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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW CHACON, Defendant and Appellant.	F038393 (Super. Ct. No. 80653) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Coleen W. Ryan and Clarence Westra, Jr., Judges.*

Rachel Lederman, 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, Jeffrey Firestone, Louis M. Vasquez and Kathleen A. McKenna, Deputy Attorneys General, for Plaintiff and Respondent.

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*Judge Ryan heard and denied a pretrial motion to dismiss; Judge Westra heard and denied subsequent motions to dismiss, and presided at trial and sentencing.

The issue on appeal is whether a court has discretion to order a juvenile disposition after a jury finds a 17-year-old minor with no known prior criminal history guilty of assault by means of force likely to produce great bodily injury (assault by means) on a "discretionary direct file" for which Proposition 21 authorizes, but does not mandate, a criminal trial instead of a juvenile hearing.[1] (Pen. Code, § 245, subd. (a)(1).) The minor, Matthew Chacon, objected to the discretionary direct file charging him with, inter alia, assault by means. After the prosecutor opposed, and the court overruled, his objections, the court imposed a state prison sentence.

Before adjudicating the issue on appeal, we must address two foundational questions: Is Proposition 21 constitutional? Does the statutory requirement that a prosecutor consent before a court can order a juvenile disposition on a discretionary direct file violate the state Constitution's separation of powers doctrine?[2] We will answer both questions in the affirmative.

On the facts and law here, we will hold that a court has express statutory discretion to order a juvenile disposition other than a Youth Authority commitment or to impose an adult sentence instead. The record shows no awareness by the court of that discretion, however, so we will affirm the judgment, order the state prison sentence stricken from the judgment, and remand the matter for an exercise of informed judicial discretion.

DISCUSSION

I. Constitutionality of Proposition 21

Chacon argues that Proposition 21 violates the single-subject initiative rule (Cal. Const., art. II, § 8, subd. (d)) and that the discretionary direct file authority enacted into Welfare and Institutions Code section 707, subdivision (d) by Proposition 21 violates

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[1]See the Gang Violence and Juvenile Crime Prevention Act of 1998. (Initiative Measure, Voter Information Guide, Primary Elec. (Mar. 7, 2000) Prop. 21 (hereafter Proposition 21).) The crime here occurred just days after the adoption of Proposition 21.

[2]See Penal Code section 1170.19, subdivision (a)(4).

state constitutional guarantees of separation of powers (Cal. Const., art. III, § 3), equal protection of the laws (*id*., art. I, § 7, subd. (a)), uniform operation of laws (*id*., art. IV, § 16), and due process of law (*id*., art. I, §§ 7, subd. (a), 15).

After briefing was complete here, the Supreme Court adjudicated challenges like Chacon's. The court held that Proposition 21 does not violate the single-subject initiative rule (Cal. Const., art. II, § 8, subd. (d)), that the grant of discretion to the prosecutor by Welfare and Institutions Code section 707, subdivision (d) to file criminal charges against certain minors without a judicial fitness hearing does not violate the separation of powers doctrine (Cal. Const., art. III, § 3), that the elimination of a judicial fitness hearing by that statute does not violate due process of law (Cal. Const., art. I, §§ 7, subd. (a), 15), and that the grant of discretion to the prosecutor by Welfare and Institutions Code section 707, subdivision (d) to file criminal charges against some minors but not others does not violate equal protection of the laws (Cal. Const., art. I, § 7, subd. (a)) or the uniform operation of the laws doctrine (*id*., art. IV, § 16). (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 550-562.)

II. Constitutionality of Penal Code section 1170.19, subdivision (a)(4)

Chacon argues that a court has discretion to order a juvenile disposition on a discretionary direct file. The Attorney General argues the contrary. At the heart of the issue is a statute requiring a court to secure a prosecutor's consent to order a juvenile disposition on a discretionary direct file:

> "Notwithstanding any other provision of law, the following shall apply to a person sentenced pursuant to Section 1170.17. [¶] … [¶] (4) *Subject to the knowing and intelligent consent of both the prosecution and the person being sentenced pursuant to this section*, the court may order a juvenile disposition under the juvenile court law, in lieu of a sentence under this code, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering a juvenile disposition, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the

social study made by the probation officer has been read and considered by the court." (Pen. Code, § 1170.19, subd. (a)(4), italics added.)

