

COPY

In the Supreme Court of the State of California

**J.G.,
a Person Coming Under the Juvenile
Court,**

Case No. S240397



v.

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

**SUPREME COURT
FILED**

Plaintiff and Respondent,

NOV 13 2017

J.G.,

Jorge Navarrete Clerk

Defendant and Appellant.

Deputy

Third Appellate District, Case No. C077056
Shasta County Superior Court, Case No. JDSQ122933901
The Honorable Anthony Anderson, Judge
The Honorable Monique McKee, Judge

ANSWER BRIEF ON THE MERITS

REDACTED VERSION
Redacts Material From Sealed Record

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ISSUES PRESENTED

1. Can outstanding restitution be converted to, or enforced as, a civil judgment when a juvenile petition is dismissed after a minor successfully completes deferred entry of judgment (Welf. & Inst. Code,¹ § 790 et seq.)?

2. Can a juvenile court consider a minor's Supplemental Security Income Program (SSI) or Social Security Disability Insurance Program (SSD) benefits when determining the extent to which the minor has the ability to pay restitution under the Graffiti Removal and Damage Recovery Program ("the Graffiti Program" or "Program"; § 742.10, et seq.)?

3. Did the juvenile court abuse its discretion [REDACTED]

[REDACTED]

INTRODUCTION

[REDACTED]

Vandalism is one of the few crimes subject to the Graffiti Program. Unlike the general restitution statutes, in setting restitution under the Graffiti Program, a court considers a minor's ability to pay. (§ 742.16, subd. (a).) [REDACTED]

[REDACTED]

¹ All undesigned statutory references are to the Welfare and Institutions Code.

[REDACTED]

As he did in the Court of Appeal, appellant claims the juvenile court did not have the authority to [REDACTED]

[REDACTED]

[REDACTED] his first claim, has forfeited his third and fourth claims, and has failed to show merit in any of them.

STATEMENT OF THE CASE

[REDACTED]

[Redacted text block containing approximately 25 lines of obscured content]

2 [Redacted footnote text]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

4. Court of Appeal proceedings

[REDACTED]

SUMMARY OF ARGUMENT

1. [REDACTED]

[REDACTED], the claim fails on the merits. Section 793 subdivision (c) does not unambiguously provide that

restitution cannot be converted to a civil judgment when a petition is dismissed after successful completion of DEJ. Rather, the various DEJ statutes explicitly provide that a restitution order issued pursuant to their provisions is enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 730.6, subds. (i), (l), (r); § 742.16, subd. (j).)

2. Because a complete picture of a minor's expenses, obligations, and financial resources should be considered when assessing the minor's ability to pay restitution under the Graffiti Program, Social Security payments must be considered as a factor that bears on the minor's financial capability. Although a court cannot order those payments to be used to pay restitution, it is proper for a court to consider them when determining a minor's ability to pay restitution under the Program.

3. Appellant's challenges to [REDACTED]

[REDACTED]

[REDACTED] was not an abuse of discretion. Nor did the record before the court necessarily establish that [REDACTED]

[REDACTED]. While the appellate record furnishes no basis for reversal, it may be that appellant could pursue other remedies in the trial court to challenge [REDACTED]

ARGUMENT

I. A JUVENILE COURT CAN CONVERT OUTSTANDING RESTITUTION TO A CIVIL JUDGMENT UPON SUCCESSFUL COMPLETION OF DEJ, [REDACTED]

Section 793, subdivision (c), states that upon successful completion of DEJ the charges “in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred[.]” Appellant claims this language “unambiguously prohibits a juvenile court from converting unpaid restitution to a civil judgment when a minor completes DEJ.” (AOBM 12-13.) This is not the case. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, [REDACTED], the claim fails on the merits. Section 793, subdivision (c) unambiguously provides that upon successful completion of DEJ the charges in the wardship petition will be dismissed and the arrest upon which the petition is based shall be deemed not to have occurred. The section makes no mention of restitution, let alone unambiguously states that a restitution order in a juvenile case cannot be converted to, or enforced as, a civil judgment after successful completion of DEJ. Appellant’s claim to the contrary should be rejected.

