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FILED WITH PERMISSION

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent

v.

F.M.

Defendant and Appellant

No. _____

Court of Appeal
Case No. H048693

Santa Cruz County
Superior Court
Nos. 19JU00191A, B, C

The Honorable
Denine Guy, Judge

APPELLANT'S PETITION FOR REVIEW

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Michael Reed
SBN 325583
P.O. Box 386
Salinas, CA. 93902
(831) 250-0820
mike@reedmlaw.com

Attorney for Defendant-Appellant

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

ISSUES PRESENTED FOR REVIEW

I. When the trial court is entirely silent on the issue, and no oral declaration by the judge is ever made, does the trial court's treatment of wobbler offenses as felonies satisfy Welfare and Institutions Code, section 702, and this Court's exception as articulated in *In re Manzy W.* (1997) 14 Cal.4th 1199?

REASONS FOR GRANTING REVIEW

This case raises the important issue of what is required of the trial court in a juvenile proceeding when pronouncing judgment for a wobbler offense that can be sentenced as either a misdemeanor or felony. Although Welfare and Institutions Code, section 702 states that the court is required to declare whether the offense is a misdemeanor of a felony, such required declarations are frequently forgotten and not addressed. Although this Court provided an exception in *In re Manzy W*. (1997) 14 Cal.4th 1199, for occasions in which the record clearly demonstrates that the court knew of and exercised its discretion to treat a wobbler as a felony, that exception should not be so broad as to cover situations where the court never made any statements which would evidence this exercise. Review should be granted to clarify the scope of *Manzy W.'s* exception as it applies to cases in which the trial court never makes any oral statements evidencing its knowledge that an offense could be sentenced as a misdemeanor and that it has undergone a discretionary exercise to determine that it should nevertheless be a felony.

Appellant pled to multiple wobbler offenses in multiple cases. The trial court did not make any statements evidencing that it knew that the offenses could be sentenced as misdemeanors. It spoke solely of the offenses as felonies, advised appellant of the offenses solely as felonies, and calculated appellant's exposure as if the offenses were felonies.

On appeal, appellant contended that the court did not satisfy its duty under section 702, nor did the record show that it knew the offenses

were misdomeanors but were nevertheless treated as felonies for discretionary reasons as permitted by *Manzy W.'s* exception. In an unpublished opinion the Court of Appeal denied appellant's contention on the grounds that, although the court failed to strictly comply with section 702, the record satisfied the exception articulated in *Manzy W.* (*Exhibit A* at p. 8.) The following reasons were given: (1) the offenses were alleged as felonies, (2) appellant admitted the offenses as felonies, (3) the court advised appellant as if the offenses were felonies and, (4) the court ultimately sentenced appellant in a way that was consistent with finding that the offenses were felonies. (*Id*. at pp. 8-9.)

STATEMENT OF THE CASE

In the fall of 2019, appellant admitted to committing misdemeanor assault (Pen. Code, § 242) and was placed on formal probation. (1CT 17.) In March 2020, appellant was charged in case 19JU00191B with 3 new incidents: brandishing a firearm in Santa Cruz County, evading law enforcement in Santa Clara County, and assault in Santa Cruz County. (1CT 39-43.) Appellant admitted to committing assault with force likely to cause great bodily injury (Pen. Code, §245, subd. (a)(4)), being an active participant in a criminal street gang as a misdemeanor (Pen. Code, §186.22, subd. (a)), and evading a police officer. (Veh. Code, § 2800.2, subd. (a).) (1RT 7-9; 1CT 64-65.)

In July 2020, while awaiting his dispositional hearing, appellant was charged with a subsequent assault in juvenile hall in case

19JU00191C. (1CT 128-130.) He admitted one count of assault with force likely to cause great bodily injury (Pen. Code, §245, subd. (a)(4)). (1CT 183-185.) Following a dispositional hearing held jointly on both cases appellant was committed to a ranch camp. (5RT 1051.)