On the threshold question of whether requiring a prosecutor's consent violates the state Constitution's separation of powers doctrine, we examine relevant case law. (See Cal. Const., art. III, § 3.[3])

In the seminal case of *People v. Tenorio* (1970) 3 Cal.3d 89, 91-95 (*Tenorio*), the Supreme Court held that a statute requiring a court to secure a prosecutor's consent to dismiss an allegation of a prior conviction violates the state Constitution's separation of powers doctrine by improperly invading the constitutional province of the judiciary:

> "When the decision to prosecute has been made, the process which leads to acquittal or to sentencing is fundamentally judicial in nature. Just as the fact of prosecutorial discretion prior to charging a criminal offense does not imply prosecutorial discretion to convict without a judicial determination of guilt, discretion to forgo prosecution does not imply discretion to sentence without a judicial determination of those factors which the Legislature has never denied are within the judicial power to determine and which relate to punishment. The judicial power is compromised when a judge, who believes that a charge should be dismissed in the interests of justice, wishes to exercise the power to dismiss but finds that before he may do so he must bargain with the prosecutor. The judicial power must be independent, and a judge should never be required to pay for its exercise." (*Id*. at p. 94.)

In the years after *Tenorio*, the Supreme Court applied the rationale of that case to several analogous situations. In *Esteybar v. Municipal Court* (1971) 5 Cal.3d 119, 122, the court held that a statute requiring a magistrate to secure a prosecutor's consent to determine that a wobbler is a misdemeanor rather than a felony violates the separation of powers doctrine (see Pen. Code, § 17, subd. (b)):

> "Since the exercise of a judicial power may not be conditioned upon the approval of either the executive or legislative branches of government, requiring the district attorney's consent in determining the charge on which

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[3]California Constitution, article III, section 3 provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

> a defendant shall be held to answer violates the doctrine of separation of powers." (*Esteybar v. Municipal Court*, *supra*, 5 Cal.3d at p. 127.)

In *People v. Navarro* (1972) 7 Cal.3d 248, 258-260, the Supreme Court held that a statute requiring a court to secure a prosecutor's consent to order a posttrial commitment to a narcotic detention, treatment, and rehabilitation facility violates the separation of powers doctrine:

> "The imposition of sentence and the exercise of sentencing discretion are fundamentally and inherently judicial functions. [Citation.] … [¶] … 'It bears reiteration that the Legislature, of course, *by general laws* can control eligibility for probation, parole and the term of imprisonment, but it cannot abort the *judicial process* by subjecting a judge to the control of the district attorney.'" (*Id*. at pp. 258-259, fns. omitted.)

In *People v. Superior Court* (*On Tai Ho*) (1974) 11 Cal.3d 59, 61, the Supreme Court held that a statute requiring a court to secure a prosecutor's consent to order pretrial diversion to a narcotic treatment and rehabilitation program violates the separation of powers doctrine:

> "[W]hen the jurisdiction of a court has been properly invoked by the filing of a criminal charge, the *disposition* of that charge becomes a judicial responsibility. … With the development of more sophisticated responses to the wide range of antisocial behavior traditionally subsumed under the heading of 'crime,' alternative means of disposition have been confided to the judiciary." (*Id*. at p. 66.)

In *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 69-72, the court held that a local rule on wobblers precluding diversion to those whom a prosecutor charges with felonies while permitting diversion to those whom a prosecutor charges with misdemeanors does not violate the separation of powers doctrine. The local rule granted discretion that a prosecutor could exercise *before* the filing of a criminal charge, but the challenged statutes at issue in *Tenorio* and progeny "purported to give a prosecutor the right to veto a decision made by a court *after* criminal charges had already been filed. None of the cases suggests that the exercise of prosecutorial discretion *prior* to the filing of such charges improperly subordinates the judicial branch to the executive in violation of the

Constitution, even though the prosecutor's exercise of such charging discretion inevitably affects the sentencing or other dispositional options available to the court." (*Davis v. Municipal Court*, *supra*, at p. 82.) Like the challenged statutes at issue in *Tenorio* and progeny, Penal Code section 1170.19, subdivision (a)(4) purports to give a prosecutor the right to veto a decision that a court makes *after* the filing of a criminal charge.

