IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE J.G., a Person Coming Under the Juvenile Court Law.	)	**No. S240397**
PEOPLE OF THE STATE OF CALIFORNIA,	)	Court of Appeal No. C077056
Plaintiff and Respondent,	)	Shasta County Superior Court No. JDSQ122933901
v.	)	
J.G.,	)	
Defendant and Appellant.	)	

OPENING BRIEF ON THE MERITS

REDACTED VERSION
Redacts Material From Sealed Record

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ISSUES PRESENTED FOR REVIEW

I. When a juvenile court terminates a minor's probation in a deferred entry of judgment (DEJ) case and dismisses the Welfare and Institutions Code[1] section 602 petition, can it also convert unpaid restitution to a civil judgment? Or, does section 793, subdivision (c) prohibit such a conversion order because it states that following a dismissal "the arrest upon which the judgment was deferred shall be deemed never to have occurred . . . "?

II. When setting restitution as a condition of DEJ probation, which requires the juvenile court take into account a minor's ability to pay, does a juvenile court err by:

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[1] All further non-designated statutory references are to the Welfare and Institutions Code unless otherwise specified.

(a) treating a minor's federal Supplemental Security Income (SSI) benefits or his father's Social Security Disability (SSD) benefits as income for ability to pay purposes?

(b) failing to reduce restitution to an amount the minor can repay during the deferral period or finding that a minor had the ability to pay $36,381 in restitution when his family survived below the federal poverty line solely on the minor's SSI benefits, his father's SSD benefits, and food stamps?

(c) setting restitution above the $20,000 cap set forth in section 742.16, absent evidence the minor engaged in more than one tort?

STATEMENT OF THE CASE AND FACTS

[redacted]

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[2] "CT" refers to the Clerk's Transcript filed in the Court of Appeal on August 25, 2014. "1RT" refers to the Reporter's Transcript of the proceedings held in the juvenile court on January 1, 2014 and July 9, 2014. "2RT" refers to the Reporter's Transcript of the proceedings held on January 17, 2013, November 7, 2013, November 14, 2013, and December 19, 2013. "RST" refers to the Reporter's Supplemental Transcript of the proceedings held on December 5, 2013.

[redacted]

The Court of Appeal disagreed with each of those contentions. (Slip. Op., at pp. 2, 9-17.) J.G. filed a petition for review, which this Court granted.

ARGUMENT

I. THE JUVENILE COURT LACKED JURISDICTION TO CONVERT UNPAID RESTITUTION TO A CIVIL JUDGMENT [redacted].

Section 793 gives minors who complete DEJ very broad protection: it wipes their slate clean as if the underlying arrest had never occurred. J.G. was not afforded that broad protection. [redacted]

[redacted]. The Court of Appeal disagreed and upheld the conversion order. It correctly identified the issue as one of statutory construction. But instead of applying section 793's unambiguous language, it found support for the conversion order in other sections, which permit conversion orders in different contexts. (See Slip Op., at pp. 10-12.) This Court should reverse.

The issue is one of first impression. While this Court has discussed how restitution operates in the DEJ context (*Luis M. v. Superior Court* (2014) 59 Cal.4th 300), it has not considered the particular interaction at issue in this case: whether unpaid restitution can be converted to a civil judgment when a minor completes DEJ. That issue presents a question of statutory construction, which this Court reviews de novo. (See *Coker v. JPMorgan Chase Bank, N.A.* (2016) 62 Cal.4th 667, 674.)

> The first principle of statutory construction requires us to interpret the words of the statute themselves, giving them their ordinary meaning, and reading them in the context of the statute (or, here, the initiative) as a whole. If the language is unambiguous, there is no need for further construction. If, however, the language is susceptible of more than one reasonable meaning, we may consider the ballot summaries and arguments to determine how the voters understood the ballot measure and what they intended in enacting it. In construing constitutional and statutory provisions, whether enacted by the Legislature or by initiative, the intent of the enacting body is the paramount consideration.

(*People v. Gonzales* (2017) 2 Cal.5th 858, 868, internal citations and quotations omitted.)

The plain language of section 793 unambiguously prohibits a juvenile court from converting unpaid restitution to a civil judgment when a

minor completes DEJ. Section 793 provides,

> If the minor has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period 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 that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether a minor is eligible for deferred entry of judgment [in the future] pursuant to Section 790.

