602 petition is not required to secure a certificate of probable cause in order to obtain appellate review of a juvenile court proceeding. (*In re Joseph B.* (1983) 34 Cal.3d 952, 955.)

Cal.3d 315, 320-321, abrogated on another ground as stated in *People v. Mosby* (2004) 33 Cal.4th 353, 360-361; *In re Chadwick C.* (1982) 137 Cal.App.3d 173, 182; see also Cal. Rules of Court, rule 5.778.)

Here, the court painstakingly explained to F.B. his constitutional rights and secured waivers thereof. The court also advised F.B. of various consequences of his admissions, including the maximum period of physical confinement, possible commitment to DJJ, payment of restitution and a restitution fine, possible imposition of gang terms, potential deportation if he was not a citizen, and requirement that he submit biological samples for identification analysis. The court ascertained from defense counsel that counsel had had sufficient time to discuss the case with F.B.; had discussed with him his rights, defenses, and possible consequences of the admissions; believed F.B. understood his rights; and concurred in F.B.'s admissions. The court did not, however, advise F.B. that one of the consequences of his admissions would be the requirement that he register as a sex offender for the rest of his life.

The Attorney General now says no error occurred because the registration requirement was not a direct consequence of F.B.'s admissions; moreover, as to all counts admitted by F.B., the petition contained a written notice that adjudication as a ward of the court for the offense and a disposition to the California Youth Authority (the former name of DJJ) would require F.B. to register pursuant to section 290 of the Penal Code. F.B. maintains the registration requirement was indeed a direct consequence of his admissions, and that even assuming he was advised of a potential registration requirement by the petition, that advisement did not meet the court's obligation to advise of a *lifelong* registration requirement. (See *People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1481, 1484.) We conclude no prejudicial error has been shown.

The requirement that in guilty plea cases the defendant must be advised of all direct consequences of conviction "relates to the primary and direct consequences involved in the criminal case itself and not to secondary, indirect or collateral

consequences. [Citations.] A collateral consequence is one which does not ‘inexorably follow’ from a conviction of the offense involved in the plea. [Citation.]” (*People v. Crosby* (1992) 3 Cal.App.4th 1352, 1355.)

The California Supreme Court has held that the duty to register as a sex offender under section 290 is a direct consequence of a conviction for committing a sex offense specifically enumerated therein. (*People v. McClellan* (1993) 6 Cal.4th 367, 376; see *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605; *In re Birch* (1973) 10 Cal.3d 314, 322.) The Attorney General argues the basis of these opinions (and of *People v. Zaidi*, *supra*, 147 Cal.App.4th at p. 1481) has been undermined by subsequent cases holding that the sex offender registration requirement is not considered a form of punishment for purposes of ex post facto or cruel and/or unusual punishment analyses under the state and federal Constitutions. (E.g., *Smith v. Doe* (2003) 538 U.S. 84, 105-106; *In re Alva* (2004) 33 Cal.4th 254, 292; *People v. Castellanos* (1999) 21 Cal.4th 785, 796; but see *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1197 [though not considered punishment, sex offender registration requirement imposes “ ‘substantial’ and ‘onerous’ burden”].) She points to cases in which our state Supreme Court has referred, albeit in dicta, to the requirement as being a collateral consequence of a conviction. (E.g., *People v. Picklesimer* (2010) 48 Cal.4th 330, 337-338 [addressing scope of trial court’s post-remittitur jurisdiction to issue all orders necessary to carry judgment into effect]; *People v. Ansell* (2001) 25 Cal.4th 868, 872-873 [discussing statutory amendment limiting availability of certificates of rehabilitation].)

In addition, the Attorney General implicitly suggests lifetime registration did not inexorably follow from F.B.’s admissions. Section 290 mandates lifetime registration for any person convicted of a crime enumerated therein. (*Id.*, subs. (b) & (c).) By contrast, a minor’s duty to register is governed by section 290.008, and arises only where the minor has committed an offense enumerated in that section and been committed to DJJ after having been adjudicated a ward of the juvenile court as a result thereof. (*Id.*, subs.

(a) & (c).) Because it was not certain at the time of F.B.'s admissions that he would be committed to DJJ, it was also not certain the registration requirement would be triggered. (But see *People v. Zaidi, supra*, 147 Cal.App.4th at p. 1485 [rejecting argument no advisement necessary because crime to which defendant pled did not mandate registration, but gave sentencing court discretion whether to impose].) Additionally, Welfare and Institutions Code section 781, subdivision (a) provides a means by which F.B. will, if he is not convicted of a felony or misdemeanor involving moral turpitude and attains rehabilitation to the court's satisfaction, be able to gain relief from the registration requirement.⁵ (But see *People v. Zaidi, supra*, 147 Cal.App.4th at pp. 1485-1486 [rejecting argument that legal possibility person required to register might eventually be relieved of requirement meant trial court need not advise of lifetime registration requirement].)

