In the Supreme Court of the State of California

In re Alonzo J., a Person Coming Under the Juvenile Court Law.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

Alonzo J.,

Defendant and Appellant.

Case No. S206720

Third Appellate District, Case No. C068046
Sacramento County Superior Court, Case No. JV130980
The Honorable Robert M. Twiss, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Where a minor's counsel refuses to consent to the minor's admission of charges, must the juvenile court allow and accept a minor's no contest plea over counsel's objection?

STATEMENT OF THE CASE

On November 3, 2010, the district attorney filed a petition in the Sacramento County Superior Court, alleging that 13-year-old appellant Alonzo J. came within the provisions of Welfare and Institutions Code section 602. (1 CT 54-55.) The petition alleged that appellant had assaulted his mother with a deadly weapon by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1); counts 1 and 2)[1] and that he had maliciously and unlawfully damaged a door (§ 594, subd. (b)(2)(A); count 3). (1 CT 56-57.) The allegations were based on a altercation where appellant swung a skateboard at his mother and then hit her in the face with a space heater. (1 RT 194-196.)

On January 25, 2011, a *Marsden*[2] hearing was held to address concerns that appellant had with his trial counsel. (1 CT 114; 1 RT 39.) During the *Marsden* hearing, appellant expressed his desire to admit a felony allegation and go home with an ankle monitor, but noted that his attorney did not agree. (1 CT 114; 1 RT 40.)

Appellant's attorney subsequently explained her belief that appellant was "desperate to get out of custody and go home with his family" and that, because of his desperation, he was willing to admit certain charges that he did not commit. (1 RT 50-51.) Counsel also noted there was "a California Rule of Court and a Welfare and Institutions Code [section] that indicates

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[1] All further statutory references are to the Penal Code unless otherwise noted.

[2] *People v. Marsden* (1970) 2 Cal.3d 118.

that unless an attorney representing a minor joins in the admission, the Court cannot take the plea." (1 RT 52.)

The court subsequently denied the *Marsden* motion, ruling that appellant's counsel had provided effective assistance of counsel and that the relationship between the parties had not broken down to a point where counsel could no longer provide effective assistance. (1 RT 54-55.)

On February 2, 2011, the court "decided to reconvene" the *Marsden* hearing to address the issue of whether or not appellant was being denied the right to enter a plea. (1 CT 115; 1 RT 64.) The court noted that it "would not accept an admission from [appellant] unless [it] had a complete discussion with [him] about the rights that [he] was giving up and also that there was an agreement as to what the facts are, what actually happened, and those facts would amount to proving all the things that the People have to prove in order to find the allegations to have been demonstrated." (1 RT 65.)

Appellant's counsel explained that appellant had told her that he was "factually innocent" and that he had not "swung the skateboard" or "swung the heater at his mother." (1 RT 70.) The court then noted that appellant would not be entitled to accept a plea if "he cannot legitimately get through the factual inquiry because he's not guilty. . . ." (1 RT 71.)

The court subsequently determined that there was a "completely legitimate reason" that appellant was "being denied the right to admit the allegations." (1 RT 72-73.) It ruled that there were "no facts that the two sides could stipulate to which would allow [the court] to accept [appellant's] admission" and that there was not a conflict between appellant and his counsel. (1 RT 73.) The case was then set for a contested jurisdictional hearing. (1 CT 115; 1 RT 73-74.)

On February 18, 2011, following a contested jurisdictional hearing, the court found that all three counts were supported beyond a reasonable

doubt and therefore sustained the petition. (1 CT 119-120.) Counts 1 and 2 were deemed felonies and count 3 was deemed to be a misdemeanor. (1 CT 120.)

On March 8, 2011, appellant was continued as a ward of the court.[3] (1 CT 126-127, 134.) Appellant was ordered to serve 127 days in juvenile hall and was given credit for the 127 days he had already served. (1 CT 128, 134.) It was further ordered that appellant be placed into a "suitable Level A placement pursuant to Standing Order 98-003," which includes the home of a relative or friend, a licensed foster home, a licensed group home, or a licensed residential treatment center. (*Ibid.*; see also Clerk's Augmented Transcript on Appeal at p. 2.)

In a published opinion, the Court of Appeal held that the juvenile court erred in considering the prosecution's plea offer and had erred in finding that appellant did not have a right to accept it. To remedy the errors, the Court of Appeal determined that it was necessary to remand the case and have the prosecution submit the extant provisions of the previously-offered plea bargain to the juvenile court for its approval, unless the prosecution elected to readjudicate the minor and resume the plea negotiation process. The Court of Appeal further noted that, if the plea bargain was submitted to and approved by the juvenile court, the findings and orders of the juvenile court should be modified to be consistent with the terms of the plea bargain. (Court of Appeal opinion.)