A notice of appeal was filed on December 17, 2020. (1CT 259-261.) The matter was submitted on the parties briefing and the appeal was denied in an unpublished opinion on July 26, 2021. (Exhibit A.)

STATEMENT OF FACTS

In the fall of 2019, appellant admitted to committing misdemeanor assault (Pen. Code, § 242) and was placed on formal probation. (1CT 17.) On March 16, 2020, while on probation, appellant and another minor approached the victim on foot and asked him his gang affiliation. (1CT 15.) The victim denied being involved with gangs and attempted to walk away. (*Ibid*.) Appellant and his friend caught up to the victim and stabbed him in the arm and back. (*Ibid*.) A witness identified appellant's friend as the one who used the knife. (1CT 29-30.) The following day, Milpitas Police notified probation that appellant was involved in another incident. (1CT 16.) On March 10, 2020, appellant was driving when he stopped and confronted the victim on the side of the road. (1CT 47.) The front passenger in the vehicle pointed a gun at the victim. (*Ibid*.) The victim ran to a gas station and reported the incident to police. (*Ibid*.) Officers located the vehicle and appellant led them on a high speed chase, eventually crossing a median and crashing into a light pole and fence. (*Ibid*.) There

were five people in the vehicle when it came to a stop and it was determined that appellant was driving without a license. (1 CT 47.)

Appellant was charged for both of these incidents in trial case 19JU00191B, and admitted to committing assault with force likely to cause great bodily injury (Pen. Code, §245, subd. (a)(4)), being an active participant in a criminal street gang as a misdemeanor (Pen. Code, §186.22, subd. (a)), and evading a police officer. (Veh. Code, § 2800.2, subd. (a).) (1RT 7-9; 1CT 64-65.) When discussing the assault the court stated, "This is what is considered a serious violent felony that can be used against him in the future. So this could be counted as a strike, which means it would double his exposure or sentence in an adult court case." (1RT 6.) Other than taking the plea, the court did not say anything about the evasion admission. (1RT 11.) The minute order for the change of plea stated, "The Court has considered whether the above offense(s) should be felonies or misdemeanors." (1CT 65.) But the court never said anything on the record about exercising its discretion to find that the offenses were felonies or misdemeanors. (1RT 3-14.) It stated only that the offenses were felonies.

On July 15, 2020, while in juvenile hall awaiting his dispositional hearing in 19JU00191B, appellant participated in a group assault. (1CT 132.) Specifically, appellant and four other minors assaulted the victim in the middle of class. (1CT 133.) Appellant was charged for this incident in 19JU00191C, and admitted to one count of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(4).) (1CT 183-185.) The court

did not discuss its discretion on that occasion either, and the minute order is silent on the issue. (1CT 183-185; 4RT 755-758.) A joint dispositional hearing for both 19JU00191B and 19JU00191C was held on November 3, 2020. (5RT 1001-1059.) At that hearing the court did not declare whether the two assaults and the evasion were felonies or misdemeanors, nor did it say anything evidencing that it knew the offenses could be misdemeanors, and appellant was committed to a ranch camp. (5RT 1001-1059.)

ARGUMENT

I. The Court Of Appeal's Finding That The Trial Court Was Aware Of Its Discretion To Sentence Appellant To Misdemeanors But Otherwise Chose Felonies Was Erroneous.

Strictly speaking, compliance with section 702 requires following the statutory language— the trial court is to declare whether a wobbler offense is a misdemeanor or a felony. In some circumstances failure to follow the statutory language may not require remand if the record otherwise demonstrates that the court knew of and exercised its discretion. This was this Court's holding in *In re Manzy W.* (1997) 14 Cal.4th 1199. But this limited exception to the statute is distinct from actual statutory compliance. (*Ibid.*) Here, the court did not comply with the statute in either of appellant's cases and the Court of Appeal agreed on that point. (*Exhibit A* at p. 8.)

