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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re SEAN M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. SEAN M., Defendant and Appellant.	E035486 (Super.Ct.No. J173721) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Ronald M. Christianson, Judge. Affirmed.

Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, and Scott C. Taylor, Deputy Attorney General, for Plaintiff and Respondent.

Following a contested jurisdictional hearing, the juvenile court found true that minor committed assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),[1] grand theft of a firearm (§ 487, subd. (d)(2)), and possession of a firearm by a minor (§ 12101, subd. (a)(1)). Minor was thereafter committed to the California Youth Authority (CYA) for a maximum period of 8 years 10 months and ordered to pay a previously imposed victim restitution in the amount of $30,158 pursuant to section 1203.1. On appeal, minor contends (1) there was insufficient evidence to sustain his conviction for assault with a deadly weapon; and (2) the juvenile court erred in ordering him to pay the previously imposed victim restitution. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

After minor admitted that he had committed misdemeanor battery (§§ 242/243) upon his mother, he was declared a ward of the court and placed on formal probation in the custody of his parents on various terms and conditions on February 20, 2001. During his formal probationary period, his behavior deteriorated.

On May 29, 2001, minor was seen lighting a bush on fire using an aerosol spray can and a lighter as an improvised torch. He then walked into a nearby orchard and set the dry grass and other vegetation on fire using the same improvised torch. As a result, 35 lemon trees were destroyed.

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[1] All future statutory references are to the Penal Code unless otherwise stated.

On June 4, 2001, minor admitted to committing one count of felony arson (§ 451, subd. (c)); in exchange, another count of arson and one count of possession of a flammable material (§ 453, subd. (a)) were dismissed. Minor was thereafter continued as a ward of the court and placed on probation in the custody of the probation department pending placement. He was also ordered to pay victim restitution for damage pertaining to all counts. After failing one placement, minor successfully completed another and was returned to the home of his parents on February 3, 2003.

On April 14, 2003, about 8:00 p.m., minor got into an argument with his parents after minor's mother found her pager in minor's bedroom. Minor's mother believed that minor stole the pager from her locked bedroom. Minor's parents threatened to call minor's probation officer and searched minor's bedroom looking for other items minor may have stolen. Minor became angry and very agitated and left the room. Minor's sister said she thought she had seen minor leave the house with a gun. Minor's father ran after him.

Minor's mother then called the police. While speaking with the dispatcher and giving a description of her son, minor's mother walked outside with a cordless telephone.[2] When she spotted minor, he began walking towards her with his hands in his sweatshirt pockets. She told the dispatcher that she did not think minor had a gun. Minor then pulled out a gun and began waving it around, pointing it, and walking toward his mother while yelling, "Is this what you don't think I have?" When minor was about 16

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[2] Minor's mother's conversation with the dispatcher was played for the court and transcribed.

feet away, he pointed the gun at his mother with his finger on the trigger and continued walking toward her.

Minor's mother, still on the telephone with the dispatcher, ran toward the house. She was fearful for her safety and could hear minor's footsteps continuing behind her. Once inside the house, minor's mother closed the door and locked it. However, concerned about her husband, minor's mother went back outside to look for him. She exited the house through the garage and saw minor standing at the entrance of the open garage door. At this point, minor was standing about eight feet away from his mother, and he was still holding the gun. When minor saw his mother, he again pointed the gun at her with his finger on the trigger and told her that he did not want to hurt her and just wanted to talk. Very frightened and believing her son was capable of pulling the trigger, as he appeared extremely agitated, very desperate, and scared, minor's mother went back into the house.

Minor's mother never saw minor point the gun at himself, nor did she hear him make any statements indicating an intent to commit suicide. She was not in fear for her son's life, only her own and her husband's. Although minor had voiced thoughts of suicide on one occasion in the past to a school counselor and was placed in a hospital for observation, he later recanted those statements and stated, "I didn't want to hurt myself. I just simply wanted to get out of the house."

