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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Appellant,

v.

JOSE LUIS OLIVA,

Defendant and Respondent.

B261837

(Los Angeles County  
Super. Ct. No. BA429429)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Reversed and remanded.

Jackie Lacey, District Attorney, Steven I. Katz and Felicia N. Shu, Deputy District Attorneys, for Plaintiff and Appellant.

Law Office of Matthew D. Kohn and Matthew Kohn for Defendant and Respondent.

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Plaintiff and appellant the People of the State of California appeal the trial court's order granting a civil compromise and dismissing a criminal complaint against defendant and respondent Jose Luis Oliva. The People contend the matter was not suitable for a civil compromise because the crime charged was committed with felonious intent, and the trial court failed to comply with the requirements of the civil compromise statutes, Penal Code sections 1377 and 1378.<sup>1</sup> We agree that the civil compromise did not comport with the statutory requirements, and therefore reverse and remand for further proceedings.

#### FACTUAL AND PROCEDURAL BACKGROUND

On September 18, 2014, the People filed a two-count felony complaint against Oliva. Count 1 alleged Oliva had committed grand theft of personal property, a felony, by taking \$9,956.24 from the Los Angeles Mission College Foundation. (§ 487, subd. (a).) Count 2 alleged Oliva had committed forgery, a felony, by passing or attempting to pass a forged check. (§ 470, subd. (d).)

According to a preconviction probation report (§ 1203.7), at the time of the offenses Oliva was the chairman of the Los Angeles Mission College Foundation. His duties were to raise scholarship money for needy students. Oliva was entrusted with the Foundation's funds from January 2011 through January 2014. During a period of approximately 18 months, he stole \$9,956.24 from the Foundation's general account. Oliva obtained two of the Foundation's blank checks from a locked cabinet, wrote the checks payable to "cash, made payable to himself," and

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

endorsed both using his own signature. During the course of an internal audit, a “Team Leader” for Mission College determined that Oliva had forged and cashed a third check written for \$2,456. Oliva was subsequently terminated from his position.

The probation officer opined that Oliva “was in a position of public trust which he violated. [He] basically stole scholarship money for needy students.” The Foundation desired restitution. Oliva was eligible and suitable for formal probation. The probation officer recommended that if formal probation was granted, Oliva should “initially spend time in custody”; be required to make restitution; perform community service; and be ordered not to volunteer or work in a capacity where he had access to an establishment’s funds or merchandise. The probation officer also noted that Oliva worked in the “sales industry,” selling “financial products,” and his “actions in the present offense possibly might jeopardize his clients.”

On December 12, 2014, the matter was called for setting of the preliminary hearing. On that date Oliva filed and presented to the trial court a document entitled “Declaration of Victim Regarding Civil Compromise Under Penal Code §§ 1377 and 1378.” The declarant, Albert D. Alvarez, the “Chair of the Los Angeles Mission College Foundation,” which was the “real party in interest, the victim, and the complaining witness in this pending criminal matter,” stated the following: “I hereby acknowledge that on behalf of the Foundation, I received full and prompt restitution and compensation from Mr. Jose Oliva in the amount of \$7,956.24 paid by cashier’s check. In further consideration for and as a condition to settle by this civil compromise, the Foundation releases Jose Oliva, who owes no further obligation and debt to the Foundation. Mr. Oliva has

provided Foundation with a full apology, reasonable explanation for his actions, and almost one year ago, he voluntarily repaid \$2,000 of his debt as an act of good faith. Therefore, I am prepared and willing to have this case compromised pursuant to law which I understand to mean that the Court will order the criminal proceedings against Mr. Oliva stayed and/or terminated; that Mr. Oliva will be discharged, and that this Order of Court is a bar to another criminal prosecution for the same offense. I further understand that this civil compromise applies to and is in consideration for Mr. Oliva's unlawful possession of Foundations [sic] funds and his subsequent failure to reimburse the Foundation in a more timely manner." The document was signed "Mr. Albert D. Alvarez, Chair." Attached was a photocopy of a cashier's check payable to Los Angeles Mission College Foundation, dated November 15, 2014. Also attached was a letter from Los Angeles Mission College, on college letterhead, to Oliva from Alvarez and Monte E. Perez, acknowledging receipt of the cashier's check. The letter stated: "In making this restitution, Mr. Oliva acknowledges and agrees that neither the Foundation nor the College participated in the diversion of funds, and that they acted promptly to address the matter once discovered. In recognition of the good works that the College and Foundation contribute to the community, Mr. Oliva agrees that he will not disparage the College and/or the Foundation."