(§ 793, subd. (c).) If a court must deem an arrest never to have occurred and seal all the records, it cannot enter an order converting unpaid restitution to a civil judgment as those actions are mutually exclusive. Whether section 793 is considered in isolation, or in the context of the DEJ program as a whole, the conclusion remains the same: the drafters did not intend for juvenile courts to convert restitution to a civil judgment when a minor completes DEJ.

In essence, DEJ is available to first time offenders who have been charged with a felony offense that is not listed in section 707, subdivision (b). (§ 790, subd. (a).) DEJ begins with the minor admitting the allegations in the wardship petition. (§§ 790, 791.) But instead of being adjudged a ward, the minor is placed on DEJ probation for 12 months. (§ 794.) Section 794 lists the probation conditions that can be imposed. If the minor successfully completes DEJ probation, the petition will be dismissed pursuant to section 793. (§ 793, subd. (c).) If the minor does not successfully complete DEJ probation he can be adjudged a ward. (§ 793, subd. (a).)

Restitution "may" be imposed as a condition of DEJ probation. (§ 794.) However, section 794 does not provide guidelines for doing so. Instead, it provides "The minor may also be required to pay restitution to the victim or victims pursuant to the *provisions of this code*." (Italics added.) Sections 730.6 and 742.16 are other provisions of the Welfare and Institutions Code dealing with restitution. Section 730.6 is the general restitution statute and section 742.16 is the restitution statute that deals specifically with vandalism.

Sections 730.6 and 742.16 were drafted with minors who have already been adjudged wards in mind. Both sections state they apply to minors who are "found to be a person described in Section 602." (§§ 730.6, subd. (a), 742.16, subd. (a).) Minors who have been granted DEJ, however, have not been adjudged wards. Nevertheless, in *Luis M.*, *supra*, 59 Cal.4th 300, this Court acknowledged that sections 730.6 and 742.16 apply, to some extent, in the DEJ probation context. There, a minor was placed on DEJ for nine acts of graffiti. (59 Cal.4th at pp. 303-304.) As a condition of DEJ probation, the juvenile court imposed restitution of $3,881.88. (*Ibid.*) The evidence offered in support of that amount was based on the fact the minor committed nine acts of graffiti and the city's average cost to abate an incident of graffiti was $431.32. (*Id.* at p. 304.) This Court found that calculating restitution that way violated sections 730.6 and 742.16, which it observed apply in the DEJ context through the "other provisions of this code" language in section 794. However, this Court was not called upon in *Luis M.* to decide whether any unpaid restitution could be converted to a civil judgment when the minor completed DEJ.

It is not disputed that section 794 incorporates sections 730.6 and 742.16 for purposes of imposing restitution as a condition of DEJ probation.

Nor is it disputed that sections 730.6 and 742.16 contain provisions that allow unpaid restitution to be converted to a civil judgment. What is disputed is whether the conversion provisions in 730.6 and 742.16 can be applied when a minor completes DEJ notwithstanding section 793, which provides that a minor who completes DEJ is entitled to have his slate wiped clean.

Section 793 governs on the question of what happens when a minor completes DEJ. As set forth above, it states that the wardship petition must be dismissed, the arrest deemed never to have occurred, and all the records sealed. Those protections and converting unpaid restitution are mutually exclusive. For them to coexist there would need to be some type of exception to the arrest deeming and record sealing language. However, there is only one exception to those broad protections: the prosecutor and probation officer may inspect the sealed records for the limited purpose of determining whether a minor is eligible for a future grant of DEJ. (§ 793, subd. (c).) Listing that exception, but not another that allows unpaid restitution to be converted to a civil judgment, is strong indicator that unpaid restitution cannot be converted to a civil judgment. "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v Zolin* (1993) 6 Cal.4th 841, 852.)

The argument that section 794's oblique reference to "other provisions of this code" somehow incorporated a restitution conversion provision that provides an additional exception to section 793's broad protections is illogical. When the drafters wanted to allow unpaid restitution to survive the dismissal of the 602 petition, they know how to say so clearly.