SUMMARY OF ARGUMENT

In a published opinion, the Court of Appeal found that the juvenile court had erred in two ways when considering the prosecution's plea offer

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[3] Appellant had previously been adjudged a ward of the court following a prior sustained petition from February 22, 2010. (1 CT 1-3, 46.)

and thereby failed to acknowledge the minor's personal choice over the fundamental decision of whether to accept the offer. First, the Court of Appeal found that the juvenile court had erred under the plea procedure for juveniles (Cal. Rules of Court, rule 5.778(c), (d), (e))[4] by not allowing the minor to plead no contest, which he could do subject only to the approval of the court, as an alternative to admitting the allegations of the petition, which required the consent of counsel. Second, the Court determined that the juvenile court impermissibly relied solely on the belief of defense counsel that there was no factual basis for a plea, rather than independently determining the issue itself.

The holding of the Court of Appeal is based on an erroneous interpretation and application of the rule 5.778, which requires counsel to consent to the admission by a represented minor. The decision mistakenly distinguished between an admission and plea of no contest for purposes of whether a represented minor can enter into a plea bargain over counsel's objection. By creating such a distinction, the appellate court misread the rule and contradicted the statutory language of the Welfare and Institutions Code, which requires counsel's consent in order for an admission to be operative. The decision also would put the juvenile court in a position where it may interfere with the advice that counsel gives to a represented minor. Finally, the opinion conflates the steps the juvenile court is required to take regarding a plea agreement and the order in which the court is required to take them.

The Court of Appeal's interpretation and application of rule 5.778 is wrong and the decision should be reversed.

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[4] All further references to rules refer to the California Rules of Court, unless otherwise noted.

ARGUMENT

I. A JUVENILE COURT MAY NOT ACCEPT A NO CONTEST PLEA FROM A REPRESENTED MINOR WHEN COUNSEL REFUSES TO CONSENT TO AN ADMISSION OF THE ALLEGATIONS

The Court of Appeal erroneously held that a juvenile court must allow or accept a no contest plea from a minor when the minor's counsel refuses to consent to an admission of the allegations. The Court of Appeal's opinion mistakenly distinguishes between an admission and a plea of no contest, thus contradicting the statutory requirement that counsel must consent in order for the admission to be valid. The opinion also conflates the steps the juvenile court is required to take regarding a plea agreement and the order in which the court is required to take them.

A. Overview of the Statutes and Rules Governing Admissions and No Contest Pleas

The issue here involves the interpretation of both statutory provisions and rules of court. "The California Rules of Court are adopted by the Judicial Council of California. The Judicial Council, which is charged by the state Constitution with 'improv[ing] the administration of justice,' is authorized to 'adopt rules for court administration, practice and procedure,' which shall 'not be inconsistent with statute.' (Cal. Const., art. VI, § 6, subd. (d).) 'The rules have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.' (*In re Richard S.* (1991) 54 Cal.3d 857, 863.)" (*In re Kler* (2010) 188 Cal.App.4th 1399, 1402.)

Welfare and Institutions Code section 657, subdivision (b), states that, "At the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of Section 601 or 602, may, *with the consent of counsel*, admit in court the allegations of the petition and waive the jurisdictional hearing." (Italics added.)

The Legislative intent behind this requirement may be inferred by looking at the history of the statute. In its original form, Welfare and Institutions Code section 657 provided that:

> Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must set for hearing within 15 judicial days from the date of the order of the court directing such detention.

(Welf. & Inst. Code, § 657, as added by Stats. 1961, ch. 1616, § 2.)

In 1971, the Legislature added a second paragraph to the statute, which provided that:

> At the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of Section 601 or 602, may, *with the consent of counsel*, admit in court the allegations of the petition and waive the jurisdictional hearing.

(Welf. & Inst. Code, § 657, as amended by Stats. 1971, ch. 1389 (SB 1094), § 4, italics added.) Respondent submits that the intent behind the amendment was to allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case, resulting in the saving of time, avoidance of confusion and minimization of the period of detention. Further, the requirement of *consent of counsel* was logically included to carry out the Legislature's intent to protect the rights of minors in making such a decision.

The consent requirement remains in place today as Welfare and Institutions Code section 657, subdivision (b). (See Welf. & Inst. Code, § 657, as amended by Stats. 1984, ch. 158, § 1.)

The intent behind Welfare and Institutions Code section 657 is also encompassed in the rules of court. Rule 5.778 addresses the procedure when a minor wants to admit an allegation.[5] Rule 5.778(c) provides that:

> The court must . . . inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court must state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (b).[6]

Subdivision (d) provides that, "*Counsel for the child must consent to the admission*, which must be made by the child personally." (Italics added.) And subdivision (e) provides that, "The child may enter a plea of no contest to the allegations, subject to the approval of the court."