A. General Background on Restitution and DEJ

1. Restitution in adult cases

In 1982, the California Constitution was amended to provide that “all persons who suffer losses” resulting from crime are entitled to “restitution from the persons convicted of the crimes causing the losses.” (Cal. Const., art. I, § 28, subd. (b)(13)(A); *Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 304 (*Luis M.*)) In 1983, the Legislature enacted Penal Code section 1202.4 which directs a court to order full restitution in a criminal case for every determined economic loss. (Pen. Code, § 1202.4, subds. (f) & (f)(3).) “A defendant’s inability to pay shall not be a consideration in determining the amount of a restitution order.” (Pen. Code, § 1202.4, subd. (g).) A restitution order imposed pursuant to this section “shall be enforceable as if the order were a civil judgment” (Pen. Code, § 1202.4, subd. (i)) and “[a]ny portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.”⁶ (Pen. Code, § 1202.4, subd. (m).)

2. General restitution in juvenile cases

“In 1994, the Legislature enacted section 730.6 to provide ‘parallel restitutionary requirements for juvenile offenders.’ [Citation.]” (*Luis M., supra*, 59 Cal.4th at p. 305.) This section directs a court to order full restitution for every determined economic loss unless it finds compelling and extraordinary reasons for not doing so. (§ 730.6, subd. (h)(1).) “A

⁶ Among other things, Penal Code section 1214 provides that an order to pay restitution is deemed a money judgment and “shall be enforceable by a victim as if the order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment.” (Pen. Code, § 1214, subds. (b) & (d).)

minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order."

(Ibid.)

As in the adult context, a restitution order imposed pursuant to section 730.6 is enforceable as a civil judgment (§ 730.6, subs. (i) & (r)), and any portion of a restitution order that remains unsatisfied after a minor is no longer on probation shall continue to be enforceable as a civil judgment until the obligation is satisfied in full. (§ 730.6, subd. (l).) Restitution is a mandatory condition of juvenile probation (*ibid.*), but probation cannot be revoked for failure to make restitution "unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay." (§ 730.6, subd. (m).)

In 1995, the legislature enacted section 730.7, which makes a parent "rebuttably presumed to be jointly and severally liable with the minor ... subject to the court's consideration of the parent's or guardian's inability to pay." (§ 730.7, subd. (a).) The burden is on the parent to show an inability to pay. (*Ibid.*)

3. Restitution in juvenile cases under the Graffiti Program

In 1994, the Legislature added the Graffiti Program to the Welfare and Institutions Code (§ 742.10 et seq.; Stats. 1994, ch. 909, § 11, p. 4603 et seq.) to allow for recovery of graffiti remediation costs. (*Luis M., supra*, 59 Cal.4th at pp. 305-306.) The Legislature's intent in enacting the Graffiti Program was to assist owners of property defaced by minors with graffiti to recover their full damages from the minor (§ 742.10, subd. (a)); to minimize the cost of collecting restitution (§ 742.10, subd. (d)); to deter graffiti by requiring minors and their parents to bear the costs associated with defacement of property with graffiti (§ 742.10, subd. (e)); and to retain

in the juvenile court the discretion needed to rehabilitate minors (§ 742.10, subd. (f)).

While the Graffiti Program is directed at graffiti-related vandalism, it also governs direct victim restitution for any act of vandalism, regardless of whether it involves graffiti.⁷ (§ 742.16, subd. (a).) Under section 742.16, subdivision (a), when a minor commits “an act prohibited by Section 594” the court, as a condition of probation, shall order the minor to repair the property defaced, damaged, or destroyed, or otherwise pay restitution, or both. If a minor is not granted probation, or if “the minor’s cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages.” (§ 742.16, subd. (a).)

Section 742.16, subdivision (a) further requires the court to order the minor or the minor’s estate to pay restitution to the extent it determines they “have the ability to do so[.]” If the court determines that the minor or the minor’s estate are unable to pay full restitution, the court can order the minor’s parents to pay restitution if it determines they have the ability to do so and they have been cited into court pursuant to section 742.18. (§ 742.16, subd. (d).)