Take, for example, section 786. Section 786 governs on the question of what happens when a minor completes formal probation or informal supervision pursuant to section 654.2. Like section 793, it states that the wardship petition must be dismissed, the arrest deemed never to have occurred, and all the records sealed. (§ 786, subds. (a) & (b).) However, it then lists a number of exceptions to those broad protections including one that expressly permits unpaid restitution to be converted to a civil judgment:

> (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution ordered pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.
>
> (2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to records sealed pursuant to this section for the limited purpose of enforcing a civil judgment or restitution order.

(§ 786, subd. (g).)

As a matter of statutory construction, the existence of an express exception in section 786 that allows unpaid restitution to be converted to a civil judgment is a strong indication that such an exception should not be read into section 793. (See *Milklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 896 ["[W]hen the Legislature uses a critical word or phrase in one statute, the omission of that word or phrase in another statute dealing with the same general subject generally shows a different legislative intent."]; *People v. Trevino* (2001) 26 Cal.4th 237, 242 [same].)

Section 786 did not always contain an exception that allowed unpaid restitution to be converted to a civil judgment when a minor completed probation or informal supervision. Its provisions used to mirror those set forth in section 793. However, in 2015, the Legislature amended section 786 to add the exception. (See Assembly Floor Analysis, Analysis of Assembly Bill No. 666 (2015-2016 Reg. Sess.), as amended September 4, 2015, p. 2 [stating that the amendment would "Provide that a court is not prohibited from enforcing a civil judgment for an unfulfilled order of restitution . . . because the minor's records are sealed."].)

Penal Code section 1203.4 is another example of a dismissal statute that is not as broad as section 793. It provides that dismissal releases the defendant from "all penalties and disabilities resulting from the offense of which he or she has been convicted." In *People v. Gross* (2015) 238 Cal.App.4th 1313, 1315-1316, the court considered whether a dismissal pursuant to section 1203.4 relieved the defendant of his obligation to pay direct victim restitution. The court held that it did not because direct victim restitution "is not a penalty or disability."

Section 793, unlike Penal Code section 1203.4, does not merely release a minor from all penalties or disabilities, but wipes the minor's slate clean as if the arrest had never occurred. While restitution may survive a dismissal under Penal Code section 1203.4, it does not survive a dismissal under section 793. The arrest deemed never to have occurred and record sealing language in section 793 is a broader protection than releasing a defendant from penalties and disabilities.

Courts have interpreted protections similar to those found in section 793 very broadly. (See *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 230 [barring administrative action taken against a

licensee based upon an arrest report when the licensee had completed diversion and the arrest was deemed never to have occurred]; *Parmett v. Superior Court* (1989) 212 Cal.App.3d 1261, 1268 [discovery barred in civil suit of facts related to arrest that was deemed never to have occurred].) If administrative action and discovery are prohibited by such language, a civil judgment should be too.

In 2000, the voters added the juvenile DEJ program via Proposition 21. The uncodified findings and declarations make clear that successful completion of DEJ was intended to result in "expungement."

> Juvenile court resources are spent disproportionately on violent offenders with little chance to be rehabilitated. If California is going to avoid the predicted wave of juvenile crime in the next decade, greater resources, attention, and accountability must be focused on less serious offenders, such as burglars, car thieves, and first time non-violent felons who have potential for rehabilitation. This act must form part of a comprehensive juvenile justice reform package which incorporates major commitments to already commenced 'at-risk' youth early intervention programs and expanded informal juvenile court alternatives for low-level offenders. These efforts, which emphasize rehabilitative protocols over incarceration, must be expanded as well under the provisions of this act, which requires first time, non-violent juvenile felons to appear in court, admit guilt for their offenses, and be held accountable, but also be given a non-custodial opportunity to demonstrate through good conduct and compliance with a court-monitored treatment and supervision program that the record of the juvenile's offense should justly be expunged.

(Voter Information Guide, Primary Elec. (Mar. 7, 2000) text of Prop. 21, § 2, subd. (j), p. 119.)