Sergeant Jim Anderson responded to the scene and saw that minor was being followed by a small compact car. It appeared as though the driver, minor's father, was talking to minor. When Sergeant Anderson noticed that minor was not responding to his

father, Sergeant Anderson got out of his car and asked minor to stop. Minor did not respond; instead, he placed his hands inside the front pocket of his sweatshirt. Sergeant Anderson then drew his weapon and told minor to get his hands out of his sweatshirt pocket. Minor, however, turned and walked away from the officer. While repeating his commands for minor to stop and turn around, Sergeant Anderson followed minor until they reached a dead-end street. Minor turned and faced the officer. Sergeant Anderson then told minor to turn around and place his hands behind his back. Minor complied and was taken into custody. A nine millimeter semiautomatic gun was retrieved from minor's sweatshirt pocket. The gun was cocked and loaded.

Neither of minor's parents owned any guns, and the one used in this incident had been stolen by minor from a family friend and neighbor two to three weeks prior to the incident. The family friend did not know his gun was missing until he received a call from the police after this incident.

Officer Daniel Romero spoke with minor and his mother after the incident. Both minor and his mother were crying, and minor's mother appeared distraught. After minor waived his constitutional rights, he admitted stealing the gun from the family friend about two weeks prior to the incident. He also said that he had stolen the gun to kill himself but that he did not kill himself on the day of the incident because he did not want his father to see him die either by his own hand or by Sergeant Anderson if minor had pulled the gun on the sergeant. Minor denied pointing the gun at his mother and that claimed that he did not want to hurt her. Minor's mother stated that minor had pointed the gun at her. After

minor stated that he would try to hurt himself in the future, Officer Romero took minor to the hospital for observation.

Minor, who testified on his own behalf, knew the gun was loaded. He admitted to stealing the gun from the family friend's home two or three weeks prior to the incident with the intention of using it to commit suicide that day. However, minor did not kill himself on the day he stole the gun because the relationship between him and his mother was improving. Minor held onto the gun, keeping it first under his bed and then in the bathroom. After having the fight with his mother about the pager and hearing that his probation officer was going to be called regarding his behavior, he retrieved the gun and walked outside to kill himself.

Minor did not want his mother to call his probation officer, so he got upset. When he saw his mother on the telephone with the dispatcher and heard her say she did not think minor "had access to one," minor pulled the gun out from his sweatshirt pocket, pointed it into the air, and said, "Is this what you don't think I have?" After asking minor what he was doing and where he got the gun, minor's mother turned around and started walking toward the house. Minor followed her while saying that he did not want to hurt her and just wanted to talk. Minor denied pointing the gun at his mother. He claimed that he had the gun in the air the entire time and that he did not intend to hurt her or anybody with the gun. He also explained that he showed her the gun because he was upset and wanted his mother to see he had a gun. He further claimed that when he showed his mother the gun, she did not look or sound scared and was not crying.

On April 16, 2003, the San Bernardino County District Attorney's office filed a section 602 petition alleging that minor committed one count of felony assault with a deadly weapon (§ 245, subd. (a)(1)), one count of felony grand theft of a firearm (§ 487, subd. (d)(2)), and one count of felony possession of a firearm by a minor (§ 12101, subd. (a)(1)). On August 20, 2003, the juvenile court found all of the allegations in the petition true.

Following a contested dispositional hearing on March 11, 2004, minor was committed to CYA. The court also enforced the previously imposed victim restitution order in the amount of $30,158 from the arson offense.

II

DISCUSSION

A. *Insufficiency of the Evidence*

Minor contends the evidence was insufficient to support the juvenile court's true finding that he assaulted his mother with a deadly weapon. We disagree.

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]'" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088, quoting *In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) "In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11, citing *People v. Johnson* (1980) 26

Cal.3d 557, 578; see also *People v. Bolin* (1998) 18 Cal.4th 297, 331.) If the evidence presented below is subject to differing inferences, the reviewing court must assume that the trier of fact resolved all conflicting inferences in favor of the prosecution. (*Jackson v. Virginia* (1979) 443 U.S. 307, 326; *People v. Farnam* (2002) 28 Cal.4th 107, 142-143) A reviewing court is precluded from making its own subjective determination of guilt. (*Jackson v. Virginia* at p. 319, fn. 13.)

