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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IN RE E.A., a Person Coming Under the Juvenile Court Law.	H039165 (Santa Clara County Super. Ct. No. JV37891)
THE PEOPLE, Plaintiff and Respondent, v. E.A., Defendant and Appellant.	

The minor, E.A., admitted that he committed vehicle theft in violation of Vehicle Code section 10851, subdivision (a), as alleged in a Welfare and Institutions Code section 602 petition.[1] On appeal, the minor contends that the juvenile court failed to expressly declare whether the offense was a felony or a misdemeanor pursuant to section 702, and that, therefore, the matter must be remanded for clarification. We agree and will order the matter remanded for a determination of whether the offense is a felony or a misdemeanor.

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

BACKGROUND

On November 30, 2010, a San Jose Police sergeant stopped a vehicle he had observed speeding. The minor was driving the vehicle, which had been reported stolen. The minor admitted he had stolen the vehicle.

On December 16, 2010, the District Attorney filed a section 602 petition alleging that the minor committed vehicle theft in violation of Vehicle Code section 10851, subdivision (a).

On March 7, 2011, the minor admitted the allegation of vehicle theft, and the juvenile court granted him deferred entry of judgment. (See § 790 et seq.) The trial court told the minor, "In Count 1 of Petition A you have been charged with a violation of Vehicle Code Section 10851 (a), a felony. You're charged with the crime of theft or unauthorized use of a vehicle on or about November 30th, 2010. Is that charge true?" The minor replied, "Yes, Your Honor."

The minor also filled out a "Waiver Form With Advisements, Stipulations, Declarations, Findings And Orders," which included a section for the juvenile court's findings. The juvenile court signed the form, but it did not check the boxes indicating whether the vehicle theft was a felony or misdemeanor. The minute order from the hearing specifies that the minor admitted count 1: "VC 10851(a) – fel."

The juvenile court lifted the deferred entry of judgment on September 7, 2012 after finding that the minor had failed the program. (See § 793, subd. (a).)

A contested disposition hearing was held on December 17, 2012. The juvenile court declared the minor a ward of the court, placed him on probation, and ordered him to serve 45 days in custody

The signed disposition order (on Judicial Council form JV-665 (Rev. January 1, 2012)) contains a check-mark next to the statement, "The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to

be as follows[.]" Underneath that statement, there are boxes labeled "Misdemeanor" and "Felony." There is a check-mark in the box marked "Felony" and "CT. 1 VC 10851 (a)" is written next to that box.

DISCUSSION

At the time of the minor's offense, a violation of Vehicle Code section 10851, subdivision (a) was, in the case of an adult, punishable "by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment." (Stats. 1995, ch. 101, § 4 (S.B. 317), operative Jan. 1, 1997.) Thus, the offense was a "wobbler," i.e., a crime "chargeable or, in the discretion of the court, punishable as either a felony *or* a misdemeanor." (*People v. Park* (2013) 56 Cal.4th 782, 789.)

Section 702 provides that in a juvenile proceeding, "[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." This language is "unambiguous" and its "requirement is obligatory . . . ." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*).) Section 702 "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult. [Citations.]" (*Manzy W.*, *supra*, at p. 1204.)

The required declaration as to misdemeanor or felony may be made at the contested jurisdictional hearing or at the dispositional hearing. (Cal. Rules of Court, rules 5.780(e)(5), 5.790(a)(1), 5.795(a).)[2] "If any offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and *expressly declare on the record that it has made such consideration*, and *must state its determination* as to whether the offense is a misdemeanor or a felony."

[2] All further rule references are to the California Rules of Court unless stated otherwise.

(Rule 5.780(e)(5), italics added; see also rules 5.790(a)(1), 5.795(a).) The juvenile court's determination must also be noted in an order or in the minutes from the hearing. (Rules 5.780(e), 5.795(a).)

The significance of an express declaration under section 702 was explained by the California Supreme Court in *Manzy W.*, *supra*, 14 Cal.4th 1199. Among other things, the California Supreme Court pointed out that a minor may not be held in physical confinement longer than an adult convicted of the same offense. (*Id.* at p. 1205; § 731, subd. (c).) Requiring the juvenile court to declare whether an offense is a misdemeanor or felony "facilitat[es] the determination of the limits on any present or future commitment to physical confinement for a so-called 'wobbler' offense." (*Manzy W.*, *supra*, at p. 1206.) Further, "the requirement that the juvenile court declare whether a so-called 'wobbler' offense [is] a misdemeanor or felony also serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under Welfare and Institutions Code section 702." (*Manzy W.*, *supra*, at p. 1207.)