The extent of expungement varies from context to context. Some expungement statutes, like section 786 and Penal Code section 1203.4,

specifically allow unpaid restitution to be converted to a civil judgment. Section 793 does not. The voters intended the DEJ program to be a "carrot-and-stick" approach to juvenile crime. (See *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1327-1328.) Reading section 793 to authorize conversion of unpaid restitution to a civil judgment makes the carrot of expungement less rewarding than was intended. The Court of Appeal below reached a contrary conclusion by ignoring the differences between section 793 and the statutes governing expungement in other contexts.

G.C. v. Superior Court (2010) 183 Cal.App.4th 371, 378, recognized that restitution does not survive the dismissal of a section 602 petition in the DEJ context and emphasized the importance of discretion in setting a realistic restitution amount which the minor can satisfy during the deferral period. That interpretation harmonizes all the relevant provisions. It gives full effect to section 793's broad protections while allowing the restitution conversion provisions in 730.6, 742.16, and 786 to continue to operate within their respective spheres (to adjudged minors and minors who complete formal probation or informal supervision). "A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions." (*State Dept. Of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955-956.) "[T]he requirement that courts harmonize potentially inconsistent statutes when possible is not a license to redraft the statutes to strike a compromise that the Legislature did not reach." (*Id.* at p. 956.)

The Court of Appeal in the present case essentially redrafted section 793 to contain an exception that allows unpaid restitution to be converted to a civil judgment. That strikes a compromise the drafters did not reach. This Court is respectfully urged to reverse the conversion order.

II. THE JUVENILE COURT ERRED BY [redacted].

A. The juvenile court violated the federal anti-alienation provisions [redacted].

Federal law contains anti-alienation provisions that protect SSI and SSD benefits from garnishment, levy, attachment, or other legal process. (42 U.S.C. §§ 407(a), 1383(d)(1).) Notwithstanding the anti-alienation provisions, the juvenile court [redacted] The Court of Appeal affirmed, following *Kays v. State* (Ind. 2012) 963 N.E.2d 507, 510. (Slip Op., at p. 14.) For the reasons set forth below, *Kays* should not be followed because it trivializes the Supremacy Clause and is antithetical to the federal benefit programs. This Court should reverse.

This issue presents a question of law, which this Court reviews de novo. (See *People v. Cromer* (2001) 24 Cal.4th 889, 894.)

Federal law protects SSD and SSI benefits from "execution, levy, attachment, garnishment, or other legal process . . . ." (42 U.S.C. §§ 407(a), 1383(d)(1).) If a state executes, levies, attaches, garnishes, or uses other legal process to reach SSD or SSI benefits, it violates those anti-alienation provisions and the Supremacy Clause of the United States Constitution. (*Bennett v. Arkansas* (1988) 485 U.S. 395, 397-398.) The United States Supreme Court has struck down a number of direct attempts by states to attach SSI and SSD benefits. (See *id.*; *Philpott v. Essex County Welfare Bd.*

(1973) 409 U.S. 413.)

However, to date, the United States Supreme Court has not specifically decided whether a state court violates the anti-alienation provisions if it treats SSI and SSD benefits as income for purposes of assessing a defendant's ability to pay restitution. (See, e.g., *Bennett*, *supra*, 485 U.S. at pp. 397-398 [invalidating direct state attempt to attach Social Security benefits]; *Philpott*, *supra*, 409 U.S. at pp. 413-417 [same]; *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler* (2003) 537 U.S. 371, 385 (*Keffeler*) [upholding state's use of foster children's Social Security benefits where state was acting as a representative payee].)

A number of state courts have considered the issue and are split on it. Most have held that doing so amounts to "other legal process" in violation of the anti-alienation statute. (See, e.g., *State v. Eaton* (Mont. 2004) 99 P.3d 661, 665-666; *City of Richland v. Wakefield* (Wash. 2016) 380 P.3d 459, 465-466) But at least one has reached the opposite conclusion. (See *Kays v. State*, *supra*, 963 N.E.2d 507, 510.)

The United States Supreme Court explored the meaning of the term "other legal process" in *Keffeler*. There, the State of Washington had been appointed by the Social Security Commissioner to act as representative payee for some foster children's Social Security benefits. (*Keffeler*, *supra*, 537 U.S. at pp. 375-379.) Washington, in turn, used those Social Security benefits to reimburse itself for expenditures it made for the foster children's care and maintenance. (*Ibid.*) The foster children sued the state arguing that its use of the benefits amounted to "other legal process" in violation of the anti-alienation provisions. (*Id.* at pp. 379-381.) The United States Supreme Court disagreed. (*Id.* at p. 392.)