Manduley stresses the critical distinction between discretion *before* and discretion *after* the filing of a criminal charge. *Tenorio* and progeny "establish that the separation of powers doctrine prohibits the legislative branch from granting prosecutors the authority, *after* charges have been filed, to control the legislatively specified sentencing choices available to a court. A statute conferring upon prosecutors the discretion to make certain decisions *before* the filing of charges, on the other hand, is not invalid simply because the prosecutor's exercise of such charging discretion necessarily affects the dispositional options available to the court." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 553.) "Because [Welfare and Institutions Code] section 707(d) does not confer upon the prosecutor any authority to interfere with the court's choice of legislatively specified sentencing alternatives after an action has been commenced pursuant to that statute, we conclude that section 707(d) does not violate the separation of powers doctrine." (*Ibid*.)

In *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*), the Supreme Court approved the application of the rationale in *Tenorio* to analogous situations in later cases and stated the fundamental principle in that line of authority: "When the jurisdiction of a court has been properly invoked by the filing of a criminal charge, the disposition of that charge becomes a judicial responsibility." (*Romero*, *supra*, at p. 517.) *Romero* implemented that principle and avoided finding a violation of the separation of powers doctrine by construing a provision of the three strikes law so as not to require a prosecutor's consent to the exercise of a court's authority on its own motion

to strike a strike prior at sentencing. (*Id*. at pp. 508-517; Pen. Code, §§ 667, subd. (f), 1385.)

The discretion that Penal Code section 1170.19, subdivision (a)(4) grants to a court to order a juvenile disposition on a discretionary direct file indisputably constitutes a judicial responsibility squarely within the scope of "[a]ll of the subsequent cases applying *Tenorio* to invalidate legislative provisions …." (See *Davis v. Municipal Court*, *supra*, 46 Cal.3d at p. 83.) Like the statutes in *Tenorio* and progeny, Penal Code section 1170.19, subdivision (a)(4) authorizes "the exercise of a veto *after* the filing of criminal charges, when the criminal proceeding has already come within the aegis of the judicial branch." (*Davis v. Municipal Court*, *supra*, at p. 83.)

We hold that the requirement of Penal Code section 1170.19, subdivision (a)(4) that on a discretionary direct file a court must secure a prosecutor's consent to order a juvenile disposition violates the state Constitution's separation of powers doctrine.[4] (Cal. Const., art. III, § 3.) Since the constitutionally infirm requirement of a prosecutor's consent is severable from the rest of that statute (see *People v. Navarro*, *supra*, 7 Cal.3d at pp. 260-264), we turn to the issue of whether Chacon is entitled to relief from the orders overruling his objections to the discretionary direct file.

III. Informed judicial discretion on a discretionary direct file

Chacon argues that the court was not aware of its discretion on a discretionary direct file to order a juvenile disposition or to impose an adult sentence and that a remand is necessary to allow the court to exercise that discretion. The Attorney General argues that the court had no discretion and that no remand is necessary.

Proposition 21 *mandates* a criminal prosecution, without a judicial fitness hearing, of a minor 14 years of age or older whom a prosecutor charges with a specified murder or

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[4]Since Chacon opposed the discretionary direct file, the issue is not before us whether the statute's requirement of the accused's consent is severable from the invalid requirement of a prosecutor's consent. (Cf. *People v. Navarro*, *supra*, 7 Cal.3d at pp. 264-265.)

serious sex offense. (Welf. & Inst. Code, § 602, subd. (b).) Proposition 21 *authorizes* a discretionary direct file, without a judicial fitness hearing, of a minor 16 years of age or older against whom a prosecutor brings a different statutorily designated charge. (Welf. & Inst. Code, § 707, subds. (b), (d)(1).) Here, the charge of assault by means authorized the discretionary direct file against Chacon. (Pen. Code, § 245, subd. (a)(1); Welf. & Inst. Code, § 707, subds. (b)(14), (d)(1).)