In *Manzy W.*, the minor admitted a drug possession offense that was a "wobbler" as well as a "joyriding" allegation, and the juvenile court dismissed two other allegations. (*Manzy W.*, *supra*, 14 Cal.4th at p. 1202.) At disposition, the juvenile court imposed a felony-level term of physical confinement in the Youth Authority[3] but did not expressly declare the offense a felony. (*Id.* at p. 1203.) The California Supreme Court held that the failure to make the mandatory express declaration pursuant to section 702 required remand of the matter. The court explained that "neither the pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony. [Citation.]" (*Manzy W.*, *supra*, at p. 1208.) The court found "[n]othing in the record

[3] The Youth Authority is now known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (§ 1710, subd. (a); Pen. Code, § 6001.)

establish[ing] that the juvenile court was aware of its discretion to sentence the offense as a misdemeanor rather than a felony," and that "it would be mere speculation to conclude that the juvenile court was actually aware of its discretion in sentencing Manzy." (*Id.* at p. 1210.)

The California Supreme Court also refused to apply the Evidence Code presumption that the juvenile court had performed its official duty. The court was "unpersuaded that such a presumption is appropriately applied when the juvenile court *violated* its clearly stated duty under . . . section 702 and there is nothing in the record to indicate that it ever considered whether the . . . offense was a misdemeanor or a felony." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1209.)

In this case, respondent first contends that the minor expressly agreed that the offense was a felony as part of his negotiated settlement, and that *Manzy W.* does not apply in such a situation. Respondent refers to the March 7, 2011 hearing, at which the trial court took the minor's admission after reciting that he had been "charged with a violation of Vehicle Code Section 10851 (a), a felony."

The record does not support respondent's claim that the minor expressly agreed that the offense was a felony as part of a negotiated settlement. The minor simply admitted the allegation of the petition in order to be placed on deferred entry of judgment. Although the petition alleged that the offense was a felony, such a pleading does not "substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony. [Citation.]" (*Manzy W.*, *supra*, 14 Cal.4th at p. 1208.) In fact, the facts of this case are essentially indistinguishable from *Manzy W.*, where the petition referred to each of the offenses as " 'a Felony,' " the minor admitted two of the allegations, and the court dismissed other allegations. (*Id.* at p. 1202; see *In re Nancy C.* (2005) 133 Cal.App.4th 508, 512 ["a minor's admission of a wobbler offense charged as a felony is not an 'adjudication' of the misdemeanor or felony status of that offense"].)

Respondent next contends that the disposition order reflects that the juvenile court expressly declared the minor's offense to be a felony. As noted above, the juvenile court signed the disposition order, in which there is a check-mark in the box marked "Felony" next to the handwritten phrase "CT. 1 VC 10851 (a)," underneath the statement, "The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows[.]"

Respondent asserts that "[s]uch a document signed by the juvenile court declaring the offense to be a felony has been held to comply with both the letter and spirit of section 702." The cases respondent cites for this proposition predate *Manzy W.* and amendments to the Rules of Court requiring an express determination of whether a wobbler offense is a felony or a misdemeanor. The cases are also distinguishable from the present case because in each, the record explicitly showed that the juvenile court was aware of its discretion under section 702.

In *In re Michael S.* (1983) 141 Cal.App.3d 814, the disposition order stated that the offense was " 'declared to be a felony.' " (*Id.* at p. 818.) The order also stated that after a year, the offense would be " 'reduced to a misdemeanor' " if the minor performed well on probation. (*Ibid*.) Thus, the order reflected the juvenile court's awareness of its discretion to treat the offense as a wobbler as a felony or a misdemeanor, and the appellate court held that "the [juvenile] court adequately complied with both the letter and the spirit of section 702." (*Id.* at p. 818.)

In *In re Robert V.* (1982) 132 Cal.App.3d 815, the juvenile court sustained a charge of vehicle theft against a minor. The minute order included a notation stating, " '[m]isdemeanor or felony to be determined at the time of dispositional hearing.' " (*Id.* at p. 818.) At the dispositional hearing, the juvenile court signed an order specifying: " 'Petition filed 3/24/81 VC10851 felony in Ct I to run concurrent with time still owed on CYA commitment.' " (*Id.* at p. 823.) As the juvenile court had previously demonstrated

it understood the offense was a wobbler, it was unnecessary to remand the matter "for clarification whether the crime was a felony or a misdemeanor." (*Ibid.*)

In the instant case, nothing in the record unambiguously indicates that the juvenile court was aware of its discretion to treat the minor's offense as a misdemeanor. While the signed disposition order includes a check-mark indicating that the court had previously sustained count 1 and that the offense was "now determined to be" a felony, the transcript of the dispositional hearing "does not support this notation," in that no express declaration was made on the record. (*In re Dennis C.* (1980) 104 Cal.App.3d 16, 23.) In an abundance of caution and in accord with *Manzy W.*'s requirement of an "explicit declaration by the juvenile court whether [the] offense would be a felony or misdemeanor in the case of an adult" (*Manzy W.*, *supra*, 14 Cal.4th at p. 1204), we will remand the matter to the juvenile court so that it may declare the character of this offense.

DISPOSITION

The juvenile court's dispositional order is reversed, and the matter is remanded to permit the juvenile court to exercise its discretion to select between misdemeanor or felony treatment for count 1 and to make the express declaration required by Welfare

and Institutions Code section 702 and California Rules of Court, rule 5.795(a). In all other respects, the judgment is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

_____
ELIA, ACTING P.J.

_____
MÁRQUEZ, J.