We need not decide the issue(s) the Attorney General raises because F.B. is not entitled to relief in any event.

First, F.B. failed to object to the registration requirement at the disposition hearing. “[W]hen the only error is a failure to advise of the consequences of the plea, the error is waived if not raised at or before sentencing. Upon a timely objection, the sentencing court must determine whether the error prejudiced the defendant, i.e., whether it is ‘reasonably probable’ the defendant would not have pleaded guilty if properly advised. [Citation.]” (*People v. Walker* (1991) 54 Cal.3d 1013, 1023.) The objection

⁵ Welfare and Institutions Code section 781, subdivision (a) prohibits the granting of such relief “in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 [of the Welfare and Institutions Code] when he or she had attained 14 years of age or older.” Section 288, subdivision (b) is listed in subdivision (b)(6) of Welfare and Institutions Code section 707. F.B. remains eligible for relief, however, because he was 12 and 13 years old when his offenses were committed.

requirement applies in juvenile as well as adult proceedings. (See generally *In re Sheena K.* (2007) 40 Cal.4th 875, 880-881.)

Here, although the probation officer's report was silent on the issue, the prosecutor mentioned the lifetime sex offender registration requirement in her comments at the conclusion of the evidentiary portion of the contested disposition hearing. Despite this fact, F.B. did not object — or even express surprise — when the juvenile court ordered him to register as a sex offender at the time it made its dispositional rulings several days later. Because F.B. readily could have raised the advisement omission then, his failure to do so has forfeited his claim of error. (See *People v. McClellan, supra*, 6 Cal.4th at p. 377; *People v. Wrice* (1995) 38 Cal.App.4th 767, 771.)⁶

Second and more importantly, F.B. has failed to demonstrate he was prejudiced by the absence of an advisement of the lifetime registration requirement. “[T]he failure of the court to advise an accused of the consequences of an admission constitutes error which requires that the admission be set aside only if the error is prejudicial to the accused.” (*In re Ronald E., supra*, 19 Cal.3d at p. 321.) Where, as here, juvenile delinquency proceedings are concerned, a showing of prejudice requires that the minor affirmatively demonstrate it is “reasonably probable that such admonishment would have persuaded [him] to deny the truth of the allegations.” (*Id.* at pp. 325-326; see *People v. Walker, supra*, 53 Cal.3d at p. 1023.)

The record before us contains no evidence of prejudice. F.B. was represented by counsel, who is presumed to have advised him about the possible consequences of his admissions (see *Strickland v. Washington* (1984) 466 U.S. 668, 689; *In re Birch, supra*,

⁶ In *In re Moser* (1993) 6 Cal.4th 342, 352, footnote 8 and *People v. Zaidi, supra*, 147 Cal.App.4th at page 1487 and footnote 6, a lack of timely objection was held not to constitute a procedural bar to review because the cases did not involve a trial court's imposition of a sentence at variance with the advice given at the plea proceeding. Here, by contrast, the problem was one of lack of any advisement, not one of misadvisement.

10 Cal.3d at p. 322), and who in fact expressly represented that he had done so. Unlike the defendant in *People v. Zaidi, supra*, 147 Cal.App.4th at pp. at pages 1479-1480, 1488-1489, F.B. neither objected to imposition of the registration requirement at the disposition hearing nor sought to withdraw his admissions. Although appellate counsel asserts F.B. would not have admitted the allegations of the petition had he been given a proper advisement, counsel points, as support, to F.B.'s motion to withdraw his plea. No such motion was made. Moreover, appellate counsel's assertion "is not a proper component of the record on appeal." (*People v. McClellan, supra*, 6 Cal.4th at p. 378.) While new trial counsel mentioned that F.B. "should be withdrawing his admission," no perceived basis for such an action was given. Sheer speculation on our part does not constitute an affirmative demonstration of prejudice on F.B.'s part. Finally, F.B. received a favorable plea agreement. Had he declined to admit the five offenses, he would have faced a jurisdictional hearing on 17 sex offenses, which could have resulted in a substantially greater sentence. This in turn could have resulted in an increased period of actual custody,⁷ and could have adversely affected such things as F.B.'s housing, security level, and programming at DJJ; the terms of any parole; and the possibility of early discharge and of being relieved of the registration requirement in the future.

F.B. has failed to demonstrate that any additional advisement at the time of his admissions would have caused him to reject the negotiated agreement. Any error was therefore harmless.

DISPOSITION

The judgment is affirmed.

⁷ DJJ is required to discharge F.B. at the latest at age 25, "unless an order for further detention has been made by the committing court" (Welf. & Inst. Code, § 1769, subd. (b).)