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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JUSTIN W., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN W.,

Defendant and Appellant.

G046050

(Super. Ct. No. DL038647)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Affirmed.

Raymond M. DiGuiseppe, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

\* \* \*

The juvenile court sustained allegations that defendant Justin W. (minor) committed vandalism causing \$400 or more in damages. (Pen. Code, § 594, subs. (a), (b)(1).) The court declared the offense to be a felony, set the maximum term of confinement at three years, and placed minor on continued supervised probation.<sup>1</sup>

Minor timely filed a notice of appeal, and we appointed counsel to represent him. Counsel did not argue against minor, but advised the court he was unable to find an issue to argue on minor's behalf. Minor was given 30 days to file written argument in his own behalf. That period has passed, and we have not received any communication from him. We have examined the entire record but have not found an arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Accordingly, we affirm the judgment.

## FACTS

We recite the facts, in the light most favorable to the judgment. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.) The principal of an intermediate school in Garden Grove pulled his truck into the parking lot of a school facility to attend a meeting. He noticed a group of five students, including minor, congregated in the parking lot, talking to someone in a Ford F-150 pickup truck. As the principal started to walk to his meeting, one of the students yelled to him by name. The meeting lasted 45 minutes to an hour. When the principal returned from the meeting, he discovered someone had "taken a key to [his truck] and scratched it multiple times from front to back." The cost of repair for the vehicle damage, together with a car rental, totaled \$2,912. The principal paid \$346 of this amount and the insurance company paid the rest.

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<sup>1</sup> Minor was already on probation under previous wardship proceedings.

The next morning, the principal called one of the students he had recognized in the parking lot, C.V., into his office in an effort to determine who had caused the damage to his truck. After that conversation, he called the police.

The responding police officer interviewed C.V. in the principal's office. C.V. had already provided a written statement to the principal, so the officer went over that statement with him. C.V. told the officer that he saw the principal pull into the parking lot, and, after the principal left the lot on foot, minor rode his bicycle around the truck several times with keys in his right hand which he used "to scratch the side of the truck every time he rode around it."

The officer then went to a high school to speak with several other students that were identified by C.V. and the principal as having been present in the parking lot. J.M. told the officer he had observed minor riding his bicycle around the truck, but had not actually witnessed the keying. But J.M. related that minor later told him he had "keyed [the principal's] truck."

At trial, C.V. and J.M. recanted the statements they had made to the investigating officer. C.V. admitted the signature on the written statement was his, but did not "remember writing . . . any of that." J.M. did not remember the minor telling him he had keyed the principal's truck, but did acknowledge that his written statement to that effect was in his own handwriting. The minor likewise denied even seeing the principal on the date of the incident and denied keying the truck.

## DISCUSSION

To assist the court in its independent review of the record, minor's counsel has suggested we consider two potentially arguable issues. (See *Anders v. California* (1967) 386 U.S. 738.) First, counsel suggests we consider whether the court properly denied deferred entry of judgment (DEJ) under Welfare and Institutions Code section 790

et seq., without first ordering an updated suitability report from the probation department. Second, counsel suggests we consider whether the court erred in declaring the offense a felony instead of a misdemeanor. As we explain below, neither issue has arguable merit.

*The Court Was Not Obligated to Order an Updated Suitability Report*

Pursuant to Welfare and Institutions Code section 790, subdivision (b), the prosecuting attorney filed a declaration in writing with the court stating that minor was eligible for DEJ. The court set July 11, 2011, for a DEJ suitability hearing, and directed the probation department to prepare a report for that hearing. The report was timely prepared and filed. The report recommended denying minor the benefits of DEJ. At the July 11 hearing, minor requested the court “reserve determination of DEJ suitability”; the court granted the request. The case proceeded through a full contested jurisdictional trial, resulting in the court finding the allegations of the petition true beyond a reasonable doubt. Proceeding immediately to disposition with minor’s consent, the court indicated it had considered the probation report of July 11. It then continued minor as a ward of the court with additional probation conditions. The disposition order was made on November 1, some three and one-half months after the filing of the probation report.

Simply put, there is no evidence that an updated probation report would likely have changed either the probation department’s recommendation or the court’s disposition. Moreover, minor steadfastly denied the allegations of the petition, choosing to defend the allegations in a full trial. Under these circumstances minor was not entitled to be considered for DEJ. The court need not consider DEJ for a minor “who does not admit the charges in the petition or waive a jurisdictional hearing, and who does not show the least interest in probation, but who insists on a jurisdictional hearing in order to contest the charges.” (*In re Kenneth J.* (2008) 158 Cal.App.4th 973, 979-980.) The record does not disclose any request by minor to be considered for DEJ. Quite to the

contrary, minor “insist[ed] on a jurisdictional hearing in order to contest the charges.” (*Ibid.*) The potential issue is not arguable.

*The Court Did Not Abuse Its Discretion in Declaring the Offense a Felony*

Section 702 of the Welfare and Institutions Code requires that “[i]f 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.” In the case of an adult, minor’s offense, vandalism causing damage of \$400 or more, is punishable either as a state prison term of 16 months, two years, or three years, or by a jail term not exceeding one year. (Pen. Code, §§ 594, subd. (b)(1), 1170, subd. (h)(1).) Here, the court declared minor’s offense a felony with a maximum term of confinement of three years. Counsel suggests we consider whether the court erred in making this determination.

In the case of an adult, Penal Code section 17, subdivision (b), is the statute authorizing alternate punishment as a felony or misdemeanor, and that choice, by the terms of the statute, is made “in the discretion of the court.” Accordingly, we review the court’s determination to declare minor’s offense a felony under the abuse of discretion standard. Under Penal Code section 17, subdivision (b), the discretionary authority of the court is guided by “the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial” and “the general objectives of sentencing such as those set forth in California Rules of Court.” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.) Here, the court did not abuse its discretion. Minor had already admitted separately charged petitions alleging public intoxication (Pen. Code, § 647, subd. (f)), unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a)), and two counts of hit and run causing property damage (Veh. Code, § 20002, subd. (a)). The property damage in the present case caused by his vandalism was substantial, and minor continued

to deny under oath even his presence at the scene of the crime. The court was well within its discretionary authority in determining the present offense to be a felony.

*No Other Issues Have Been Found*

Our review of the entire record has not disclosed the existence of any arguable issue.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.