However, the Court of Appeal went on to find that the record nevertheless demonstrated that the court was aware of its discretion to declare the offenses as misdemeanors or felonies and chose to exercise that discretion in finding them as felonies. (*Exhibit A* at p. 9.) Specifically it pointed to the following facts: (1) the offenses were alleged as felonies, (2) appellant admitted the offenses as felonies, (3) the court advised appellant as if the offenses were felonies and, (4) the court ultimately sentenced appellant in a way that was consistent with finding that the offenses were felonies. (*Id*. at pp. 8-9.) It is true that these facts seem to show that the court did in fact treat the offenses as felonies. However, these facts do nothing to show that the trial court *knew that they could also be misdemeanors,* yet nevertheless considered discretionary factors to proceed with them as felonies.

Because the trial court did not say anything at all about the possibility that the offenses could be misdemeanors (even if they were pled to as felonies) and did not say anything at all describing any exercise of its discretion to proceed otherwise, *Manzy W.'s* exception is not satisfied.

CONCLUSION

For the reasons expressed above, appellant respectfully requests that review be granted.

Dated: September 16, 2021

Michael Reed

Michael Reed, Esq.
Attorney for Defendant-Appellant

CERTIFICATE OF COMPLIANCE WITH WORD LIMITATIONS

I, Michael Reed, certify that the length of Petitioner's Petition for Review complies with the requirements of California Rules of Court, Rule 8.504, subdivision (d), and that according to the word-processing program used to prepare it, the number of words, except for those portions excluded from the length limits, is 2,109.

Dated: September 16, 2021

Michael Reed

Michael Reed, Esq.
Attorney for Defendant-Appellant

Filed 7/26/2021

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re F.M., a Person Coming Under the Juvenile Court Law.	H048693 (Santa Cruz County Super. Ct. No. 19JU00191A, B, C)
THE PEOPLE, Plaintiff and Respondent, v. F.M., Defendant and Appellant.	

While on probation for misdemeanor assault (Pen. Code, § 242),[1] the minor, F.M., admitted allegations in two separate juvenile petitions that he committed two assaults with force likely to produce great bodily injury (§ 245, subd. (a)(4)), was an active participant in a criminal street gang (§ 186.22, subd. (a)), and recklessly evaded police (Veh. Code, § 2800.2). The juvenile court continued F.M. as a ward of the court pursuant to Welfare and Institutions Code section 602 and found him suitable for placement at a ranch camp.

On appeal, F.M. argues the juvenile court failed to declare whether the two assaults and the reckless evasion allegations were considered felonies or misdemeanors as required by Welfare and Institutions Code section 702 and that the matter must be remanded so that the juvenile court can correct this error. In response, the Attorney

[1] Unspecified statutory references are to the Penal Code.

General contends that F.M. has forfeited this argument by failing to object below and, in the alternative, remand is unnecessary because the record shows the juvenile court exercised its discretion and considered the sustained allegations as felonies.

After reviewing the briefs and record, we requested supplemental briefing on the impact of a recent amendment to Welfare and Institutions Code section 726, subdivision (d)(1), which reduced the maximum term of confinement which could be imposed on a minor. The parties agree that F.M. is entitled to retroactive application of that amendment.

For the reasons explained below, we conclude that F.M. has not forfeited his claim of error. However, we further conclude the record demonstrates that the juvenile court was aware of and exercised its discretion to treat the sustained allegations as felonies. Finally, we also agree with the parties that F.M. is entitled to the ameliorative effect of the amendment to Welfare and Institutions Code section 726, subdivision (d)(1).

Accordingly, we will modify the dispositional order to reflect the maximum term of confinement under the amended version of Welfare and Institutions Code section 726, subdivision (d)(1) and, as so modified, we will affirm the dispositional order.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

In October 2019, the juvenile court sustained an allegation in a juvenile wardship petition (Petition A) that F.M. had committed simple battery (§ 242). F.M. was placed on probation with various terms and conditions.