Commenting on Welfare and Institutions Code section 707, subdivision (d), the statute at issue in *Manduley*, the Supreme Court observed that "[t]he prosecutor's discretionary charging decision … is no different from the numerous prefiling decisions made by prosecutors … that limit the dispositions available to the court after charges have been filed. *Conferring such authority upon the prosecutor does not limit the judicial power*, *after charges have been filed*, *to choose among the dispositional alternatives specified by the legislative branch*." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 555, italics added.) One of those alternatives is the discretion that Penal Code section 1170.19, subdivision (a)(4) grants to a court to order a juvenile disposition on a discretionary direct file. *Manduley* characterizes as only a *general* rule the statutory preclusion of a juvenile disposition by Welfare and Institutions Code section 707, subdivision (d): "If the prosecutor initiates a proceeding in criminal court, and the circumstances specified in section 707(d) are found to be true, the court *generally* is precluded by statute from ordering a juvenile disposition. (Welf. & Inst. Code, § 1732.6, subd. (b)(2); see Pen. Code, §§ 1170.17, 1170.19.)" (*Manduley v. Superior Court*, *supra*, at p. 555, italics added.)

In *Manduley*, the Supreme Court noted that the prosecutor's "traditionally … broad power to charge crimes extends to selecting the forum …." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 552.) By selecting the forum, the prosecutor selects the procedure and protocol of that forum. By choosing a discretionary direct file, the prosecutor not only invokes the rigorous adversarial character of a criminal trial but also

adds a dimension of evidence, findings, and rulings with which to inform the exercise of judicial discretion in selecting a juvenile disposition or an adult sentence.

As the Supreme Court observed, the "voters, through the enactment of Proposition 21, have determined that the judiciary shall not make the determination regarding a minor's fitness for a juvenile disposition where the prosecutor initiates a criminal action pursuant to [Welfare and Institutions Code] section 707(d)." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 555, fn. omitted.) We read that sentence as an articulation of the statutory mandate of Welfare and Institutions Code section 707, subdivision (d)(4): "In any case in which the district attorney … has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to the provisions of this subdivision, the case shall then proceed according to the laws applicable to a criminal case."

For two reasons, we decline to make a broader inference from that sentence. First, not once did *Manduley* cite Penal Code section 1170.19, subdivision (a)(4), the part of that statute in which the Legislature expressly granted judicial discretion to order a juvenile disposition on a discretionary direct file. That part of that statute was simply not at issue in that case. It is axiomatic that cases are not authority for propositions not considered. (*People v. Nguyen* (2000) 22 Cal.4th 872, 879; *People v. Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7.) Second, *Manduley* itself notes that "a prosecutor's decision to file charges against a minor in criminal court pursuant to [Welfare and Institutions Code] section 707(d) is not analogous to a prosecutor's veto of a court's legislatively authorized determination, after a judicial hearing, of a defendant's suitability for a particular disposition …." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at p. 559.)

On that rationale, as the prosecutor's authority in Welfare and Institutions Code section 707, subdivision (d) to make a discretionary direct file survives a separation of powers analysis, so the requirement in Penal Code section 1170.19, subdivision (a)(4) that a court secure a prosecutor's consent to order a juvenile disposition on a discretionary direct file does not. In short, a prosecutor's exercise of discretion *before* the

filing of a criminal charge is not at all inconsistent with a court's exercise of discretion *after* the filing of a criminal charge.