In its decision in this case, the Court of Appeal relied on several statutes that are applicable to pleas in the adult courts. Penal Code section 1016 discusses the "[p]ermissible pleas" and the "[e]ffect of [a] plea of nolo contendere" in adult court. Section 1016 provides in pertinent part that a defendant may enter a plea of

> [n]olo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. *The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes.*

(Italics added.)

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[5] The original rule on juvenile pleas, former rule 1354, was enacted in 1977. The rule was amended in 1991 and the rule was renumbered to rule 1487. Current rule 5.778 succeeded rule 1487 in 2007.

[6] Rule 5.778(b) lists the rights of a child at a contested adjudication hearing.

Penal Code section 1018, also relied on by the Court of Appeal in this case, additionally addresses plea agreements in adult courts, and provides in part that: "Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court. No plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, *nor shall that plea be received without the consent of the defendant's counsel.*" (Italics added.)

Finally, the Court of Appeal also addressed rule 5.778(f) and Penal Code section 1192.5. Rule 5.778(f) sets out the findings that a juvenile court "must make" "[o]n an admission or plea of no contest." Similarly, section 1192.5 addresses the procedure in adult court and provides in part as follows:

> *If the court approves of the plea*, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, *and that there is a factual basis for the plea.*

(Italics added.)

B. The Consent Requirement of Welfare and Institutions Code Section 657, Subdivision (b), May Not Be Circumvented by Allowing a No Contest Plea to be Entered Without the Same Procedural Safeguards Required for an Admission

The Legislature, through Welfare and Institutions Code section 657, subdivision (b), has clearly established that counsel's consent is required before a minor may admit allegations in a petition. Because pursuant to Penal Code section 1016, a guilty plea and a no contest plea have the same

"legal effect," it is inconceivable that the Legislature intended to allow a process in which a minor could avoid the safeguards that were established for admissions by allowing the minor to enter a plea of no contest against the advice, and without the consent, of counsel.

The Court of Appeal failed to consider Penal Code section 1016 in its entirety when it reasoned that:

> [T]he juvenile court effectively treated the prosecution's plea bargain offer as calling only for an "admission" by Alonzo of the allegations of the section 602 delinquency petition, to which Alonzo's counsel had to "consent." (Rule 5.778(d).) The juvenile court failed to recognize that Alonzo could, alternatively, "enter a plea of no contest to th[ose] allegations, subject [only] to the approval of the court."[7] (Rule 5.778(e).) Not only rule 5.778, but a related rule as well as statutes recognize this distinction between an "admission" of, and a "no contest" plea to, section 602 petition allegations; this distinction is analogous to the adult criminal plea distinction between pleading guilty and pleading no contest. (Rule 5.754(b); see Welf. & Inst. Code, § 657, subd. (b); see also Pen. Code, §§ 1192.5, 1016, subds. 1 & 3.)

(Court of Appeal opinion at p. 13.)

Although the Court of Appeal correctly noted that Penal Code section 1016 distinguishes between a plea of guilty and no contest, the Court omitted the fact that the statute goes on to provide that "[t]he legal effect of [a no contest] plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes."

Welfare and Institutions Code section 657, subdivision (b), and, in turn, rule 5.778(d), require that, in order for a minor to admit allegations, he or she must have the consent of counsel. If this Court were to interpret rule 5.778(e) to allow the entry of a no contest plea without the consent of

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[7] Respondent notes that nothing in the record establishes that the prosecutor's offer would have allowed for a no contest plea as opposed to an admission.

counsel, then the rule itself would be invalid. This is so because, if rule 5.778(e) did indeed allow a minor to enter a plea without the consent of counsel, the rule would invalidly circumvent the safeguard that was clearly established by the Legislature in Welfare and Institutions Code section 657.

While the decision whether or not to enter into a plea agreement is a "fundamental" decision, it is appropriate for the Legislature to put limitations or safeguards on the decision. In this way the relevant provisions of the Welfare and Institutions Code are akin to Penal Code section 1018 and the limitations it places on defendants in capital cases and cases involving a sentence of life without the possibility of parole. In analyzing the consent requirement of section 1018, this Court has noted that "[a]lthough . . . the decision how to plead to a criminal charge is personal to the defendant, . . . 'it is no less true that the Legislature has the power to regulate, in the public interest, the manner in which that choice is exercised.'" (*People v. Alfaro* (2007) 41 Cal.4th 1277, 1299, quoting *People v. Chadd* (1981) 28 Cal.3d 739.)