In May 2020, the Santa Cruz County District Attorney filed an amended juvenile wardship petition (Petition B) alleging that F.M., age 17, committed felony assault with a deadly weapon, a knife (§ 245, subd. (a)(1); count 1); felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4); count 2); two felony counts of participation in a criminal street gang (§ 186.22, subd. (a); counts 3 & 4); misdemeanor

brandishing of a deadly weapon (§ 417, subd. (a)(1); count 5); felony assault with a firearm (§ 245, subd. (a)(2); count 6); felony reckless evasion of a peace officer (Veh. Code, § 2800.2; count 7); and misdemeanor driving without a license (Veh. Code, § 12500, subd. (a); count 8). As to counts 1 and 2, it was further alleged that F.M. committed those offenses for the benefit of a criminal street gang pursuant to section 186.22, subdivision (b)(1)(A).

At a June 22, 2020 pretrial conference, F.M. admitted the allegations that he committed felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4); count 2), participated in a criminal street gang, amended to a misdemeanor (§ 186.22, subd. (a); count 3), and felony reckless evasion of a police officer (Veh. Code, § 2800.2; count 7). The juvenile court found F.M. had violated his probation in Petition A by operation of law.[2] The minute order from the hearing notes that "[t]he Court has considered whether the above offense(s) should be felonies or misdemeanors."

Prior to the disposition hearing, on July 22, 2020, the district attorney filed a new wardship petition (Petition C) alleging that F.M. committed a felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4); count 1), with a gang enhancement (§ 186.22, subd. (b)(1)(A)), and felony active participation in a criminal street gang (§ 186.22, subd. (a); count 2). On that same date, the district attorney filed a Welfare and Institutions Code section 777 petition alleging that F.M. violated his probation in Petition A by failing "to obey all laws."

On October 5, 2020, F.M. admitted the allegation that he committed felony assault with force likely to produce great bodily injury. The juvenile court found F.M. had violated his probation.

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[2] The probation department filed a Welfare and Institutions Code section 777 petition in March 2020 alleging that F.M. violated his probation by "fail[ing] to obey all laws in that he participated in an assault with a deadly weapon and participated in criminal street gang activity."

At the November 3, 2020 dispositional hearing on Petitions B and C, as well as F.M.'s probation violations, the juvenile court continued F.M. as a ward of the court and found him eligible for placement at a ranch camp, with various terms and conditions. The juvenile court set F.M.'s maximum confinement time at six years two months.

F.M. timely appealed.

B. Factual Background[3]

1. Petition B

On March 3, 2020, a Watsonville police officer responded to a report of brandishing of a knife. The victim, E.M., told the officer that he was walking along the street when a vehicle pulled up next to him. Two people, one of whom the victim recognized as F.M., got out of the vehicle and approached him. Both F.M. and the other person were holding knives and walked toward E.M. They called out, " 'City Hall!' " and one of them said, " 'What's up? Where you from?' " E.M. told the officer he did not know why F.M. and the other individual asked him that because " 'They know I don't bang.' " E.M. ran away because he was afraid he would be stabbed.

On March 10, 2020, R.J. was walking home at 1:00 a.m. after being released from Elmwood Correctional Facility. A vehicle drove past him and one of the occupants whistled at him three times. R.J. saw the vehicle park in a nearby parking lot and the driver, subsequently identified as F.M., and the front passenger got out and walked toward R.J. The front passenger pointed a gun at R.J. and R.J. ran in the opposite direction toward a nearby gas station where he asked an attendant for help. F.M. and the other person got back into their car.

At approximately 1:37 a.m., a Milpitas police officer spotted a vehicle matching the description reported to police. The officer turned on his lights and siren, but the vehicle fled at a high speed. Officers pursued the vehicle, reaching speeds of over

[3] Since F.M. admitted certain of the allegations in Petitions B and C, we derive the facts from the probation officer's reports.