Given this court's limited role on appeal, minor bears an enormous burden in claiming there was insufficient evidence to sustain his conviction for assault with a deadly weapon. If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "'"Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citations.]"' [Citation.]" (*People v. Lewis* (2001) 26 Cal.4th 334, 361; see also *People v. Franz* (2001) 88 Cal.App.4th 1426, 1447; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Hale* (1999) 75 Cal.App.4th 94, 105.) The testimony of a witness who was apparently believed by the trier of fact may be rejected on appeal only if that testimony was physically impossible of belief or inherently improbable without resort to inferences or deductions. (*People v. Jackson* (1992) 10 Cal.App.4th 13, 21; *In re Andrew I.* (1991) 230 Cal.App.3d 572, 578; *People v. Breault* (1990) 223 Cal.App.3d 125, 140-141.)

For a violation of section 245, subdivision (a)(1) (aggravated assault), the prosecution must prove beyond a reasonable doubt that defendant (here minor) (1) willfully committed an act that by its nature would probably and directly result in the application of force upon the victim; (2) at the time the act was committed, defendant intended to use physical force upon the victim; and (3) at the time the act was committed, defendant had the present ability to apply physical force upon the victim. (CALJIC No. 9.00; *People v. Williams* (2001) 26 Cal.4th 779, 783; *People v. Colantuono* (1994) 7 Cal.4th 206, 212.)

Traditionally, an assault has been defined as "'an attempt to commit a battery.'" (*People v. Colantuono*, *supra*, 7 Cal.4th 206, 214, quoting *People v. Rocha* (1971) 3 Cal.3d 893, 899; see also § 240.) "An assault occurs whenever '"[t]he next movement would, at least to all appearance, complete the battery."' [Citation.]" (*People v. Williams*, *supra*, 26 Cal.4th 779, 786, italics omitted, quoting Perkins & Boyce, Criminal Law (3d ed. 1982) p. 164; see also *Colantuono*, at pp. 216-217; *In re Ronnie N.* (1985) 174 Cal.App.3d 731, 734; *People v. Paul* (1978) 78 Cal.App.3d 32, 45; *People v. Fuller* (1975) 53 Cal.App.3d 417, 421 ["[b]y definition one cannot commit battery without also committing a 'simple' assault which is nothing more than an attempted battery"].) Assault does not require actual physical contact with the victim(s). (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028; *People v. Raviart* (2001) 93 Cal.App.4th 258, 266.)

As the Supreme Court has noted, aggravated assault encompasses a broad range of conduct: "At one end of the spectrum there is conduct virtually indistinguishable from premeditated murder, while at the other there is a mere attempt to seriously injure which

lacks any specific intent and is completely futile." (*People v. Wingo* (1975) 14 Cal.3d 169, 176.)

Assault has been well established by our Supreme Court as a general intent crime. (See, e.g., *People v. Williams*, *supra*, 26 Cal.4th 779, 786; *People v. Colantuono*, *supra*, 7 Cal.4th 206, 214; *People v. Rocha*, *supra*, 3 Cal.3d 893, 899; see also *People v. Covino* (1980) 100 Cal.App.3d 660, 666-667.) The *Williams* court reiterated its earlier holdings that assault is a general intent crime and explained, "[A]ssault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*Williams*, at p. 790.) Thus, to be guilty of assault the defendant must have "actual knowledge of the facts sufficient to establish that the defendant's act by its nature will probably and directly result in injury to another." (*Id*. at p. 782.) "In other words, a defendant guilty of assault must be aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally, and probably result from his conduct. He may not be convicted based on facts he did not know but should have known. He, however, need not be subjectively aware of the risk that a battery might occur." (*Id*. at p. 788, fn. omitted; accord, *People v. Wright* (2002) 100 Cal.App.4th 703, 711-712.)

