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

REPLY BRIEF ON THE MERITS

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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

Appellant contends that "the plain language of rule 5.778" allows a minor to "plead no contest to allegations in a section 602 petition without the consent of his or her attorney." (AAB[1] 4.) Appellant further argues that such an interpretation of the rule is "consistent with section 657, subdivision (b) [of the Welfare and Institutions Code], which requires a minor's attorney to consent when the minor *admits* allegations in the petition." (AAB 4, italics in original.) Appellant's arguments are without merit.

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

The statutes and rules governing admissions and no contest pleas are set forth in respondent's opening brief on the merits. Respondent will not readdress these statutes and rules in their entirety, but will instead limit the discussion to two issues raised by appellant's answering brief.

California Rules of Court, rule 5.778(e)[2] in its current form simply states that, "The child may enter a plea of no contest to the allegations, subject to the approval of the court." The rule does not explicitly state that such a plea may be entered "without the consent of his or her attorney." (See AAB 4.)

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[1] "AAB" refers to Appellant's Answer Brief on the Merits. For the sake of consistency, respondent will adopt appellant's other references, such as "RMB" for Respondent's Opening Brief on the Merits. (See AAB 1, fn. 2.)

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

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

As discussed in respondent's opening brief on the merits, Welfare and Institutions Code section 657, subdivision (b), clearly establishes that counsel's consent is required before a minor may admit allegations in a petition.[3] (RMB 8.) Rule 5.778(d) conforms with the statute and notes the consent requirement when a minor is admitting the allegations. Rule 5.778(e) then presents an option of entering a no contest plea—an option that is not provided anywhere in the Welfare and Institutions Code.

Respondent's argument is based primarily on the premise that an admission and a no contest plea have the same legal effect upon the proceedings. As such, respondent submits that it must follow that any safeguards implemented to protect the minor when entering an admission should also apply when the minor wishes to enter a no contest plea.

1. Rule 5.778(e) is inconsistent with Welfare and Institutions Code section 657 to the extent it allows a minor to enter a no contest plea without the consent of counsel

In respondent's opening brief, respondent argued that, to the extent rule 5.778(e) allows a minor to enter a no contest plea without the consent of counsel, it conflicts with section 657, subdivision (b), and it is therefore invalid. (RMB 9-10.) Appellant responded that because section 657 does not directly address no contest pleas, rule 5.778(e) is not inconsistent with the statute. (AAB 10-11.) Instead, appellant submits that rule 5.778(e) "establishes a new practice" and "fills a gap left by the statute." (AAB 11.)

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[3] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

As such, appellant submits that the rule "builds upon and is consistent with section 657, subdivision (b)." (AAB 14.)

Appellant's argument, however, ignores the fact that the legislative intent behind section 657, subdivision (b), was to allow a minor to forgo a jurisdictional hearing, while protecting the minor's rights by requiring the consent of counsel to do so. Allowing a no contest plea without the consent of counsel would allow a minor to forgo a jurisdictional hearing designed to protect the minor's rights, as the Legislature clearly requires under section 657, subdivision (b). To the extent that rule 5.778(e) allows a minor to waive such a right without the protection of counsel's consent, it is inconsistent with the Welfare and Institutions Code.

2. The Legislature's inaction regarding amendments to Welfare and Institutions Code section 657 does not establish that rule 5.778(e) is consistent with the statute

The fact that section 657, subdivision (b), has not been amended to address rule 5.778(e) and no contest pleas does not offer any guidance on the Legislature's intent. Appellant seems to argue that because section 657, subdivision (b), was amended after the rule regarding no contest pleas was established (as rule 1354) in 1977[4], there is evidence of "the Legislature's

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[4] In respondent's opening brief, respondent briefly noted the history behind rule 5.778. (See RMB 7, fn 1.) As noted therein, rule 5.778 was initially enacted in 1977 as rule 1354. Appellant points out that at the time rule 1354 was enacted, it included language referencing Penal Code section 1016, and stated, "For the purpose of these rules, the procedure for and legal effect of an entry of no contest shall be the same as that of an admission, but the entry of no contest may not be used against the minor as an admission in any other action or proceeding." (See AAB 30.)