The Court defined "other legal process" as "some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." (*Keffeler*, *supra*, 537 U.S. at p. 385.) Washington's use of the benefits did not involve the exercise of judicial or quasi-judicial authority, was not done in an effort to secure discharge of an enforceable obligation, and was completely consistent with the objectives of the Social Security program to provide care and maintenance for the children. (*Id.* at pp. 386-387.)

By contrast, a court treating Social Security benefits as income when assessing an individual's ability to pay restitution is "other legal process." It is undeniably a judicial mechanism designed to secure discharge, to the maximum extent possible, of an enforceable liability (restitution) and it is by no means consistent with providing for the beneficiary's care and maintenance as it ultimately diverts funds from the beneficiary to a third-party victim.

Nevertheless, some courts have reasoned that considering SSI or SSD benefits as income for making an ability to pay determination does not amount to other legal process because it does not specifically require a defendant to use his or her SSI or SSD benefits to pay restitution. (See *Kays*, *supra*, 963 N.E.2d at p. 510.) That analysis is flawed because it fails to recognize that in many cases, including this one, the defendant's only source of income is SSI and SSD benefits. There is no other source, aside from Social Security benefits, from which restitution payments can be made.

In *Kays*, a woman, Kays, hit her neighbor with a pipe during a dispute causing $1,496.15 in medical bills. (963 N.E.2d at pp. 508-509.) Kays was convicted of misdemeanor battery and ordered to pay restitution to her neighbor in the same amount as the medical bills. (*Ibid.*) On appeal, she argued that the trial court violated the federal anti-alienation statute by considering her monthly $674 SSD benefit to be income for restitution purposes. The Indiana Supreme Court disagreed reasoning, "ignoring a defendant's social security income may paint a distorted picture of her ability to pay restitution. For example, a debt-free defendant who lives with a family member and receives room and board at no charge may very well have the ability to pay restitution even if her only income is from social security. This does not mean that the State could levy against that income to collect the restitution, but it does reflect an important part of the person's total financial picture that a trial court may consider in determining ability to pay." (*Id.* at pp. 510-511.)

That logic is flawed because it fails to address whether treating social security benefits as income for ability to pay purposes amounts to "other legal process." It is also inapplicable where, as here, [redacted] While the defendant in *Kays* might have had other resources aside from social security benefits from which restitution could be satisfied, the record in this case reflects [redacted]

Kays relied on three federal decisions. The first, *United States v. Lampien* (7th Cir. 2001) 1 Fed.Appx. 528, 531-532, does hold that prospective social security benefits can be treated as income for restitution purposes. However, the argument in the case centered on whether social

security benefits should be treated as income if the defendant was age-eligible to receive them but was electing to wait. (*Id.* at p. 532.) Neither the court nor the parties addressed the impact of the anti-alienation provisions.

The second, *United States v. Smith* (4th Cir. 1995) 47 F.3d 681, involved a district court ordering a defendant, Smith, to turn over his monthly pension as restitution for a fraud he had committed. He appealed, arguing that ERISA's anti-alienation provisions prohibited that order. The appellate court agreed and found that "approach . . . impermissible." (*Id.* at p. 684.) The appellate court provided the following guidance: "Although a court cannot mechanically deprive Smith of his pension benefits, it can determine restitution based on a balance of the victims' interest in compensation and Smith's *other financial resources*." (*Ibid.*, italics added.)

Kays interpreted *Smith* as holding that pension benefits could be considered in determining an appropriate amount of restitution. (47 F.3d at p. 684.) But *Smith* holds that only "other financial resources," and not pension benefits, should be considered when assessing ability to pay. (*Ibid.*) Thus, it reaches the opposite conclusion of *Kays*.