The court may execute the restitution order “in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court’s jurisdiction over the minor.” (§ 742.16, subd. (j).)

⁷ Penal Code section 594, subdivision (a), states that a person can commit vandalism by maliciously: defacing property with graffiti; damaging property; or destroying property.

4. DEJ

Under the DEJ procedures (§ 790 et seq.), when a minor admits that he or she committed a felony offense, the court, under specified conditions, is authorized to place the minor on probation for a period of 12-36 months without adjudging him or her a ward of the court if it finds the minor is suitable for such deferral and would benefit from education, treatment, and rehabilitation efforts. (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308; §§ 790, subds. (a) & (b), 791.) When a minor is permitted to participate in DEJ, the court must impose certain conditions of probation, may impose any term authorized by the Welfare and Institutions Code, and may also require the minor “to pay restitution to the victim or victims pursuant to the provisions of this code.” (§ 794; *G.C. v Superior Court* (2010) 183 Cal.App.4th 371, 377.) If a minor successfully completes probation, “the charge or charges in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred and any records in the possession of the juvenile court shall be sealed” except in circumstances not relevant here. (§ 793, subd. (c).)

B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In order to participate in DEJ, a minor must admit every allegation contained in the petition. (§ 791, subd. (a)(3).) There are certain mandatory conditions of probation, and a court may order a minor to pay restitution “pursuant to the provisions” of the Welfare and Institutions Code. (§ 794.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(See *In re K.C.* (2013) 220 Cal.App.4th 465, 471-473; *People v. Hester* (2000) 22 Cal.4th 290, 295 [“defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process.”].)

This is true regardless of whether appellant’s underlying claim is meritorious. For example, in *In re K.C.*, *supra*, 220 Cal.App.4th 465 the Court of Appeal found that the section 654.2 informal probation provisions did not incorporate the restitution provisions found in section 730.6 and, thus, a court could not convert outstanding restitution to a civil judgment upon successful completion of informal probation. (*Id.* at pp. 470-471.) However, in that case, “in exchange for the benefit of a program of informal supervision and to avoid an adjudication, the minor agreed that the order of victim restitution would remain in effect until paid in full pursuant to section 730.6 and would not be discharged upon termination of probation.” (*Id.* at pp. 471-472.) Thus, “the minor agreed that section 730.6 would apply to the restitution order, despite the fact it did not by its terms apply. In so doing, the minor consented to an act in excess of the

court's jurisdiction." (*Ibid.*) Accordingly, the court held, the minor was estopped from challenging the court's order converting the outstanding restitution obligation to a civil judgment because, "[a] litigant who has stipulated to a procedure in excess of jurisdiction may be estopped to question it when 'To hold otherwise would permit the parties to trifle with the courts.' [Citations.]" (*Id.* at p. 472, quotation marks altered.)

Like the minor in *In re K.C.*, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*In re K.C.*, *supra*, 220 Cal.App.4th at p.

472; see *People v. Hester*, *supra*, 22 Cal.4th at p. 295.) [REDACTED]

[REDACTED]

[REDACTED]

C. Outstanding Restitution Can Be Converted to, or Enforced as, a Civil Judgment upon Successful Completion of DEJ

Section 794 incorporates the Welfare and Institution Code's restitution statutes which provide for enforcement of a restitution order as a civil judgement after a juvenile court no longer retains jurisdiction over a minor. (§ 730.6, subds. (i), (l), (r); § 742.16, subd. (j); Pen. Code, § 1214, subd. (b); *G.C. v. Superior Court*, *supra*, 183 Cal.App.4th at p. 377.)

