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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re LINO B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. LINO B., Defendant and Appellant.	C050274, C050803 (Super. Ct. No. JV119460)

APPEAL from judgments of the Superior Court of Sacramento County, John A. Mendez, Judge. Affirmed.

Thomas M. Singman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, and John G. McLean, Deputy Attorney General, for Plaintiff and Respondent.

A petition alleged that minor Lino B. was within Welfare and Institutions Code section 602 in that he committed two felony counts of second degree burglary. (Pen. Code, §§ 459, 460, subd. (b).) In a negotiated disposition, he admitted one

count as a misdemeanor and the other count was dismissed with a *Harvey*[1] waiver. The minor was placed on court probation for a stipulated term of nine months on conditions including a period of home supervision and performance of community service. He was ordered to pay a restitution fine and to make restitution to the victim in an amount to be determined.

In case No. C050274, the minor appeals from this judgment. He contends the nine-month period of probation must be reduced to the statutory maximum of six months. (Welf. & Inst. Code, § 725, subd. (a).)[2]

Following a contested hearing, the amount of victim restitution was determined to be $581. In case No. C050803, the minor appeals from this restitution order. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), he requests the court to make its own examination of the record of the restitution hearing.

We ordered the two appeals consolidated. We shall affirm the judgment in each case.

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

[2] Undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL BACKGROUND[3]

On April 2, 2005, Sacramento County Sheriff's deputies responded to a silent alarm at the Laurel Ruff Center. They found the minor and six other juveniles in a classroom. One of the juveniles admitted that they had crawled in through an open window. Once inside, the minor and his companions consumed candy and milk. Several desk drawers had been opened and the contents ransacked. The juveniles also entered an adjoining classroom where desk drawers were found open and ransacked.

During the investigation, the school principal came to the facility. She told deputies that there had been a similar burglary on September 26, 2004, and that latent prints had been recovered from that incident. When the deputies informed the minor that fingerprints had been recovered from the previous burglary, he admitted to participating in the September burglary. The minor said that he had entered the office by being boosted up through a window that had been forced open. The minor also admitted entering the principal's office and handling property he had received from his accomplices.

DISCUSSION

I

The minor contends the nine-month term of probation must be reduced to the six-month maximum allowed by section 725,

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[3] The facts of the minor's offenses are taken from the probation report.

subdivision (a).[4] The People respond that the estoppel doctrine bars the minor's contention in light of his acquiescence to the imposed term of probation. The People have the better argument.

Before the minor admitted count one, the juvenile court recited the terms of the agreement as follows: "The proposed disposition is now an admission to Count One as a misdemeanor with court probation for a period of nine months as stipulated by counsel. The statute [says]--and the Court recognizes-- . . . that [section] 725[, subdivision] (a) is for a six-month period. [¶] *Counsel are stipulating that that period can be nine months in order to resolve this case*." (Italics added.)

After the minor admitted to a misdemeanor offense in count one, his counsel commented on the probation agreement: "I understand that there is an agreement for the nine months. I know the code says not to exceed six months. [¶] This Court has indicated in order for the minor to be placed on [section] 725 and for the [People] to agree, *that we would have to agree and stipulate to the nine months, and I have done so*." (Italics added.)

Thereafter, the court placed the minor "on probation under section 725[, subdivision] (a) of the Welfare and Institutions

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[4] Section 725, subdivision (a) provides in relevant part: "If the court has found that the minor is a person described by Section . . . 602, . . . it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months."

Code for nine months pursuant to that code section. And by stipulation of counsel, the probation period will be for nine months."

Thus, in a negotiated disposition, the minor knowingly and willingly accepted a probation period exceeding the statutory maximum in exchange for an admission to a reduced charge and dismissal of a second charge. Now, the minor claims the juvenile court improperly imposed the nine-month term that he expressly and knowingly accepted. He is estopped from asserting that claim.

"'"Where defendants have pleaded guilty in return for a specified sentence, appellate courts are not inclined to find error even though the trial court acts in excess of jurisdiction in reaching that figure, as long as the court does not lack fundamental jurisdiction. [Citations.] The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to 'trifle with the courts' by attempting to better the bargain through the appellate process."'" (*People v. Flood* (2003) 108 Cal.App.4th 504, 508 (*Flood*); see *People v. Beebe* (1989) 216 Cal.App.3d 927, 932-933, 935; *People v. Ellis* (1987) 195 Cal.App.3d 334, 343 (*Ellis*), criticized on other grounds in *People v. Panizzon* (1996) 13 Cal.4th 68, 89, fn. 15.)

