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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ARMANDO G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ARMANDO G., Defendant and Appellant.	G031906 (Super. Ct. No. DL011651) O P I N I O N

Appeal from a juvenile dispositional order of the Superior Court of Orange County, Michael J. Cassidy, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

James R. Bostwick, Jr., 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, Assistant Attorney General, Anthony Da Silva and David Delgado-Rucci, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Armando G. was 16 when he was arrested for receiving stolen property in violation of Penal Code section 496. After finding he had committed the offense, the juvenile court set the offense as a felony and continued Armando on probation, with the added conditions that he be incarcerated for 120 days and pay restitution. In the clerk's minute order, however, it was recorded that Armando was to pay "restitution on all counts, including those dismissed, as determined by court and directed by probation, subject to a restitution hearing if" Armando requested such. He appeals from that minute order, contending it violates his right to due process and that it must be revised to conform to the court's actual order. Specifically, he objects to any order requiring him to pay restitution for any dismissed count. We order the clerk of the superior court to correct its minute order to reflect the actual pronouncement of the court, which we affirm.

FACTS

At around 9:00 p. m. on a January night, Santa Ana Police Officer Frank Aragon noticed a car that had all its windows rolled down in spite of the winter weather. Inquiring of the car's status via computer database, he learned that Lynda Barron had reported the car as stolen. Aragon immediately stopped the car, finding Armando to be the driver. Aragon noticed that there was no key in the ignition and arrested Armando.

Aragon drove Armando to the police station and advised him of his rights pursuant to *Miranda* v. *Arizona* (1966) 384 U.S. 436. Armando agreed to talk with the officers. He told them that he was at the home of a friend by the name of Dave when he met another of Dave's associates by the name of Trigger. Trigger, a reputed member of the Sixth Street gang, gave Armando permission to drive his car, adding that he didn't have the keys but Armando could ignite the engine by inserting a dime in the key slot. Armando conceded that, upon reflection, he thought the car was probably stolen.

DISCUSSION

Condition of Probation

Originally, Armando faced two charges: Unlawful taking and driving a motor vehicle (Veh. Code, § 10851) and receiving stolen property (Pen. Code, § 496). The court dismissed the first count but found the second count to be true beyond a reasonable doubt. At the later dispositional hearing, the court ordered he pay restitution without stating any further details. The minute order for that hearing, however, required Armando to pay restitution on all counts, including those that had been dismissed.

Armando argues the probation condition detailed in the written minute order conflicts with the court's actual order. However, he failed to either contest the restitution condition or demand a restitution hearing which, the Attorney General contends, waives the issue. (See *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469 [defendant must make a timely objection to restitution fine so that trial court can correct the error; otherwise, the issue is waived].) Armando responds that he had no notice that the *clerk* was going to erroneously expand the court's actual order to include the dismissed count of auto taking.[1] Thus, he could not be required to object to something he did not know was going to occur. (See *People v. Carbajal* (1995) 10 Cal.4th 1114, 1125 ["The defendant is entitled to notice that restitution . . . may be considered as a condition of probation and must be given a meaningful opportunity to controvert the information to be considered and relied on by the court in sentencing."]; see also Pen. Code, § 1203, subd. (d) [such notice must be given to misdemeanants].)

Armando argues that restitution for the "stolen property" could not include the cost of damages related to the actual theft of the car. Moreover, he argues he did not waive this aspect of the restitution issue when he could not possibly have known the court would include the damages due to theft as part of the restitution for the receiving stolen property count. We need not resolve this detail of the waiver issue because the

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[1] The probation report prepared for the dispositional hearing reflects only that the minor should be required to "pay restitution with the amount to be set by the Court within 60 days and the Probation Officer be ordered to submit a nonappearance restitution report to the Court within 50 days."

trial court did not make the error. A clerk made a clerical mistake outside the court hearing. Thus, Armando never had an opportunity to voice an objection to the term. (See *People v. Tillman* (2000) 22 Cal.4th 300, 302 ["we held the [waiver] doctrine 'should apply to claims involving the *trial court's* failure to properly make or articulate its . . . choices[, italics added]'" not to extrajudicial errors committed without the party's presence].)

The Attorney General replies that the minute order later signed by the commissioner alerted Armando to the added detail that restitution would include costs of dismissed counts. However, the minute order is a clerk's summary of the court's actual order. (Cf. *People v. Mesa* (1975) 14 Cal.3d 466, 471; Pen. Code, § 1207.) It *follows* the hearing that it purports to summarize; it does not precede it. (*Mesa, supra,* 14 Cal.3d at p. 471.) The minute order could not *possibly* have informed Armando in advance that the court's order of judgment was going to be broader than voiced. Likewise, the probation report could not have alerted him to this potentiality as it merely recommends Armando "[p]ay restitution with the amount to be set by the Court within 60 days . . . ."

The essence of the problem is the need to conform the superior court's order—albeit signed by the commissioner after the dispositional hearing and therefore presumably approved by him—to the verbal pronouncement of judgment. The transcript of the dispositional hearing records the court's actual order as "[Armando was to] pay restitution" for the crime of receiving stolen property. We therefore order the clerk of the superior court to conform the minute order to the court's actual pronouncement of the disposition. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

The Attorney General argues that, even if the disposition order is corrected, Armando will still have to pay Lynda Barron the same amount of money. Although the lower court dismissed the count accusing Armando of actually taking the car, he was in possession of it as stolen property. The Attorney General emphasizes that the harm to the ignition, which Armando exploited to drive the car, is related to the offense for which Armando was found guilty. Thus, contends the Attorney General, Armando will still be required to pay the costs of repairing the ignition as any damage related to the offense is

properly recompensed by restitution. (See Cal. Const. art. I, § 28, subd. (b); Pen. Code, § 1203.04; Welf. & Inst. Code, § 729.6.)

The lower court has yet to set an amount for Armando to pay as restitution. In setting that amount, the court must inform the minor that he has the right to a separate hearing if he disputes the amount. (See *People v. Resendez* (1993) 12 Cal.App.4th 98, 112-114, citing *People v. Sandoval* (1989) 206 Cal.App.3d 1544 and *People v. Blankenship* (1989) 213 Cal.App.3d 992.) In that hearing, the court retains wide discretion in assessing the means to make the victim whole while focusing on the defendant's misconduct and any damage "reasonably related" to it. (*People v. Carbajal, supra,* 10 Cal.4th at p. 1123.) Although the court is not limited to *just* the specific charge of which the minor was found guilty (see generally *People v. Lent* (1975) 15 Cal.3d 481, 486-487), the restitution order must be reasonably related to the goal of deterring future criminality.[2] (*Ibid.*)

The clerk of the superior court is ordered to conform the minute order to the juvenile court's actual pronouncement of disposition so that the condition of probation regarding restitution states, "Armando is to pay restitution within 60 days as set by the juvenile court, subject to a restitution hearing if the Minor disputes the amount as set."

Once corrected, the court's order is affirmed.

SILLS, P.J.

WE CONCUR:

ARONSON, J.

IKOLA, J.

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[2] Armando's situation is clearly distinguishable from that of *In re Maxwell C.* (1984) 159 Cal.App.3d 263. Maxwell admitted possessing a stolen auto stereo but adamantly denied any role in the car burglary that resulted in separating the stereo from the car. The trial court, however, ordered Maxwell to pay for the damages to the car and the loss of other items taken in the burglary.

Here, the court has yet to decide what damages are reasonably related to Armando's criminal conduct of driving the stolen car.