After a finding of guilt on a discretionary direct file, a court has express statutory discretion to choose among statutorily permissible juvenile dispositions or to impose an adult sentence instead. (See Pen. Code, §§ 1170.17, subd. (a), 1170.19, subd. (a); Welf. & Inst. Code, § 1732.6, subds. (a), (b).) "*Notwithstanding any other provision of law*," Penal Code section 1170.19, subdivision (a)(4) authorizes a court to order a juvenile disposition after reading, considering, and entering into evidence a social study of the minor by the probation officer and after making "a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced." (Pen. Code, § 1170.19, subd. (a)(4), italics added; see *id.*, subd. (a)(1); Welf. & Inst. Code, §§ 706, 1732.6, subds. (a), (b).) If the facts of a case satisfy any one of several statutory conditions, however, Penal Code section 1170.19, subdivision (a)(1) (which incorporates by reference Welfare and Institutions Code section 1732.6) precludes the exercise of that discretion to order a Youth Authority commitment. (Pen. Code, § 1170.19, subd. (a)(1), (a)(4); Welf. & Inst. Code, § 1732.6, subds. (a), (b).)

That Chacon was a minor 16 years of age or older found guilty of assault by means satisfies one of those statutory conditions so as to preclude the court's exercise of that discretion to order a Youth Authority commitment. (Pen. Code, §§ 1170.17, subd. (a), 1170.19, subd. (a)(1), (a)(4); Welf. and Inst. Code, §§ 707, subd. (b)(14), 1732.6, subd. (b)(3).[5]) Accordingly, the court here had discretion to order a juvenile disposition other than a Youth Authority commitment or to impose an adult sentence instead. (See Pen. Code, §§ 1170.17, subd. (a), 1170.19, subd. (a)(1), (a)(4); Welf. & Inst. Code, §§ 707, subd. (b)(14), 1732.6, subd. (b)(3).)

[5]Since the finding of guilt of assault by means precludes a Youth Authority commitment (Welf. & Inst. Code, §§ 707, subd. (b)(14), 1732.6, subd. (b)(3)), we need not decide whether other facts here might likewise do so under other provisions of the latter statute. (See Welf. & Inst. Code, § 1732.6, subds. (a), (b).)

The Attorney General acknowledges that "there is no explicit language in the statutes in issue *expressly* stating a juvenile disposition other than a Youth Authority commitment is prohibited" (fn. omitted), but nevertheless argues that a statutory preclusion of a Youth Authority commitment is a statutory preclusion of all other juvenile dispositions as well. The primary authority for that argument is a rule of court: "If the prosecuting attorney lawfully initiated the prosecution as a criminal case under Welfare and Institutions Code section 602(b) or 707(d), and the minor is convicted of a criminal offense listed in Welfare and Institutions Code section 602(b) or 707(b), the minor shall be sentenced as an adult." (Cal. Rules of Court, rule 4.510(a).) "To improve the administration of justice, the Judicial Council is authorized to 'adopt rules for court administration, practice and procedure,' provided the rules are 'not … inconsistent with statute.'" (*People v. Hester* (2000) 22 Cal.4th 290, 294, quoting Cal. Const., art. VI, § 6, subd. (d); see *People v. Hall* (1994) 8 Cal.4th 950, 960.) "The hierarchy is well established: '[T]he rules promulgated by the Judicial Council are subordinate to statutes.'" (*Cooper v. Westbrook Torrey Hills* (2000) 81 Cal.App.4th 1294, 1299.) "To the extent that a rule promulgated by the Judicial Council is inconsistent with a statute, it is invalid." (*Maldonado v. Superior Court* (1984) 162 Cal.App.3d 1259, 1265.)

Legislative history is another authority on which the Attorney General relies for that argument. However, as the Attorney General acknowledges, the statutory language is clear that a finding of guilt of assault by means precludes no juvenile disposition other than a Youth Authority commitment. (Welf. & Inst. Code, §§ 707, subd. (b)(14), 1732.6, subd. (b)(3).) That invokes an established rule of statutory construction: "If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*People v. Knowles* (1950) 35 Cal.2d 175, 183, disapproved on another ground in *People v. Beamon* (1973) 8 Cal.3d 625, 637, fn. 9, and superseded by statute on another ground as stated in *People v. Tribble* (1971) 4 Cal.3d 826, 831.)

