

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

F.L.,

Defendant and Appellant.

F063961

(Super. Ct. No. 512477)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Nan
Cohan Jacobs, Judge.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant
and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and
Respondent.

-ooOoo-

* Before Wiseman, Acting P.J., Cornell, J. and Poochigian, J.

The court found that appellant, F.L., was a person described in Welfare and Institutions Code section 602 after he admitted committing a second degree burglary offense (Pen. Code, §§ 459, 460, subd. (b))¹ and a gang enhancement (§ 186.22, subd. (b)(1)(A)). Following independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we remand the matter to the juvenile court so that it may declare the character of appellant's offense. In all other respects we affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 26, 2011, appellant and other gang members stole a large amount of marijuana from a building. The amount stolen was adequate for sales and would have resulted in a profit to the gang. Stolen property from the burglary was located at a codefendant's house.

On February 22, 2011, the district attorney filed a first amended petition charging appellant with second degree burglary and a gang enhancement. Also on that date, after appellant admitted committing the burglary offense and the gang enhancement, the court granted appellant deferred entry of judgment.

Following the service on appellant of a notice of noncompliance, at a hearing on November 8, 2011, the court terminated appellant's deferred entry of judgment. The court also placed appellant on probation on certain terms and conditions including that he be committed to juvenile hall for 75 days with credit for 27 days he had previously been detained.

On November 15, 2011, the court ordered appellant to register as a gang member.

Appellant's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) Appellant has not responded to this court's invitation to submit additional briefing. However, our review of the record disclosed that

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

the court failed to declare the character of appellant's second degree burglary offense as required by Welfare and Institutions Code section 702.

Second degree burglary is a so-called "wobbler" offense because it can be punished as a felony or a misdemeanor. (§§ 17 & 461.) Welfare and Institutions Code section 702 in pertinent part provides, "If the 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 felony."

"The requirement is obligatory: '[Welfare and Institutions Code] section 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.' [Citations.]" (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*)) Failure to make the mandatory express declaration requires remand to the juvenile court for strict compliance with this section. (*Ibid.*) Therefore in accord with *Manzy W.*, we remand this matter to the juvenile court so that it may declare the character of appellant's second degree burglary offense.

Further, following an independent review of the record we find that with the exception of the issue discussed above, no other reasonably arguable factual or legal issues exist.

DISPOSITION

The case is remanded for the juvenile court to make a finding as to whether appellant's second degree burglary offense is a felony or a misdemeanor pursuant to *Manzy W.*, *supra*, 14 Cal.4th 1199. The remaining findings and orders of the juvenile court are affirmed.