In 1989, rule 1354 was renumbered to rule 1488. In 1991, the rule was amended and renumbered to rule 1487. As appellant notes, the 1991 amendment removed, without comment, the language regarding "the procedure for and legal effect of an entry of no contest." (See AAB 30-31.)

belief that a no contest plea subject to the approval of the juvenile court is not inconsistent with section 657." (AAB 14-15.) This argument, however, ignores the fact that in 1984, the last time that section 657, subdivision (b), was amended, the rule of court—rule 1354 at the time—stated that "[f]or the purpose of these rules, *the procedure for* and legal effect of *an entry of no contest* shall be the same as that of an admission, but the entry of no contest may not be used against the minor as an admission in any other action or proceeding." (Italics added.)

As such, in 1984, when section 657, subdivision (b), was last amended, there was no reason for the Legislature to address no contest pleas in this context. Under the rule as then worded, the procedure for entry of a no contest plea was the same as that of an admission, and that procedure required the consent of counsel. In support of his argument, appellant cites to *Sara M. v. Superior Court* (2005) 36 Cal.4th 998. (AAB 15.) *Sara M.*, however, noted that "legislative inattention . . . is often of little significance." (*Sara M. v. Superior Court, supra,* at p. 1015.) Here, despite the length of time that has passed since the removal of the language regarding the procedure for no contest pleas from the pertinent rule, respondent is not aware of any cases that have interpreted the rule. Given the lack of controversy surrounding the rule from 1984—when section 657 was last amended—to now, any failure to amend section 657 should be considered, at most, inattention. Moreover, it is possible that the Legislature has always interpreted the rule as requiring the consent of counsel when entering a no contest plea.

3. The additional safeguards provided by the Rules of Court and the right to counsel do not eliminate the requirement of counsel's consent

Respondent has argued that allowing a minor to enter a no contest plea without the consent of counsel would "invalidly circumvent the

safeguard that was clearly established by the Legislature in Welfare and Institutions Code section 657." (RMB 10.) Appellant disagrees, arguing that "[r]ule 5.778 as a whole functions to protect a minor's rights regardless of whether the minor pleads no contest without the consent of counsel or enters an admission." (AAB 17.) Appellant then points to the "requirements for explanations and findings" that are "outlined" by rule 5.778, and he argues that they "safeguard a minor's rights regardless of whether the minor enters an admission or no contest plea." (AAB 17-21.)

But, as appellant acknowledges, the additional procedures discussed by rule 5.778 are also required upon entry of an admission. The Legislature has clearly established that, despite these additional safeguards that are in place, counsel must still consent to the minor's admission. As such, it seems clear that the "safeguards" imposed by rule 5.778(f) were to be in addition to the protection provided by requiring counsel's consent. Moreover, as noted by respondent in the opening brief, the requirements under rule 5.778(f) are not at issue until a court determines whether or not a factual basis exists for a plea that has already been agreed upon by the parties.[5] (RMB 11-12.)

Respondent also submits that the same argument is true when it comes to appellant's claim that "[n]othing about [his] interpretation of rule 5.778 prevents the minor's counsel from effectively representing the minor and providing competent advice regarding the minor's case." (AAB 23-24.) While this may be true, it misses the point. As respondent has argued, there is a valid reason for imposing the consent of counsel requirement upon minors. That reasoning applies equally to admissions and no contest pleas. The fact that counsel is still obligated to provide competent advice does not

[5] Rule 5.778(f) discusses the findings that must be made by the court upon an admission or a no contest plea.

negate the Legislature's finding that it is necessary to protect the rights of minors by imposing the consent requirement.

Appellant also makes a conclusory statement that "[t]he fact that a juvenile may waive numerous constitutional rights without the consent or assistance of counsel demonstrates that allowing a minor to plead no contest without the consent of counsel does not impermissibly circumvent section 657, subdivision (b)." (AAB 25.) Respondent first notes that, unlike the waiver of other rights, an admission or a no contest plea has a unique legal effect. Specifically, they are the only ways in which a minor can essentially relieve the prosecutor of his or her burden to prove the charges against the minor. As such, they deserve the type of special attention that they have been provided by the Legislature in requiring counsel's consent. Moreover, appellant's argument also fails to address why there should be a distinction between an admission and a plea of no contest. Despite the ability of a minor to waive other constitutional rights, the Legislature has continued to require a minor to have the consent of counsel in order to admit allegations in a petition.

