IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA	No. S270907
	Sixth District Court of Appeal
Plaintiff and Respondent	Case No. H048693
	Santa Cruz County Superior Court
v.	Nos. 19JU00191A, B, C
F.M.	
	The Honorable
Defendant and Appellant	Denine Guy, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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ARGUMENT

I. THE TRIAL COURT'S FAILURE TO COMPLY WITH WELFARE AND INSTITUTIONS CODE SECTION 702 WAS NOT FORFEITED.

As a threshold matter respondent argues that appellant's Welfare and Institutions Code section 702 claim was waived when trial counsel failed to object at the time of disposition.[1] (ABM 20-27.) Respondent argues that position is supported by this Court's recent decision *In re G.C.* (2020) 8 Cal.5th 1119. (ABM 21-23.)

A. Respondent Missed Its Opportunity To Raise New Issues When It Failed To File An Answer To The Petition For Review.

Although the issue of forfeiture was not included in the question presented, respondent raises it pursuant to California Rules of Court, rule 8.516, subdivision (b)(2), on the grounds that the parties briefed it below and it was part of the Court of Appeal's decision. (ABM 21.) It is appellant's position that the plain language of rule 8.516 allows this Court to raise and decide issues it feels are appropriate, but does not permit the parties to raise additional issues on their own for the first time in an answer. While rule 8.516 addresses what *this Court* may do, rule 8.500, subdivision (a), addresses what *the parties* may do.

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

Subdivision (a)(2) states, "A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review." Thus the appropriate way for respondent to raise its jurisdictional issue would have been the filing of an answer to the petition. Respondent chose not to take that opportunity and should not be permitted to raise new issues now based on rules applicable to this Court's own authority.

B. The Court Of Appeals Correctly Decided The Issue Of Jurisdiction Based On This Court's Decision In *G.C.*

If the Court finds that respondent may appropriately raise the forfeiture issue it is appellant's position that the Court of Appeals correctly read and applied this Court's recent decision in *In re G.C.*, *supra*, 8 Cal.5th 1119, and that it's finding on the issue should be left undisturbed. At issue in *G.C.* was whether the appellate court had jurisdiction over a claimed *Manzy W.* error once the time to appeal the dispositional orders had expired. (*Id*. at p. 1122.) G.C. was charged with three wobbler offenses in two separate wardship petitions. The court did not fulfill its obligations under section 702, at either the jurisdictional or dispositional hearing, and no notice of appeal was filed following the disposition. (*Id*. at pp. 1123-1124.) Seven months after G.C.'s dispositional hearing, a section 777 petition was filed alleging violations of her probation. (*Id*. at p. 1124.) At the dispositional hearing on the 777 petition, additional gang and electronic search probation conditions were

imposed and trial counsel filed a notice of appeal challenging those probation conditions. (*In re G.C.*, *supra*, 8 Cal.5th at p. 1124.) By way of that appeal, counsel argued that the appellate court had jurisdiction to resolve the *Manzy W.* claim which had not previously been addressed because "all petitions in a juvenile proceeding are considered one case, and a timely appeal of one petition confers jurisdiction over all petitions." (*Id*. at p. 1126.) *G.C.* disagreed with that argument, finding that a notice of appeal was needed following the dispositional hearing to properly confer jurisdiction over issues which arose from that proceeding. (*Id*. at pp. 1126-1129.)

G.C. further argued that *Manzy W*. error was correctible at any time, even in the absence of a timely notice of appeal, because it was tantamount to an unauthorized sentence. (*Id*. at p. 1129.) This Court disagreed, holding that the unauthorized sentence rule "is an exception to the waiver doctrine, not to the jurisdictional requirement of a timely notice of appeal." (*Ibid*., internal citations omitted, original italics.) Thus the forfeiture discussed in *G.C.* addressed lack of jurisdiction due to counsel's failure to raise issues in a timely appeal, and potential exceptions to that procedural bar, not counsel's failure to object to *Manzy W.* error at the dispositional hearing when a timely notice of appeal has been filed.

In addition to not being supported by *G.C.*, forfeiture should not be applied to appellant's claim for other reasons. First, *Manzy W.* error occurs in cases where the court utterly failed to exercise the discretion it

was supposed to use. In those instances, the court failed in its core mission: to consider all of the options in front of it, to consider the child in front of it, and to decide which among all of the possible options— including reducing some of these charges to misdemeanors— was in the minor's best interest. In this way the error rises to the level of being structural in its importance.

Another reason that forfeiture is not appropriate for *Manzy W.* error is that finality does not exist in juvenile cases in the same way that it does in adult cases. Whether the juvenile is placed in a secure facility, placed outside of the home, or is monitored by probation at home, the court schedules review dates as a matter of course and retains the authority to make sentence modifications. The court retains this authority until the time of dismissal and sealing, the expiration of probation without sealing, or until the time that jurisdiction expires due to the juvenile's age. Thus there is a significant distinction in finality from adult cases where the sentencing court loses jurisdiction 120 days after sentencing occurs.[2]

Here, the Court of Appeal correctly held that appellant filed a timely notice of appeal following the dispositional hearing which properly preserved jurisdiction over appellant's asserted *Manzy W.* error.

