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

In re JAIME T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME T.,

Defendant and Appellant.

F066101

(Fresno Super. Ct.
No. 12CEJ600612-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James A. Kelley, Judge.

Candice L. Christensen, 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, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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

INTRODUCTION

Appellant Jaime T., a minor, was adjudged a ward of the court based on his commission of two felony offenses: arson at a middle school (Pen. Code,¹ § 451, subd. (d)), and second degree burglary, at the same school on a different occasion (§§ 459, 460, subd. (b)). At the dispositional hearing, the court ordered appellant to pay restitution to the school district as the victim of both offenses.

On appeal, appellant contends, and respondent concedes, the court erroneously calculated the amount of victim restitution. We will amend the court's order and otherwise affirm.

FACTS

Arson at Yosemite Middle School

On July 15, 2012, the Fresno Fire Department responded to a fire inside a faculty restroom at Yosemite Middle School. Fire investigator Agapito Martinez determined the fire's point of origin was the middle of a large amount of burned material piled in the center of the room, primarily consisting of paper towels and a plastic soap dispenser. There was graffiti on every wall, and the floor was also burned and damaged.

On July 16, 2012, appellant appeared at the school and turned himself in. Investigator Martinez met with appellant, who immediately admitted that he started the fire. Appellant said he was at the school with his friends, they were smoking, and they were all "high." Appellant said one of his friends dared him to start the fire, and he was not thinking because he was under the influence.

On July 25, 2012, fire investigator Floyd Wilding arrested appellant at his residence. Investigator Wilding advised appellant of his rights, and appellant agreed to answer questions. Appellant said he went to the middle school with some friends. They found an unlocked door to the restroom and went inside to smoke marijuana. Appellant

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

again said he started the fire after his friends dared him to do it. Appellant said they were “looped out” and they were “just high and trying to have fun.”

Original petition

On August 1, 2012, a juvenile wardship petition was filed in the Superior Court of Fresno County (Welf. & Inst. Code, § 602, subd. (a)), which alleged that appellant, who was 14 years old, committed felony arson of a structure (§ 451, subd. (c)). Appellant denied the allegation. On October 1, 2012, appellant failed to appear for a scheduled hearing, and the court issued a warrant for his arrest.

Burglary and grand theft at the middle school

On October 1, 2012, the principal of Yosemite Middle School arrived at work and discovered his office had been burglarized and several items were stolen: a laptop computer valued at \$2,400, a radio valued at \$200, a check made out to the school in the amount of \$1,500, \$15 in cash, and \$50 worth of ice cream.

The principal reviewed the school’s surveillance videotapes and determined appellant and two former students, D.R. and W.F.H., were on the school property on September 29, 2012. The principal contacted D.R. and W.F.H. at their current school. W.F.H. said that appellant gave him a key to the school, but denied that he entered the building. D.R. admitted he went to the school with appellant with the intent of breaking into the office. D.R. said appellant used keys to unlock the door. D.R. said he went into the office and stole the ice cream, and appellant stole everything else.

D.R. was also interviewed by a police officer, and he said appellant was addicted to methamphetamine and marijuana. D.R. said appellant stole and sold property to get money for drugs. D.R. said appellant had stolen many things from the school in the past, including \$2,000 in cash.

On or about October 2, 2012, appellant and the other two suspects were arrested. Appellant declined to give a statement.

Subsequent petition

On October 4, 2012, a subsequent juvenile petition was filed which alleged appellant, who was now 15 years old, committed two offenses at the middle school on or about September 29, 2012: count I, second degree felony burglary (§§ 459, 460, subd. (b)), and count II, felony grand theft of property exceeding \$950 (§ 487).

On October 11, 2012, the court consolidated both petitions. Appellant denied the consolidated petition and the court ordered him detained.

Further proceedings

On October 18, 2012, appellant entered into an agreement and pleaded no contest to felony second degree burglary, committed on September 29, 2012; the court dismissed the grand theft charge. Appellant and the other minors detained for the offenses stipulated they were jointly and severally liable for victim restitution to the school district of \$16,665 for the burglary.

On October 24, 2012, a first amended petition was filed on the original offense, charging appellant with felony arson of a middle school, committed on July 15, 2012 (§ 451, subd. (d)). After a contested jurisdiction hearing, the court found the arson allegation true, and that the offense was a felony.

Disposition hearing

On November 8, 2012, the court conducted the dispositional hearing. Appellant was adjudged a ward of the court and committed to the Juvenile Justice Campus for 75 days, after which he would be placed on electronic monitoring. The court ordered defendant to pay a restitution fine of \$200.

As for victim restitution, the probation report stated that according to the principal, restitution for the burglary was \$16,665, since keys were stolen from the office, and the entire school had to be rekeyed; and restitution for the arson was \$1,800, for a total victim restitution order of \$18,465. In another portion of the probation report, however, it stated that the property stolen during the burglary was worth \$4,165.

The probation report ultimately recommended the court impose victim restitution to the school district of \$18,465 and \$4,165, for a total of \$22,630.

At the dispositional hearing, the court followed the recommendation section of the probation report, and ordered appellant to pay victim restitution to the Fresno Unified School District for \$18,465, for arson of a middle school; and \$4,165 for second degree burglary, for a total of \$22,630. The court ordered appellant, D.R. and W.F.H. to be jointly and severally liable for victim restitution. Appellant did not point out the inconsistencies in the probation report or object to the victim restitution order.

DISCUSSION

On appeal, appellant contends the court miscalculated the victim restitution order in violation of the plea agreement, and the order should have been for \$16,665 for second degree burglary, and \$1,800 for arson, for a total of \$18,465. Appellant further argues he has not waived appellate review of this issue even though he failed to object to the restitution order.

Respondent agrees that appellant's failure to object to the probation report, and the court's restitution order has not waived review of this issue since the court failed to adhere to the terms of the plea agreement to the burglary charge, and appellant was not advised of his right to withdraw his plea upon a material breach of the agreement.

Respondent also agrees that the victim restitution order should be corrected to \$16,665 for second degree burglary, as stipulated in the plea agreement, and \$1,800 for the arson, as claimed by the school district, for a total of \$18,465. Respondent concedes the court's order for \$4,165 for arson is not supported by the record and should be stricken.

DISPOSITION

The juvenile court's dispositional order for victim restitution to the Fresno Unified School District is corrected and amended to a total of \$18,465, based on \$16,665 for

second degree burglary, and \$1,800 for arson. The order for \$4,165 is stricken. In all other respects, the juvenile court's ruling is affirmed.