For these reasons, the existence of additional safeguards does not negate the requirement of counsel's consent for an admission, nor should it negate such a requirement for the entry of a no contest plea.

4. An admission and a no contest plea have the same legal effect upon the jurisdictional hearing

An admission and the entry of a no contest plea have the same legal effect. Respondent has relied on a comparison to Penal Code section 1016, which states that "the 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."[6] (RMB 7.) Although appellant correctly notes (AAB 26) that rule 5.778 does not include such language—nor does the Welfare and Institutions Code—the omission of such language from the rule does not establish that an admission and a no contest plea have different effects.

As appellant points out (AAB 27), rule 5.778(f) discusses the procedure for the court to follow upon accepting an admission or plea of no contest. All of the subdivisions referenced by appellant, however, merely mention both "admission" and "plea of no contest." Despite listing both options, the subdivisions do not make any legal distinctions between the two. Moreover, it seems clear that, in regard to the immediate legal effect, both an admission and a no contest plea have the same effect in that they allow a minor to forgo a jurisdictional hearing and eliminate the need for the prosecutor to prove his case to the required legal standard. This is supported by the fact that rule 5.778(g) provides that, "[a]fter accepting an admission or plea of no contest, the court must proceed to disposition hearing under rules 5.782 and 5.785."

The one distinction noted by appellant (AAB 28) that appears to be valid is that a no contest plea is treated differently in the context of deferred entry of judgment (DEJ) pursuant to rule 5.800(f)(1), in that such a plea is not allowed for DEJ and an admission is required. Such a distinction, however, is limited to the requirements of DEJ and does not change the legal effect that the plea or admission has regarding the jurisdictional hearing and the prosecutor's burden.

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[6] As appellant notes (AAB 26), a no contest plea in a misdemeanor case is distinguished based on the fact that it "may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based." (Pen. Code, § 1016.)

Lastly, the fact that the rule of court has been amended to remove language regarding the legal effect of and the procedure for entering a no contest plea does not show that there was an intent to distinguish between the acts. Appellant argues that the removal of the language regarding the legal effect of a no contest plea "evidences the Council's intent that an admission and a no contest plea do not currently have the same legal effect." (AAB 31.) Appellant's argument is based upon the theory noted in *People v. Mendoza* (2000) 23 Cal.4th 896, 916, that "[w]hen construing statutes, courts 'presume the Legislature intends to change the meaning of a law when it alters the statutory language [citation], as for example when it deletes express provisions of the prior version [citation].'"

Assuming for the sake of argument that changes to the Rules of Court are subject to the same standard as legislative changes to statute, respondent disagrees with appellant's argument that removal of the language evidences the Council's intent to distinguish between the effect of an admission and a no contest plea. Past decisions have noted that changes to the California Rules of Court may be based upon an attempt to "'to avoid confusion.'" (*People v. Valenzuela* (1995) 40 Cal.App.4th 358, 365, quoting Advisory Com. Comment, Cal. Rules of Court, rule 421; see also *People v. Gutierrez* (1992) 10 Cal.App.4th 1729, 1739; *People v. Leung* (1992) 5 Cal.App.4th 482, 504.) It has also been observed that in the past the rules have been amended as a part of a comprehensive effort to revise appellate rules that had "become unduly complex, difficult to understand, or inconsistent with current law and practice." (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 926, citing Judicial Council of Cal., Admin. Off. of Cts., Advisory Com. Rep. on Appellate Rules (2002).)

Given these possible reasons behind the amendment of the rule and the absence of any discussion or committee comment regarding the change, respondent submits that the reasons behind the change in the rule to remove

language regarding the procedure for and legal effect of no contest pleas are unknown and speculation is futile.