The third case, *Gleave v. Graham* (W.D.N.Y. 1999) 954 F. Supp. 599, 611, concluded that veteran's benefits could be treated as income for ability to pay purposes without violating anti-alienation provisions similar to those involved here. However, *Gleave* is distinguishable and does not provide persuasive support for the proposition that SSI benefits can be used to satisfy a restitution award. The court invoked the maxim "inclusio unis est exclusion alterius" without analyzing whether treating the benefits as income amounted to "other legal process." (*Id.* at p. 611.) The court also held that even if the calculation did qualify as "other legal process" it did not violate the anti-alienation provision because it fell within an express

exception that permits alienation of benefits for claims made by the federal government. (*Ibid.*)

In sum, this Court should not follow *Kays*. Instead, it should follow those decisions which have held the anti-alienation provisions prohibit treating Social Security benefits as income. (See *In re S.M.* (2012) 209 Cal.App.4th 21, 29-30 [considering SSI benefits as income for ability to pay purposes "would be antithetical to the purpose of the SSI program of assuring a minimal level of income for the indigent blind, aged, and disabled."]; *State v. Eaton*, *supra*, 99 P.3d 661 [finding that the anti-alienation provisions prohibited treating Social Security benefits as income for restitution purposes]; *Anderson v. Cranmer* (10th Cir. 2012) 697 F.3d 1314, 1315-1318 [SSI benefits should not be treated as income during bankruptcy proceedings due to the anti-alienation provisions].)

City of Richland v. Wakefield, *supra*, 380 P.3d 459, 465-466, is a recent decision involving facts similar to those at issue here: a trial court ordered a defendant to make monthly payments toward her legal financial obligations (LFOs), but the defendant's only income was Social Security benefits. Wakefield argued that the order violated the federal anti-alienation provisions "because it legally requires her to make a payment from her social security disability benefits . . . since she has no other income [and] there is no other source from which her LFOs could be paid." (*Id.* at p. 465.) The Washington Supreme Court agreed:

> [C]ourts have rejected the view that the antiattachment provisions prohibit only direct attachment and garnishment, and have instead held that a court ordering LFO payments from a person who receives only social security disability payments is an "other legal process" by which to reach those protected funds. This comports with the Supreme Court's key ruling on the definition of "other legal process," which

> explained that it is a process that involves "some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." *Wash. State Dep't of Soc. Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385, 123 S.Ct. 1017, 154 L.Ed.2d 972 (2003). In this case, the court ordered Wakefield to turn over $15 from her social security disability payments each month. That meets the Supreme Court's definition of "other legal process." Accordingly, we hold that federal law prohibits courts from ordering defendants to pay LFOs if the person's only source of income is social security disability.

(*Id.* at pp. 465-466.)[3]

Unlike *Wakefield*, the Court of Appeal below did not analyze whether the juvenile court's action [redacted] amounted to "other legal process." Instead, it followed *Kays*, which involved the distinguishable circumstance of a defendant who had non-Social Security assets to which income could be imputed. (See Slip Op., at p. 14.) The Court of Appeal also cited two federal regulations (20 C.F.R. §§ 416.635(a), 416.640(a)) and article I, section 28 of the California Constitution. (Slip Op., at p. 13.)

The Court of Appeal reasoned that the regulations permit SSI benefits to be used to pay a portion of an individual's monthly expenses, suggesting that restitution can be one such expense. (Slip Op., at p. 13.) However, the cited regulations allow SSI benefits to be used for completely different things like "costs incurred in obtaining food, shelter, clothing,

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[3] The respondents in *Wakefield* conceded error and informed the Washington Supreme Court "there is no good faith legal argument to be made in opposition" as they perceived it to be their duty to do "when an asserted legal position is no longer tenable." (380 P.3d at p. 463.)

medical care and personal comfort items." (20 C.F.R. §§ 416.635(a), 416.640(a) (2016).) Unlike restitution, these costs are for items needed for the personal needs of the SSI recipient. They do not suggest that benefits can be used to satisfy the recipient's financial obligations to others.

And while the article I, section 28 does make victim restitution a matter of state constitutional importance, state action that is antithetical to federal law violates the Supremacy Clause regardless of whether it is permitted by the state constitution. (See *Bennett*, *supra*, 485 U.S. at pp. 397-398.) This Court should reverse the judgment of the Court of Appeal.

B. The juvenile court abused its discretion by [redacted].

If restitution is imposed as a condition of DEJ probation in a vandalism case, the juvenile court must impose an amount "to the extent the minor or [his family] have the ability to do so." (§ 742.16, subd. (a).) [redacted].