In *Chadd*, this Court reasoned that:

> A plea of guilty, of course, is the most serious step a defendant can take in a criminal prosecution. It operates first as a waiver of formal defects in the accusatory pleading that could be reached by demurrer. [Citations.] Next, because there will be no trial the plea strips the defendant of such fundamental protections as the privilege against self-incrimination, the right to a jury, and the right of confrontation. [Citations.] As to the merits, the plea is deemed to constitute a judicial admission of every element of the offense charged. [Citation.] Indeed, it serves as a stipulation that the People need introduce no proof whatever to support the accusation: the plea ipso facto supplies both evidence and verdict. [Citation.] "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." [Citation.] Finally, it severely restricts the defendant's right to appeal from the ensuing judgment. [Citation.]

(*Chadd, supra,* 28 Cal.3d at p. 748.) The Court went on to explain that "[i]n view of these consequences, the Legislature has demonstrated an increasing concern to insure that no defendant enter a guilty plea in our courts without fully understanding the nature and consequences of his act." (*Id.* at pp. 748-749.)

The plain language of Welfare and Institutions Code section 657, subdivision (b), requires the consent of counsel when a minor is going to admit allegations. In view of the tender age of minors, the Legislature has decided that it is necessary to regulate the manner in which a minor is allowed to admit charges. To allow the circumvention of this regulation by permitting entry of a plea of no contest—which is not legally distinguishable from an admission and carries the same consequences described in *Chadd*—contradicts the Legislature's intent.

The Court of Appeal in this case also mistakenly found that "the juvenile court impermissibly relied solely on defense counsel's 'personal assessment' that Alonzo, in fact, was not guilty of the two assault charges, and therefore there was no 'factual basis' to support the 'admission' underlying the prosecution's plea offer." (Court of Appeal opinion at pp. 13-14.) In doing so, the Court of Appeal held that "[t]he juvenile court did not properly 'determine[,] by independent inquiry,' whether there existed a factual basis for the plea offered Alonzo by the prosecution, through the procedure of a no contest plea." (Court of Appeal opinion at p. 14.) The Court of Appeal relied upon rule 5.778(f) and Penal Code section 1192.5. (Court of Appeal opinion at pp. 14-15.)

Rule 5.778(f) and Penal Code section 1192.5, however, apply only when the court is determining whether there is a factual basis to *accept* a plea or admission that has already been agreed upon by the parties. (See *People v. Willard* (2007) 154 Cal.App.4th 1329, 1334, fn. 2 ["The purpose of the factual basis inquiry, 'is to corroborate what the defendant already

admits' by his plea."], quoting *People v. Wilkerson*, *supra*, 6 Cal.App.4th at p. 1578.) Because the minor here had not admitted the charges, and had not reached any plea agreement with the prosecution, the Court of Appeal improperly held that the juvenile court was required to conduct an independent inquiry as to a factual basis.

In supporting its position, the Court of Appeal also cited *People v. Holmes* (2004) 32 Cal.4th 432 and *People v. Wilkerson* (1992) 6 Cal.App.4th 1571. (Court of Appeal opinion at p. 14.) These cases, however, stand for the proposition that "in order for a court to *accept* a . . . plea, it must garner information regarding the factual basis for the plea from either defendant or defense counsel to comply with section 1192.5." (*People v. Holmes, supra,* 32 Cal.4th at p. 436, italics added.)

Under both the statutory law and the Rules of Court, neither an admission nor a no contest plea may be entered without the consent of counsel. Because counsel clearly did not consent to the plea, and because a plea had not yet been entered, there was no reason for the juvenile court to move to the next step and determine whether there was a factual basis to support such a plea.

The Court of Appeal's opinion mistakenly allows a minor to enter into an unfavorable plea agreement without the consent of counsel. By doing so, the opinion contradicts the position taken by the Legislature, which requires counsel to consent to a minor's decision to enter into such an agreement.

Moreover, the opinion below creates a substantial risk that the juvenile court may become involved in judicial plea bargaining in excess of the court's discretion. (See *People v. Turner* (2004) 34 Cal.4th 406, 418; *People v. Labora* (2010) 190 Cal.App.4th 907, 913, 914; *People v. Woosley* (2010) 184 Cal.App.4th 1136, 1144-1145.)

CONCLUSION

For the foregoing reasons, respondent respectfully asks this Court to reverse the judgment of the Court of Appeal and reinstate the judgment of the juvenile court.

Dated: March 22, 2013

Respectfully submitted,

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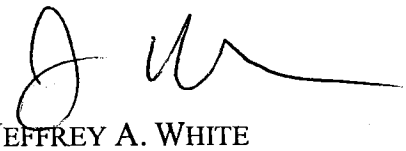

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 3,755 words.

Dated: March 22, 2013

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Alonzo .J.** No.: **S206720**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 22, 2013, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 22, 2013, at Sacramento, California.

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