Another authority on which the Attorney General relies for that argument is an excerpt from a passage in *Manduley*: "[T]he prosecutor's exercise of such charging discretion, before any judicial proceeding is commenced, does not usurp an exclusively judicial power, even though the prosecutor's decision effectively can preclude the court from selecting a particular sentencing alternative." (*Manduley v. Superior Court*, *supra*, 27 Cal.4th at pp. 545-546.) The Attorney General, however, omits both the opening of that passage ("Our prior decisions instruct that …") and the role of that passage as a prelude to the holding in *Manduley* that statutory authorization of a discretionary direct file does not violate the separation of powers doctrine. (*Id*. at pp. 545-546, 551-562.) Nothing in that passage diminishes the consistency of a prosecutor's exercise of statutory discretion *before* the filing of a criminal charge with a court's exercise of statutory discretion *after* the filing of a criminal charge. The former discretion authorizes a discretionary direct file. The latter discretion authorizes a choice among statutorily permissible juvenile dispositions and adult sentences.

The rationale for preserving informed judicial discretion to order a juvenile disposition other than a Youth Authority commitment or to impose an adult sentence is readily understandable. Statutory preclusion of a Youth Authority commitment channels to state prison a minor found guilty of a statutorily designated charge who requires the high security that no other juvenile disposition offers. That preclusion conserves the "reformatory and educational discipline" of the Youth Authority for a minor found guilty of a statutorily designated charge who requires less security and for a minor found guilty of a less grievous crime. (Welf. & Inst. Code, § 1731.5, subd. (b).)

In addition, if a prosecutor files neither a juvenile petition nor a criminal complaint within 48 hours after law enforcement takes a minor into custody for a felony, "the minor shall be released …." (Welf. & Inst. Code, § 631, subd. (a).) The information a prosecutor could possibly gather in that short a time is necessarily a small fraction of the information the criminal justice system can gather before the time finally arrives, after

plea or verdict, for a court to exercise informed judicial discretion to order a juvenile disposition other than a Youth Authority commitment or to impose an adult sentence. Even though only a few minors might actually receive a juvenile disposition on a discretionary direct file, the wisdom of preserving that discretion in all cases is empirically sound. Otherwise the judicial system will lose a safeguard against preclusion of a juvenile disposition simply because the law allows a prosecutor only 48 hours to gather information about the minor and the crime before the time expires for the exercise of discretion to file either a juvenile petition or a criminal complaint.

In some cases, the Attorney General's reading of the law could lead to other absurdities. If a circumstance that authorized a discretionary direct file were found not true, the Attorney General's reading of the law would mandate that the court impose an adult sentence even if the accused were found guilty only of a charge that did not authorize a discretionary direct file. (See Welf. & Inst. Code, § 707, subds. (b), (d)(1).) Likewise, even if the criminal justice system on a discretionary direct file were to acquire information about the minor or the crime showing that a juvenile disposition "would serve the best interests of justice, protection of the community, and the person being sentenced," the Attorney General's reading of the law would mandate that the court impose an adult sentence. (Pen. Code, § 1170.19, subd. (a)(4).) If that were the law, a judicial system without a failsafe procedure to allow for the exercise of informed judicial discretion could but lament: "Wish I didn't know now what I didn't know then." (Seger, Bob, *Against the Wind* (Gear Publishing Co. 1979).)

For those reasons, we reject the Attorney General's reading of the law and choose to abide by "the familiar canon of statutory construction that 'courts must avoid statutory constructions that lead to illogical or absurd results.'" (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 923-924, quoting *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 142.) "Defendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the

sentencing court." (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8, quoting *United States v. Tucker* (1972) 404 U.S. 443, 447; see *Townsend v. Burke* (1948) 334 U.S. 736, 741; *People v. Austin* (1981) 30 Cal.3d 155, 160-161.)

DISPOSITION

The judgment of conviction is affirmed, the state prison sentence is ordered stricken from the judgment, and the matter is remanded for an exercise of informed judicial discretion on the issue of whether to order a juvenile disposition other than a Youth Authority commitment or to impose an adult sentence instead. After the exercise of that discretion, the court shall prepare an amended abstract of judgment and shall send certified copies of that abstract to the appropriate persons.

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GOMES, J.

WE CONCUR:

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DIBIASO, Acting P.J.

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VARTABEDIAN, J.