This Court reviews the juvenile court's restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.) "The abuse of discretion standard is deferential, but it is not empty. It asks in substance whether the ruling in question falls outside the bounds of reason under the applicable law and the relevant facts." (*Ibid.*, internal citations and quotations omitted.)

The juvenile court's order in this case falls outside the bounds of reason under the applicable law and relevant facts. Under the applicable law, the juvenile court was required to reduce total restitution to an amount

J.G. was capable of repaying during the deferral period, [redacted].

In a DEJ case, juvenile courts are not required to impose restitution as a condition of DEJ probation. (See § 794 [restitution "may" be imposed].) But if a court imposes it in a vandalism case, the court must take into account the minor and his family's ability to pay. (§ 742.16, subd. (a).) If there is not an ability to pay full restitution during the deferral period, a lesser amount should be imposed. (See *Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 744-745.)

In *Charles S.*, this Court found an abuse of discretion where a probation officer failed to reduce restitution to amount a minor could repay during a six-month probationary period. (32 Cal.3d at pp. 744-745.) There, a section 602 petition was filed against a minor for stealing go-carts. (*Id.* at p. 744.) The probation officer found him to be a suitable candidate for informal probation under section 654. (*Ibid.*) However, the minor and his parents did not have the ability to pay the full restitution amount during the six-month probationary period. (*Ibid.*) The probation officer tried lowering the restitution amount from $833 to $550, which he believed the minor could repay during the six-month probationary period, but the minor and his family were in "dire financial straights" and could not even pay that reduced amount. (*Id.* at pp. 744-745.) On account of their inability to pay restitution, probation recommended that informal probation be denied. (*Ibid.*) The juvenile court questioned whether it had the authority to reconsider the probation officer's recommendation, but commenced formal proceedings anyway because it did not believe the recommendation was an abuse of discretion. (*Id.* at p. 745.)

This Court concluded otherwise: "the probation officer recognized Charles' financial difficulties and reduced the total amount of restitution

required. The officer, however, conceded that this sum was still beyond the family's ability to pay. He therefore abused his discretion in requiring this level of restitution." (*Id.* at p. 751.) This Court reasoned that restitution failed to serve a valid purpose when a minor lacked the ability to pay it. (*Id.* at pp. 750-751.)

While the probation officer in *Charles S.* at least attempted to reduce restitution to an amount the minor could repay during the relevant probationary period, [redacted].

The Court of Appeal disagreed based on two inaccuracies, one legal and one factual: that restitution always follows a minor into adulthood, and that the juvenile court "properly concluded that [J.G.] could make restitution payments in the future." (Slip Op., at p. 15.) As explained in argument I, *ante*, restitution follows some minors into adulthood, but not those who complete DEJ. (See § 793.) [redacted]. The amount must be reduced to an amount the minor can repay during the deferral period because, once the minor completes DEJ, his or her slate is wiped clean as if the underlying arrest had never occurred, and restitution ceases to exist. (See Argument I, ante [discussing why unpaid restitution does not survive when a minor

completes DEJ]; *G.C.*, *supra*, 183 Cal.App.4th at p. 378 [discussing how the ability to pay requirement operates in the DEJ context and concluding that it operated as set forth above].)

Even assuming, arguendo, that restitution survives DEJ completion, the Court of Appeal is wrong to say the juvenile court "properly concluded that [J.G.] could make restitution payments in the future."

In re Brian S. (1982) 130 Cal.App.3d 523 [finding a minor had the ability to make future restitution payments where the amount of restitution was not "exorbitant" and there was no evidence that the minor was impoverished or disabled].)

C. The juvenile court was statutorily prohibited

Section 742.16, subdivision (n) caps restitution at $20,000 per tort of the minor.

the Court of Appeal found the argument forfeited. (Slip Op., at p. 16.) The Court of Appeal reasoned, "considerations of fairness preclude us from considering minor's claim on appeal" because the

"juvenile court and the prosecutor did not have an opportunity to address minor's specific claim, and facts concerning which acts of vandalism minor committed were not developed." (Slip Op., at p. 16.) There is nothing unfair about enforcing the requirements of section 742.16.