80 miles per hour. The pursuit ended when F.M. tried to make a sharp turn at approximately 50 miles per hour and drove over a median. The vehicle was launched into the air and crashed into a light pole and fence. Five occupants, including F.M., were taken into custody at the scene.

F.M. later told officers he saw the police lights behind him but was scared because he did not have a valid license and there was alcohol in the vehicle. F.M. said he "didn't remember" anything about pointing a gun at anyone. During the interview, the officer noticed that F.M. had a tattoo of four dots on his left elbow, which the officer believed indicated affiliation with a Norteño gang.

On March 16, 2020, Watsonville Police Department officers responded to a report of a stabbing. The male victim said that he was walking along a train trestle when he was approached by two males, later identified as F.M. and A.G. F.M. and A.G. asked the victim about his gang affiliation. The victim stated he had no gang affiliation and began to walk in the opposite direction. F.M. and A.G. came up behind him and stabbed him. The victim had stab wounds on his right forearm and lower back.

Two witnesses reported they were driving by and saw two males chasing another male. One of the witnesses saw A.G. swing a knife at the victim's back, but could not recall if F.M. was holding anything. Based on the witnesses' statements, police located and apprehended F.M. and A.G. under the Pajaro Bridge. In an infield show up, one of the witnesses positively identified A.G. as the person who stabbed the victim and F.M. as the other person who chased after the victim. Video surveillance footage from near the scene showed F.M. holding a "gray/light colored slim object consistent with a knife." The footage also showed F.M. and A.G. chasing the victim, with A.G. armed with a knife. Police did not find a knife on either F.M. or A.G. and did not recover any knives in the area. F.M. denied any involvement in the incident.

2. Petition C

On July 15, 2020, F.M. was involved in an altercation at the Santa Cruz County Juvenile Hall, which was captured by surveillance cameras. After two minors attacked the victim in a classroom, F.M. and a fourth minor joined in the attack. In the video, F.M. is seen kicking the victim after he falls to the ground. After the assault, staff observed that the victim sustained a black eye and scratches on his face, and also had blood on the side of his head. When interviewed by a Santa Cruz County Sheriff's deputy after the incident, F.M. would not acknowledge there was a fight and refused to answer any questions posed by the deputy.

II. DISCUSSION

A. Forfeiture

Before addressing F.M.'s argument that the juvenile court erred by not expressly stating whether it considered the sustained allegations as felonies or misdemeanors, we turn to the Attorney General's contention that this claim is forfeited due to F.M.'s failure to raise it below.

The Attorney General cites *In re G.C.* (2020) 8 Cal.5th 1119 (*G.C.*) as holding that a juvenile court's " 'failure to properly *make* or articulate its discretionary sentencing choices' " (*id*. at p. 1130) under Welfare and Institutions Code section 702 constitutes "forfeitable legal error." (*G.C., supra,* at p. 1131.) The Attorney General misreads the decision.

In *G.C.*, the California Supreme Court examined "whether [the minor] may challenge the court's neglect of this mandatory duty [i.e., under Welfare and Institutions Code section 702] in an appeal from a *later* dispositional order after the time to appeal the *original* disposition expired." (*G.C.*, *supra*, 8 Cal.5th at p. 1122, italics added.) After the minor in that case admitted the allegations of wobbler offenses in two separate wardship petitions (Petitions A and B) filed in Santa Clara County in 2014, the petitions

were transferred to Alameda County for disposition. (*Id*. at p. 1123.) At the dispositional hearing in 2015, the Alameda County juvenile court declared the minor a ward of the court, removed her from her mother's custody, and set a maximum term of confinement. (*Ibid*.) The court failed to declare whether the offenses in Petitions A and B were felonies or misdemeanors, but the minor did not appeal from the dispositional order. (*Id*. at pp. 1123-1124.)