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[2] See Penal Code, section 1170, subdivision (d)(1).

II. REMAND WOULD NOT BE REDUNDANT IN THIS CASE.

Respondent does not oppose the continuing use of this Court's rule in *In re Manzy W.* (1997) 14 Cal.4th 1199. Respondent only asserts that remand would be redundant in this case since the record clearly shows that the trial court treated the offenses as felonies. (ABM 34-39.) Additionally, respondent argues that whether remand is required should be assessed under the standard in *People v. Watson* (1956) 46 Cal.2d 818. (ABM 29.)

A. The Correct Standard For Remand Should Be That Articulated In *Manzy W.*

Respondent argues that remand should be assessed under the standard articulated in *People v. Watson* (1956) 46 Cal.2d 818. (ABM 29.) However, this Court provided its own standard for remand when assessing section 702 error in *Manzy W.* According to *Manzy W.*, remand is required unless the record otherwise demonstrates that the court knew of and exercised its discretion. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1209.) This standard correctly presumes that remand is appropriate unless the record demonstrates otherwise to the degree that it would be "merely redundant." (*Ibid.*) This presumption in favor of remand is not present under a *Watson* standard. Under *Watson*, there is a presumption against remand unless the appellant can demonstrate a reasonable probability that a more favorable result would have been reached absent the error. (*People v. Watson*, *supra*, 46 Cal.2d at p. 836.) Put simply, respondent is

requesting that this Court use a standard that shifts the burden in respondent's favor against the plain language of *Manzy W*.

This Court should apply *Manzy W.'s* remand standard for another reason— it correctly recognizes that the sentencing court should actually exercise its discretion when it has previously failed to do so. (See *People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8.: "Defendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court.") At disposition appellant was entitled to the court's discretionary exercise in deciding whether the wobbler offenses should finally be misdemeanors or felonies. When there is no evidence that the court underwent a discretionary exercise at all, *Watson* is an ill fit because the reviewing court has nothing on which to base its conclusion of how such an exercise may have turned out. *Manzy W.'s* standard removes this problem— the sentencing judge who is most familiar with appellant and the facts of his case should actually go through a discretionary exercise in determining the appropriate disposition.

For these reasons appellant requests that this Court follow *Manzy W.'s* standard and remand the matter to the sentencing court.

B. The Court's Treatment Of Appellant's Matters As Felonies Does Not Show That It Knew They Could Be Misdemeanors But Nevertheless Chose To Find They Were Felonies.

Respondent argues that remand is not required in this case because the record clearly shows that the trial court treated the wobbler offenses as

felonies. (ABM 34-39.) Respondent points out the following: (1) appellant's admissions were to felonies (ABM 35); (2) the minute orders had a box checked by the clerk stating the matters were felonies (ABM 35) and; (3) the court imposed felony level confinement. (ABM 36.) But these factors alone are not adequate to show that the *court knew* that the offenses could be misdemeanors but chose to treat them as felonies after undergoing some discretionary exercise. Respondent's arguments are essentially indistinguishable from those rejected in *In re Dennis C.* (1980) 104 Cal.App.3d 16, *In re Jefferey M.* (1980) 110 Cal.App.3d 983, *In re Ricky H.* (1981) 30 Cal.3d 176, and *In re Kenneth H.* (1983) 33 Cal.3d 616.

Additionally and contrary to respondent's claim, appellant's reference to sentencing guidelines under the rules of court and factors for reducing a felony to a misdemeanor under Penal Code, section 17, subdivision (b) were not mentioned to suggest this Court require a pronouncement of what is being considered in order to comply with section 702. (ABM 32 citing OBM 20.) Appellant is only pointing out that — in the absence of an express declaration— the record must include evidence of the court *saying something* that approaches a discretionary exercise in selecting a felony instead of a misdemeanor. Without anything more than the way the charges are filed and the clerk's minutes, we are left only with evidence of what the prosecutor and courtroom staff were thinking. This is not enough to satisfy *Manzy W.* and remand is appropriate.

CONCLUSION

Appellant respectfully requests that this Court reverse the Court of Appeal's decision and remand the matter for the court to fulfill its statutory duty under Welfare and Institutions Code section 702.

Dated: April 20, 2022

Michael Reed

Michael Reed, Esq.
Attorney for Defendant-Appellant

CERTIFICATE OF COMPLIANCE WITH WORD LIMITATIONS

I, Michael Reed, certify that the length of Appellant's Reply Brief On The Merits complies with the requirements of California Rules of Court, Rule 8.360, subdivision (b)(1), 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 2,192.

Dated: April 20, 2022

Michael Reed

Michael Reed, Esq.
Attorney for Defendant-Appellant

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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 Appellant's Reply Brief On The Merits on the parties below:

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6. F.M.

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 April 20, 2022.

Michael Reed

_____

Michael Reed

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S270907**
Lower Court Case Number: **H048693**

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