The Supreme Court concluded: "In adopting this knowledge requirement, we do not disturb our previous holdings. Assault is still a general intent crime [citations], and juries should not 'consider evidence of defendant's intoxication in determining whether

he committed assault' [citation]. Likewise, mere recklessness or criminal negligence is still not enough [citation], because a jury cannot find a defendant guilty of assault based on facts he should have known but did not know [citation]. [¶] We also reaffirm that assault does not require a specific intent to injure the victim. [Citation.]" (*People v. Williams*, supra, 26 Cal.4th at p. 788, fn. omitted.)[3]

Here, the evidence was more than sufficient to support minor's conviction for assault with a deadly weapon. Minor does not dispute that the loaded gun was a deadly weapon. Minor obviously had the present ability to use physical force against his mother: he twice pointed a gun, which he knew was loaded, at his mother, and both times he had his finger on the trigger. Minor unquestionably had the present ability not only to batter, but also to seriously injure his mother. By pointing a loaded gun at his mother with his finger on the trigger while in a state of agitation, anger, and distress and continuing to come towards her after she ran, minor committed an act that by its nature would probably and directly result in the application of physical force against another. (*People v. Williams*, *supra*, 26 Cal.4th at p. 790.) Furthermore, "a defendant [here minor] who honestly believes that his act was not likely to result in a battery is still guilty of

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[3] The *Williams* court further clarified any confusion that may have resulted from the Supreme Court's decision in *People v. Colantuono*, *supra*, 7 Cal.4th 206, 215-216. *Colantuono* held assault was a general intent crime that required a mental state similar to negligence: "[T]he mental state for assault . . . is established upon proof the defendant willfully committed an act that by its nature will probably and directly result in injury to another, i.e., a battery." (*Id*. at p. 214.) *Williams* concluded this standard could imply an objective mental state consistent with negligence. (*Williams*, *supra*, 26 Cal.4th at p. 787.)

assault if a reasonable person, viewing the facts known to defendant, would find that the act would directly, naturally and probably result in a battery." (*Id.* at p. 788, fn. 3.)

Likewise, contrary to minor's assertions, the evidence was sufficient to show the requisite intent, i.e., that minor intended to willfully and unlawfully use force upon his mother. " . . . 'Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. . . . [A]ny . . . similar act, accompanied by such circumstances as denote an intention existing at the time, coupled with a present ability of using actual [force] against the person of another, will be considered an assault.' [Citations.]" (*People v. Colantuono*, *supra*, 7 Cal.4th at p. 219, quoting *People v. McMakin* (1857) 8 Cal. 547, 548, italics omitted.) In fact, a defendant need not even point a firearm at a victim to prove intent. (*People v. Raviart*, *supra*, 93 Cal.App.4th 258, 263.) Holding the weapon in such a way as to enable the defendant to effectively use it can support a finding of intent for purposes of assault. (*Ibid*.) Intent is a question of fact for the trier of fact to determine. (*Colantuono*, at p. 221.)

Here, the circumstances in which minor used the loaded gun denoted an intent to use actual force against another. Minor deliberately used the gun twice to taunt his mother, waving it and pointing it at her with his finger on the trigger, and by maintaining a position within shooting as well as striking range. His conduct and proximity gave rise to a fear in his mother that she would be shot, and she explicitly testified that she feared minor would shoot her with the gun. From this evidence, a reasonable trier of fact could conclude that minor intended to use the gun. By finding true that minor committed an

assault with a deadly weapon, the juvenile court made an implicit finding that minor had the intention and present ability to apply physical force to his mother with the gun. In fact, the court specifically found minor's mother to be more credible than minor.

Minor argues that he was suicidal and never intended to hurt anyone but himself. However, this contention is not supported by the record. Minor's mother testified that she never saw minor point the gun at himself and that he never indicated he was suicidal. Nothing in the transcript of the 911 call indicates minor's mother was fearful for anything but the safety of herself and her family. She never mentioned being afraid her son would hurt himself. Furthermore, minor testified that he had changed his mind about committing suicide before seeing his mother in the garage. Therefore, he had no intention of suicide before pointing the gun at his mother the second time. Moreover, as the People point out, even if minor had been contemplating suicide, these thoughts would not negate the general intent necessary to commit assault.

We also reject minor's claim that his conduct constituted mere recklessness. Minor did more than recklessly wield a gun in his mother's presence. Waving a loaded gun around and then pointing it at someone is an inherently dangerous act, and the fact that minor did so on two different occasions demonstrates his conscious disregard for human life.