In October 2015, the minor admitted the allegations in a Welfare and Institutions Code section 777 petition that she had violated her probation by running away from home.[4] (*G.C.*, *supra*, 8 Cal.5th at p. 1124.) Because the minor and her mother had relocated to Santa Clara County, the petition was transferred back to that county for disposition. (*Ibid*.) The Santa Clara County juvenile court's 2016 dispositional order maintained the minor "in her mother's custody under the supervision of the probation department, with various terms and conditions." (*Ibid*.) The minor appealed from the 2016 dispositional order challenging certain of her terms of probation, but she also sought to argue that the Alameda County juvenile court erred in its 2015 dispositional order by failing to "expressly declare whether the offenses in petitions A and B were misdemeanors or felonies." (*Ibid*.)

The California Supreme Court held that because the minor "did not timely appeal the dispositional order entered in Alameda for petitions A and B[,] [h]er claim of error is not cognizable in a later appeal from the . . . dispositional order from Santa Clara in the [Welfare and Institutions Code] section 777 proceeding." (*G.C.*, *supra*, 8 Cal.5th at p. 1125, fn. omitted.) In discussing forfeiture, the court expressly rejected the minor's "argument that the failure to comply with the mandatory provisions of [Welfare and Institutions Code] section 702 creates an unauthorized sentence correctable at any time." (*Id.* at p. 1129.) Instead, the failure to comply with that statute is an error that "must be

[4] The minor had previously been returned to her mother's custody. (*G.C.*, *supra*, 8 Cal.5th at p. 1124.)

timely asserted." (*Id*. at p. 1131.) "[U]pon timely appeal the proper course would have been to remand the case for the Alameda court to exercise its discretion." (*Ibid*.)

G.C.'s forfeiture analysis does not apply to this case. There is no suggestion here that F.M.'s appeal from the dispositional order on Petitions B and C is not timely.

B. Declaration Under Welfare and Institutions Code Section 702

Welfare and Institutions Code section 702 provides, in pertinent part, as follows: "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." Welfare and Institutions Code section 702 requires an explicit declaration by the juvenile court whether the offense would be a felony or misdemeanor. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*).) "The requirement is obligatory: '. . . [S]ection 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.' " (*Ibid*.)

However, the rule is not ironclad and there is no " 'automatic' " right to remand "whenever the juvenile court fails to make a formal declaration under Welfare and Institutions Code section 702." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1209.) "[S]peaking generally, the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error. . . . The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*Ibid*.)

We conclude that although the juvenile court did not strictly comply with the declarative requirement established in *Manzy W.*, the record in this case shows that the juvenile court was both aware of and exercised its discretion to treat the sustained

allegations as felonies. The court sustained allegations of three wobbler offenses—two assaults with force likely to produce great bodily injury (§ 245, subd. (a)(4)) and reckless evasion of police (Veh. Code, § 2800.2) in Petitions B and C. The minor admitted the offenses in both petitions as felonies. When F.M. admitted the offenses in Petition B as felonies, the court noted that the assault charge "is considered a serious violent felony" and thus "could be counted as a strike" offense in any adult court case brought against him in the future. In addition, the juvenile court rejected the probation department's initial recommendation to return F.M. to his parents' custody and reinstate probation. The court directed the probation department to "go back and reevaluate the situation, both for ranch camp and [Department of Juvenile Justice]." At the time of the dispositional hearing, a DJJ (Department of Juvenile Justice) commitment could be imposed only if the minor's most recent offense fell under Welfare and Institutions Code section 707, subdivision (b), a statute that describes certain felony offenses. (Welf. & Inst. Code, § 733, subd. (c).)[5] Given these recitations on the record, we conclude that the juvenile court elected to designate the offenses as felonies. The minor's admission of the offenses as felonies, as well as the court's statements about the offenses, provided notice to defense counsel that the court was addressing the admitted charges as felonies. Under these circumstances, remanding the matter to the juvenile court for an explicit declaration of the felony status of the offenses F.M. admitted would be redundant.