5. Penal Code section 1018 establishes the Legislature's ability to limit fundamental rights regarding the entry of a plea

In respondent's opening brief, respondent noted that Penal Code section 1018 provides guidance regarding the ability of the Legislature to place limitations upon fundamental rights such as the ability to enter into a plea agreement. (RMB 10.) Appellant notes several differences between Welfare and Institutions Code section 657 and Penal Code section 1018. (AAB 32-33.) While differences do exist, appellant misses the point of respondent's argument. The Court of Appeal found that the juvenile court had "failed to respect Alonzo's personal choice over a fundamental decision in his case—whether to accept the prosecution's plea bargain offer." (Court of Appeal opinion at p. 3.) Respondent's reliance on Penal Code section 1018 was to show that there was precedent for the Legislature limiting a defendant's rights, even in the area of accepting plea offers.

Appellant argues that the limitation in Penal Code section 1018 was guided by an overarching concern to protect against an "'ill-advised guilty plea and the erroneous imposition of a death sentence.'" (AAB 33-34.) Appellant then acknowledges that the consent requirement in section 657, subdivision (b), was implemented with a similar intent to protect a minor's rights. (AAB 34.)

Although not as serious as the right against the erroneous imposition of a death sentence, a minor's rights are of grave importance. Allowing an uneducated, inexperienced minor to enter a no contest plea without the consent of counsel may have far reaching consequences. These are consequences that the Legislature clearly believed were important enough

to require counsel's consent prior to alleviating the prosecution of its burden to prove the case.

Appellant assumes that a minor who takes a plea will "most likely receive a more favorable outcome if he or she accepts a prosecution's plea bargain offer." (AAB 35.) Although this may be correct when the allegations are subsequently found true as they were here, this is not what always happens. There is a distinct possibility that the reason the minor's attorney is withholding consent, and the reason the prosecution is offering a generous plea deal, is because there are arguably not enough facts to prove beyond a reasonable doubt the offenses alleged in the petition. In such a situation, a minor entering into a no contest plea, not because he or she committed the offenses alleged but because he or she wanted to "go home," would be at a severe disadvantage.

6. The Court of Appeal's ruling creates a risk of judicial plea bargaining

In respondent's opening brief, respondent noted the possible risk of judicial plea bargaining associated with the Court of Appeal's interpretation of the rule. (RMB 12.) Appellant dismisses respondent's argument, arguing that "[g]iven the recent guidance on the issue of improper judicial plea bargaining, it is unlikely that a juvenile court will overstep its lawful discretion when considering whether to approve a no contest plea." (AAB 22.) According to appellant's reading of the rule, however, all that is required for a minor to enter a plea of no contest is that the court approve the entry of the plea. Nowhere in the language of the rule is there any reference to the offer of a no contest plea extended by the People. This in turn could create a situation where the People offer a "deal" for the minor to admit the charges. When defense counsel does not consent to the admission, the court could then step in and offer to allow the minor to enter

a plea of no contest, despite that not being the offer from the People. This is the type of judicial plea bargaining that respondent is referencing.[7]

CONCLUSION

For the reasons set forth herein, as well as for those set forth in respondent's opening brief on the merits, respondent respectfully requests that the Court of Appeal's judgment be reversed.

Dated: July 12, 2013

Respectfully submitted,

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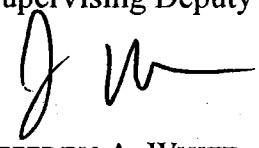

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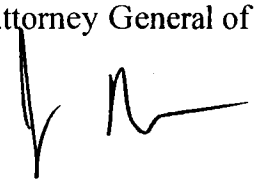
[7] In the case at bar, for example, there is nothing in the record reflecting the desire of the People to allow a no contest plea. Nonetheless, the Court of Appeal still found error by the trial court in not allowing appellant to enter into such an agreement.

CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 2,917 words.

Dated: July 12, 2013

KAMALA D. HARRIS
Attorney General of California



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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 July 12, 2013, I served the attached **RESPONDENT'S REPLY 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 July 12, 2013, at Sacramento, California.

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