Nonetheless, appellant attempts to narrowly construe section 793, subdivision (c), to prevent the [REDACTED]

[REDACTED]. Appellant claims language in section 793 subdivision (c) about what occurs upon successful

completion of DEJ probation—“the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred”—despite its silence on the issue of restitution, unambiguously means that a restitution order cannot be enforced as, or converted to, a civil judgment upon successful completion of DEJ. (AOBM 11-19.) However, appellant’s narrow interpretation of section 793 ignores the greater statutory scheme and the intent of the Legislature in enacting other provisions of the Welfare and Institutions Code applicable to restitution.

1. Rules of statutory construction

The rules of statutory construction are well settled. (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.) The fundamental premise is that the objective of statutory interpretation is to ascertain and effectuate legislative intent. (*Ibid.*) When the language is clear, there is no need for further inquiry. (*Ibid.*) As this Court has stated, “We begin by examining the statutory language because the words of a statute are generally the most reliable indicator of legislative intent. We give the words of the statute their ordinary and usual meaning and view them in their statutory context. We harmonize the various parts of the enactment by considering them in the context of the statutory framework as a whole. ‘If the statute’s text evinces an unmistakable plain meaning, we need go no further.’” (*In re C.H.* (2011) 53 Cal.4th 94, 100-101, citations omitted.) Further, with regard to the interpretation of statutes relating to restitution, “[i]n keeping with the [voters’] unequivocal intention that victim restitution be made, statutory provisions implementing the constitutional directive have been broadly and liberally construed.” (*Luis M., supra*, 59 Cal.4th at p. 305, internal quotation marks and citations omitted; *In re Keith C.* (2015) 236 Cal.App.4th 151, 155 [a juvenile court has a statutory and constitutional

duty to order a minor to make restitution to their victim and courts must broadly construe the statutory provisions implementing restitution].)

2. The plain language of the DEJ statutes provides for civil enforcement of a restitution order after successful completion of DEJ

Section 794, the statute setting forth the probation conditions for a minor who has been placed on DEJ, “plainly incorporates into the deferred entry of judgment process the provisions of the Welfare and Institutions Code pertaining to victim restitution.” (*G.C. v. Superior Court, supra*, 183 Cal.App.4th at p. 377.) Among these provisions is that a restitution order is enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 730.6, subds. (a)(1), (a)(2)(B), (h)(1), (i), (l), (r); § 742.16, subd. (j); Pen. Code, § 1214, subd. (b).) By incorporating these provisions, the DEJ statutes explicitly contemplate a restitution order issued pursuant to their provisions is enforceable as a civil judgment after a petition is dismissed upon successful completion of DEJ. Because the language of the statute is clear, there is no need for further inquiry. (*Nolan v. City of Anaheim, supra*, 33 Cal.4th at p. 340.)

Appellant argues that section 793, subdivision (c)’s statement that upon successful completion of DEJ the charges “in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred[.]” “unambiguously prohibits a juvenile court from converting unpaid restitution to a civil judgment when a minor completes DEJ.” (AOBM 12-13.) Not so. The provision makes no explicit mention of restitution and does not explicitly say that a restitution order can no longer be enforced after completion of DEJ. Additionally, the fact that an arrest is deemed not to have occurred after DEJ is completed does not mean that the damage inflicted by a minor did not occur or that a minor is no longer liable for that damage. [REDACTED]

[REDACTED]

[REDACTED]

3. Even assuming some ambiguity, the Legislature and electorate's intent is for restitution to be enforced as a civil judgment

Even if the DEJ statutes are ambiguous about whether unpaid restitution could be enforced as, or converted to, a civil judgment at the completion of DEJ, the ambiguity is resolved by the electorate and Legislature's intent that a victim recover full restitution. (*Luis M., supra*, 59 Cal.4th at p. 305 [statutory provisions implementing restitution have been broadly and liberally construed]; *In re Keith C., supra*, 236 Cal.App.4th at p. 155 [same]; *People v. Harrison* (2013) 57 Cal.4th 1211, 1221-1222 [when a statute is ambiguous a court may “look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.”].)