C. Amendment to Welfare and Institutions Code Section 726

As set forth in the disposition report, F.M.'s maximum time of confinement was calculated at six years two months, consisting of: four years for felony assault (§ 245,

[5] Effective July 1, 2021, a juvenile can only be committed to the DJJ—pending its final closure on June 30, 2023—if the juvenile is "otherwise eligible to be committed under existing law and . . . a motion to transfer the minor from juvenile court to a court of criminal jurisdiction was filed." (Welf. & Inst. Code, § 736.5, subd. (c); *id*., subd. (b).)

subd. (a)(4), Petition B; count 2);[6] two months (one-third the midterm of six months) for misdemeanor battery (§ 242, Petition A); four months (one-third the middle term of one year) for the misdemeanor gang offense (§ 186.22, subd. (a), Petition B; count 3); eight months (one-third the middle term of two years) for felony reckless evasion (Veh. Code, § 2800.2, Petition B; count 7); and one year (one-third the middle term of three years) for the second felony assault charge (§ 245, subd. (a)(4), Petition C; count 1).

At the time of F.M.'s November 3, 2020 dispositional hearing, Welfare and Institutions Code section 726, subdivision (d)(1) provided that the juvenile court could order physical confinement of a ward for a period not to exceed "the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." (Former Welf. & Inst. Code, § 726, subd. (d)(1).) However, effective May 14, 2021, Senate Bill No. 92 amended that statute to limit the maximum term of confinement to the *middle* term of imprisonment which could be imposed upon an adult convicted of the same offense or offenses. (Stats. 2021, ch. 18, § 7.) As a result of the amendment, the maximum term that can be imposed on a minor for felony assault likely to produce great bodily injury is now three years, not four.

The parties agree, as do we, that F.M. is entitled to the ameliorative effect of this amendment as his disposition was not final on the amendment's operative date. (*In re Estrada* (1965) 63 Cal.2d 740, 744.) As a result, F.M.'s maximum term of confinement must be reduced by one year to comply with Welfare and Institutions Code section 726, subdivision (d)(1), as amended. We will therefore modify the dispositional order to set forth a maximum term of confinement of five years two months.

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[6] Section 245, subdivision (a)(4) states: "Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment."

III. DISPOSITION

The dispositional order is modified to reflect a maximum term of confinement of five years two months. As modified, the dispositional order is affirmed.

_____
Greenwood, P.J.

WE CONCUR:

_____
Grover, J.

_____
Danner, J.

People v. F.M.
No. H048693

DECLARATION OF SERVICE

I am a citizen of the United States and a resident of the county of Monterey, California. I am over the age of eighteen years and not a party to the above referenced action. On the below mentioned date I served the following document(s) described as:

People v. F.M..: Santa Cruz No. 19JU00191, Sixth District Court of Appeal No. H048693; Petition for Review

By serving the parties below:

1. Sixth District Court of Appeal
   E-service: sixth.district@jud.ca.gov

2. Office of the Attorney General
   E-service: sfagdocketing@doj.ca.gov

3. F.M.

4. Santa Cruz County Superior Court
   701 Ocean St.
   Santa Cruz, CA. 95060-4086 (Mail)

5. Santa Cruz County District Attorney's Office
   701 Ocean St., Room 200
   Santa Cruz, CA. 95060 (Mail)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed at Salinas, California, on September 16, 2021.

Michael Reed

Michael Reed

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. F.M.**
Case Number: **TEMP-XNCNCYDK**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **mike@reedmlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
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APPLICATION FOR RELIEF FROM DEFAULT	Application for Relief from Default
PETITION FOR REVIEW	F.M. PFR

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/16/2021
Date

/s/Michael Reed
Signature

Reed, Michael (325583)
Last Name, First Name (PNum)

Law Firm