Forfeiture and the applicability of section 742.16 are legal questions, which this Court reviews de novo. (See *People v. Cromer* (2001) 24 Cal.4th 889, 894.)

Some challenges to restitution orders are forfeited if they are not raised below. (See *People v. Brasure* (2008) 42 Cal.4th 1037, 1075.) For example, in *Brasure*, the defendant was convicted of murder and, at the prosecutor's request, the court imposed $102,500 in restitution for the victim's mother's lost wages. While the defendant did not object to that order, he argued on appeal that the evidence offered in support of it was insufficient. (*Ibid.*) This Court found the issue forfeited: "[B]y his failure to object, defendant forfeited any claim that the order was merely unwarranted by the evidence, as distinct from being unauthorized by statute." (*Ibid.*)

The claim in this case is different than the one involved in *Brasure* because it involves an order that is both unauthorized by statute and unwarranted by the evidence. As discussed above, section 742.16, subdivision (n) authorizes a maximum of $20,000 in restitution per tort of the minor. Thus, imposition of any amount beyond that cap is unauthorized unless it is supported by evidence that the minor committed more than one tort that resulted in damages. [redacted]

[redacted] (Cf. *People v. Harvey* (1979) 25 Cal.3d 754.) [redacted]

Where, as here, a restitution statute imposes a particular requirement and that requirement is not met, the evidence is insufficient and reversal is required. (See *Luis M. v. Superior Court* (2014) 59 Cal.4th 300.) Assuming, arguendo, that there has been a forfeiture, J.G. respectfully requests that this Court exercise its discretion to reach the merits. (See *People v. Williams* (1998) 17 Cal.4th 148, fn. 6 [appellate court possesses discretion to reach merits of issues that are technically forfeited].)

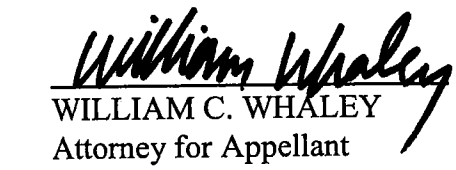
* * * * *

CONCLUSION

For the reasons set forth above, the juvenile court violated [redacted] By affirming, the Court of Appeal perpetuated those errors. This Court should reverse the judgment and vacate [redacted].

DATED: July 19, 2017

Respectfully submitted,



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Certificate of Appellate Counsel Pursuant to rule 8.204(c)(1) and rule 8.360(b) of the California Rules of Court

I, William Whaley, appointed counsel for appellant, certify pursuant to rule 8.204 of the California Rules of Court, that I prepared this Brief On the Merits on behalf of my client, and that the word count for this brief is 7,672 words.

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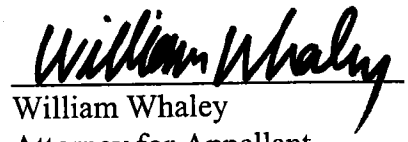

William Whaley
Attorney for Appellant

Re: *The People v. J.G.*, Case No. S240397

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I, *Debra Lancaster*, declare as follows:

I am, and was at the time of the service mentioned in this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is eservice@capcentral.org and my business address is 2150 River Plaza Dr., Ste. 300, Sacramento, CA 95833 in Sacramento County, California.

On **July 20, 2017**, I served the persons and/or entities listed below by the method checked. For those marked "Served Electronically," I transmitted a PDF version of **REDACTED VERSION Redacts Material from Sealed Record** Contains material from sealed record Contains material from sealed record by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately **11:30 AM** For those marked "Served by Mail," I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place shown below, following the Central California Appellate Program's ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

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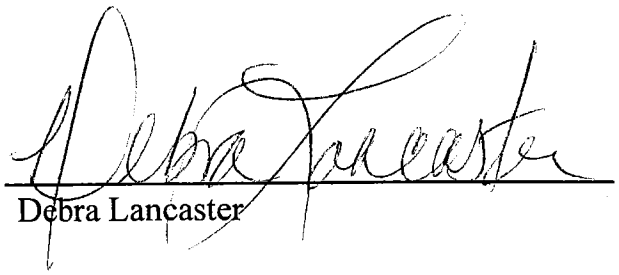
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 20, 2017**, at Sacramento, California.



Debra Lancaster