The electorate amended the California Constitution to provide that “all persons who suffer losses” resulting from crime are entitled to “restitution from the persons convicted of the crimes causing the losses.” (Cal. Const., art. I, § 28, subd. (b)(13)(A); *Luis M., supra*, 59 Cal.4th at p. 304.) The Legislature also enacted Penal Code section 1202.4 which directs a court to order full restitution in a criminal case and calls for such an order to be enforceable as a civil judgment both during and after a defendant's term of probation. (Pen. Code, §§ 1202.4, subds. (f), (f)(3), (i), & (m), 1214, subds. (b) & (d).) It also enacted section 730.6 which directs a court in juvenile cases to order full restitution and calls for such an order to be enforceable as a civil judgment both during and after the time a court

has jurisdiction over the minor. (§ 730.6, subds. (a)(1), (a)(2)(B), (h)(1), (i), (l), (r); Pen. Code, § 1214, subd. (b).)

In addition, the Legislature added the Graffiti Program which calls for a restitution order to be enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 742.16, subd. (j).) The Legislature made its intent in enacting the Program explicit: to assist victims to recover their full damages from a minor; to minimize the cost of collecting restitution; to deter graffiti by requiring minors to bear the costs associated with their defacement; to retain in the juvenile court the discretion needed to rehabilitate minors; to safeguard the fiscal integrity of cities and counties by enabling them to recoup the full costs of graffiti remediation; and to recoup the cost to law enforcement for identifying and apprehending the minor. (§ 742.10, subds. (a)-(f)). It made clear that its first priority was for a minor to provide restitution to the victim of his or her conduct. (§ 742.20, subd. (a).)

In amending sections 781 and 786, the Legislature recently reaffirmed its intent to have restitution orders enforced as civil judgments upon completion of a minor's supervision. (SO 10-11.) Section 781—providing for the sealing of juvenile delinquency records—states in subdivision (a)(2), “An unfulfilled order of restitution that has been converted to a civil judgment pursuant to Section 730.6 shall not be a bar to sealing a record pursuant to this subdivision.” Section 786—regarding the completion of informal supervision or probation—states, “An unfulfilled order or condition of restitution, including a restitution fine that can be converted to a civil judgment under Section 730.6 or an unpaid restitution fee shall not be deemed to constitute unsatisfactory completion of supervision or probation under this section.” (§ 786, subd. (c)(2).) “This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution ordered pursuant to Section 730.6.” (§ 786, subd. (g)(1).)

As the foregoing establishes, the Legislature's unambiguous intent is for a restitution order to be enforced as a civil judgment in juvenile cases. That intent, along with section 794's incorporation of the Welfare and Institutions Code provisions pertaining to victim restitution, provisions which include enforcement as a civil judgment after a juvenile court no longer has jurisdiction over a minor, resolves any ambiguity about whether restitution can be enforced as a civil judgment after a petition is dismissed upon successful completion of DEJ.

Appellant's contrary interpretation would lead to absurd results. First, it would remove or greatly diminish any incentive for a minor to make efforts to pay restitution during DEJ probation. As noted, probation cannot be revoked absent a court finding of willful failure to pay. (§ 730.6, subd. (m).) Knowing that restitution cannot be converted to a civil judgment and that probation can be violated based only on a willful failure to pay restitution, a minor would have little incentive to pay restitution—for example by getting a job—while on DEJ probation and would instead have an incentive to delay payment.

The Court of Appeal correctly reached a similar conclusion in *In re Keith C.*, *supra*, 236 Cal.App.4th 151. In that case, the juvenile court found 15-year-old Keith C. to be a ward of the court and ordered him to pay restitution. (*Id.* at p. 153-154.) When he was 23, the court terminated Keith C.'s probation "unsatisfactorily," dismissed his wardship, and issued an abstract of judgment requiring him to pay victim restitution. (*Id.* at p. 154.) On appeal, Keith C. argued the juvenile court did not have the authority to enter an abstract of judgment after it lost jurisdiction over him when he turned 21. (*Id.* at pp. 153, 155.)

The Court of Appeal rejected this argument. (*In re Keith C.*, *supra*, 236 Cal.App.4th at p. 153.) It observed that to accept Keith C.'s position "not only would contravene the express intent of the Legislature that