In *Ellis*, we recognized that "where fundamental jurisdiction was lacking, it could not be conferred by consent or estoppel, whereas consent or estoppel could supply

jurisdiction for an act undertaken by the trial court merely in excess of its statutory power." (*Ellis, supra,* 195 Cal.App.3d at p. 343, citing *People v. Garrett* (1987) 192 Cal.App.3d 41, 49.)

The minor effectively contends the juvenile court lacked fundamental jurisdiction to impose probation for nine months. Citing cases from this court, he claims the juvenile court's order "was 'null and void' to the extent it imposed more than six months' probation and the defect was not cured by [his] agreement to the term." We disagree with the two cases from this court on which the minor relies.

In *People v. Gilchrist* (1982) 133 Cal.App.3d 38, this court stated: "We have recently held '[the] power of the court with regard to probation is strictly statutory, and the court cannot impose a condition of probation which extends beyond the maximum statutory period of probation.' [Citations.] If defendant's period of probation was five years' maximum, any attempt by the Los Angeles court to extend probation beyond that period *would be null and void* even had he consented. [Citation.] Defendant's consent could not authorize an act which was beyond the trial court's statutory power." (*Gilchrist,* at p. 44, quoting and citing *In re Bolley* (1982) 129 Cal.App.3d 555, 557 (*Bolley*), italics added.)

In *Bolley* this court stated: "A court cannot establish a period of probation longer than the maximum period of imprisonment for the offense involved. [Citation.] Any attempt

to do so *is null and void*." (*Bolley, supra,* 129 Cal.App.3d at p. 557, citing primarily *People v. Goldberg* (1975) 45 Cal.App.3d 601, 603 (*Goldberg*), italics added.)

In *Goldberg*, the Court of Appeal for the Second Appellate District, Division Four, stated: "Under section 13203 of the Vehicle Code, [fn. omitted] a court cannot, even as a condition of probation, restrict a defendant's right to drive a motor vehicle for more than the period prescribed by the applicable sections of the Vehicle Code. Under section 13351 of the Vehicle Code, the limitation on such restriction is one year and until the defendant has given proof of ability to respond in damages. [Fn. omitted.] The issuance of defendant's new license in April of 1970 shows that those conditions had been met. It follows that the attempt to restrict defendant's driving privileges for the full term of probation *was, in the express words of section 13203, 'null and void.'*" (*Goldberg, supra,* 45 Cal.App.3d at pp. 603-604, italics added.)[5]

Thus, *Goldberg* applied a specific statutory provision and had no occasion to consider whether courts generally lack fundamental jurisdiction to order probation in excess of a

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[5] Vehicle Code section 13203 provides: "In no event shall a court suspend the privilege of any person to operate a motor vehicle or as a condition of probation prohibit the operation of a motor vehicle for a period of time longer than that specified in this code. Any such prohibited order of a court, whether imposed as a condition of probation or otherwise, shall be null and void, and the department shall restore or reissue a license to any person entitled thereto irrespective of any such invalid order of a court."

statutory maximum. *Bolley* relied upon *Goldberg* without recognizing that it was based on a Vehicle Code section that did not apply to the case at hand. *Gilchrist*, in turn, applied *Bolley* even though, once again, the Vehicle Code did not apply. We conclude *Bolley* and *Gilchrist's* reliance on *Goldberg* was flawed. Further, *Goldberg* is distinguishable from the facts here. None of these authorities establishes that the juvenile court lacked fundamental jurisdiction to issue the probation order in this case.

"Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288; see *People v. Garrett, supra,* 192 Cal.App.3d at pp. 46-47.)

In this case, there is no contention the juvenile court lacked power to hear the minor's case, or that it lacked authority over the subject matter or the parties. Thus, at most, the order for a nine-month period of probation was in excess of the juvenile court's jurisdiction.

The minor received the benefit of his bargain by having one felony charge reduced to a misdemeanor and the other charge dismissed. His attempt to better the bargain through the appellate process must fail. (*Flood, supra,* 108 Cal.App.4th at p. 508.)

II

The juvenile court directed the minor to make victim restitution in the amount of $581.

We appointed counsel to represent the minor on appeal. Counsel filed an opening brief that sets forth the facts of the restitution case (C050803) and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra,* 25 Cal.3d 436.) The minor was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from the minor. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to the minor on his restitution case.

DISPOSITION

In case No. C050274, the judgment is affirmed. In case No. C050803, the judgment (restitution order) is also affirmed.

BUTZ, J.

We concur:

MORRISON, Acting P. J.

ROBIE, J.