Based on the foregoing, viewing the record in the light most favorable to the judgment, we conclude that there was sufficient evidence to support the juvenile court's finding that minor had assaulted his mother with a deadly weapon.

B. *Victim Restitution*

Minor next contends the juvenile court erred in ordering him to pay a previously imposed victim restitution order in the amount of $30,158, because he was denied the opportunity to present evidence regarding his ability to pay when the restitution was imposed at a nonappearance review hearing. The People respond minor waived this issue on appeal by failing to object below. We are inclined to agree with the People.

In *People v. Scott* (1994) 9 Cal.4th 331, our Supreme Court stated: "We conclude that the waiver doctrine should apply to claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices. Included in this category are cases in which the stated reasons allegedly do not apply to the particular case, and cases in which the court purportedly erred because it double-counted a particular sentencing factor, misweighed the various factors, or failed to state any reasons or give a sufficient number of valid reasons." (*Id*. at p. 353; see also *People v. Gonzalez* (2003) 31 Cal.4th 745, 748 [Supreme Court reaffirmed the waiver doctrine first articulated in *Scott* and rejected the argument that the waiver doctrine is inapplicable if the court does not issue a tentative decision].)

"[T]he juvenile court is vested with broad discretion to select appropriate probation conditions, and thus a minor has ample opportunity to influence the court's decision. Objection and waiver principles 'encourage prompt detection and correction of error, and . . . reduce the number of unnecessary appellate claims . . . .' [Citation.]" (*In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 971, fn. omitted, quoting *People v. Scott*, *supra*, 9 Cal.4th at p. 351; see also *People v. Welch* (1993) 5 Cal.4th 228, 232-236 [the

waiver doctrine applies to conditions of probation]; *In re Josue S.* (1999) 72 Cal.App.4th 168, 172-173 [same]; but see *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033 [waiver rule inapplicable when an objection would be futile]; *In re Khonsavanh S.* (1998) 67 Cal.App.4th 532, 537 [no objection necessary where the condition violates a statute]; *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815 [court held that a constitutional challenge to the vagueness or overbreadth of a probation condition is not waived when the objection presents a "pure question of law" that can be resolved without reference to the sentencing record].)

In the present matter, the instant challenge does not fall within the "pure question of law" exception. A claim that minor was denied the opportunity to present evidence regarding his ability to pay involves the reasonableness of the condition. Minor and his counsel had more than ample opportunity to object below and bring this matter to the attention of the lower court but failed to do so.

On June 4, 2001, minor admitted to one count of felony arson (§ 451, subd. (c)); in return, another count of arson and one count of possession of a flammable material (§ 453, subd. (a)) were dismissed. Minor acknowledged that he had "picked up a spray can that he had previously hidden in the bushes, and using that as an incendiary device with a lighter, started a field on fire, along with a shrubbery bush, requiring the fire department to arrive." At the time minor admitted to this charge, the court requested a disposition report and informed minor that he would be required to pay restitution for any damages caused with regard to the count he admitted, plus the counts that were dismissed.

On June 14, 2001, the probation officer filed the disposition report, which noted that the victim of the arson was contacted on June 6, 2001, and reported that she would submit a detailed accounting to the probation officer regarding the 35 lemon trees that were destroyed as a result of the fire after she spoke with her insurance company. On June 15, 2001, the victim's insurance company submitted the documentation to substantiate the victim's restitution claim, which was as follows: $3,800.00 to remove 35 trees; $20,300 (35 trees times $580) to replace 35 trees; $1,853 to plant one date palm tree; $705 to plant one oak tree; and $3,500 in tax, for a total of $30,158. Thereafter, at a nonappearance review hearing held on June 20, 2001, minor was ordered to pay $30,158 in victim restitution based upon the recommendations of the probation officer and documentation from the victim's insurance company.[4] Subsequently, the probation officer reported that minor was ordered to pay $30,158 in restitution plus a 10 percent collection fee to the victim in a detention hearing memorandum dated April 22, 2002; again in a disposition report filed on May 21, 2002; and again in a dispositional/jurisdictional report filed on May 15, 2003.

Even though neither minor nor his counsel was present at the nonappearance review hearing, the record indicates that they had sufficient notice and opportunity to object to the restitution amount and/or make a claim that minor was denied an opportunity to present evidence regarding his ability to pay. Minor does not claim that he did not have notice of the restitution amount recommended by the probation officer or the

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[4] The minute order of this nonappearance review hearing also indicates that the insurance company would pay $13,100, leaving a deficit of $17,098 to be paid by the

[footnote continued on next page]

documentation provided by the insurance company. Presumably, he and his counsel were able to review the information in the probation reports, including the victim restitution amount and documentation from the insurance company, before each of the dispositional hearings and before restitution was ordered. However, at no time did minor object to paying victim restitution or to paying victim restitution in an amount recommended by the probation officer.

Furthermore, as minor recognizes, this court has held that the juvenile court was not required to hold a hearing specifically to determine minor's ability to pay. (*People v. Campbell* (1994) 21 Cal.App.4th 825, 829-831; see also *People v. Menius* (1994) 25 Cal.App.4th 1290.) "The requirements of due process are met if a defendant is afforded an opportunity to present evidence on his ability to pay. [Citation.] There is no requirement that a court make an express finding of the ability to pay, and the court may properly base its restitution order on the probation officer's report which recommends restitution. [Citation.] As long as the defendant is given an opportunity to respond to any matters in the probation report regarding restitution, due process is satisfied. [Citations.]" (*Campbell*, at p. 831.) There is no question minor had the opportunity to respond to the matters in the probation reports regarding restitution and chose not to.

Accordingly, minor has waived any error.

Minor next claims that if the waiver rule does apply, his counsel was ineffective in failing to object to "this exorbitant amount of victim restitution." We reject minor's contention because it is not possible to assess minor's claim on an appellate record which

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[footnote continued from previous page]
victim, and that a telephone call to the victim confirmed these figures on June 18, 2001.

does not reflect the reasons for the actions minor now claims fell below constitutional standards of competence. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267; *People v. Wilson* (1992) 3 Cal.4th 926, 936.)

To demonstrate that he received ineffective assistance of counsel, minor must establish both: (1) that his counsel's performance was deficient under an objective standard of professional competency, and (2) that there is a reasonable probability that, but for counsel's errors, a more favorable determination would have resulted. (*People v. Holt* (1997) 15 Cal.4th 619, 703; *People v. Williams* (1997) 16 Cal.4th 153, 214-215; *In re Avena* (1996) 12 Cal.4th 694, 721; *People v. Davis* (1995) 10 Cal.4th 463, 503; *People v. Babbitt* (1988) 45 Cal.3d 660, 707; *Strickland v. Washington* (1984) 466 U.S. 668, 687-688.) "We have repeatedly stressed 'that "[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation," the claim on appeal must be rejected.' [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding. [Citations.]" (*People v. Mendoza Tello*, *supra*, 15 Cal.4th at pp. 266-267, quoting *People v. Wilson*, *supra*, 3 Cal.4th at p. 936, quoting *People v. Pope* (1979) 23 Cal.3d 412, 426.)

Contrary to minor's assertion, the record here does not affirmatively disclose the reasons for trial counsel's action; counsel could have had a satisfactory explanation for his failure to object to the juvenile court's imposition of $30,158 in victim restitution or demand that the court find minor's ability to pay. It is possible that trial counsel believed

objecting and demanding that the court find sufficient evidence of minor's ability to pay would have been futile, especially in light of this court's decision in *People v. Campbell*, *supra*, 21 Cal.App.4th 825, 831. It is also possible that counsel believed the amount of restitution was appropriate considering the documentary evidence submitted by the victim's insurance company. As stated above, a claim of ineffective assistance of counsel will not be decided on appeal where the record sheds no light on why counsel acted or failed to act in the manner challenged, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation. (*People v. Mendoza Tello*, *supra*, 15 Cal.4th 264, 266-267.) Such claims are more appropriately handled in habeas corpus petitions. (*Ibid*.) Therefore, the decision must be affirmed on appeal.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

KING
J.