After an unreported sidebar discussion, the trial court stated the following: "People's objection to 1377, 1378 compromise is noted. Victim has received all of the restitution. Over People's objection case is dismissed. Matter is civil compromised 1377, 78. [¶] You are free to go."

The People filed a timely notice of appeal from the trial court's order dismissing the complaint. (§ 1238, subd. (a)(1), (8).)

## DISCUSSION

### 1. *Civil compromise under sections 1377 and 1378*

“Since 1872, California law has allowed the civil compromise of certain misdemeanor offenses if a criminal defendant adequately compensates the person injured for all costs incurred.” (*People v. Gokcek* (2006) 138 Cal.App.4th Supp. 8, 11.) Sections 1377, 1378, and 1379 “provide for the limited circumstances where a person, injured by a misdemeanant, can assert a civil claim. [Citation.] If the injured person in such an instance appears in criminal proceedings and acknowledges he has received satisfaction for his injuries, the court may stay such proceedings and discharge the defendant in accordance with procedures set out in section 1378.” (*Hoines v. Barney's Club, Inc.* (1980) 28 Cal.3d 603, 611; see generally *People v. Tischman* (1995) 35 Cal.App.4th 174, 176-177.) Sections 1377 through 1379 do not require that the prosecutor join in or agree to the civil compromise. (*Hoines v. Barney's Club, Inc., supra*, at p. 611; *People v. Gokcek, supra*, at p. Supp. 16.) An order of civil compromise is a bar to another prosecution for the same offense. (§ 1378; *People v. Gokcek*, at p. Supp. 16.) Civil compromises under section 1377 are permitted in order to promote the public interest by “‘checking rather than encouraging criminal prosecutions of cases which are in reality of a private rather than public nature, although they are technically labeled as public offenses.’” (*People v. Tischman, supra*, at p. 178; *People v. Stephen* (1986) 182 Cal.App.3d Supp. 14, 19-20.) The public interest in such cases is “‘best served by requiring the accused to make restitution directly and immediately to the individual

victim instead of subjecting him to criminal sanctions for the welfare of society in general.’ [Citations.]” (*People v. Tischman, supra*, at p. 178.)

Sections 1377 and 1378 set forth the requirements for a civil compromise. Section 1377 provides that “an act constituting a misdemeanor” may be civil compromised except under specified circumstances.<sup>2</sup> As pertinent here, an offense is ineligible for civil compromise if it was committed “[w]ith an intent to commit a felony.” (*Id.*, subd. (c).)

Section 1378 states: “If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on

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<sup>2</sup> Section 1377 states in its entirety: “When the person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised, as provided in Section 1378, except when it is committed as follows: [¶] (a) By or upon an officer of justice, while in the execution of the duties of his or her office. [¶] (b) Riotously. [¶] (c) With an intent to commit a felony. [¶] (d) In violation of any court order as described in Section 273.6 or 273.65. [¶] (e) By or upon any family or household member, or upon any person when the violation involves any person described in Section 6211 of the Family Code or subdivision (b) of Section 13700 of this code. [¶] (f) Upon an elder, in violation of Section 368 of this code or Section 15656 of the Welfare and Institutions Code. [¶] (g) Upon a child, as described in Section 647.6 or 11165.6.”

the minutes. The order is a bar to another prosecution for the same offense.”

Sections 1377 and 1378 provide the exclusive procedure by which misdemeanor charges may be dismissed by way of civil compromise. (*Hoiner v. Barney's Club, Inc.*, *supra*, 28 Cal.3d at p. 612.) Section 1379 provides: “No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this Chapter.” Generally, “the civil and criminal law operate independently of one another so that resolution of a victim’s civil rights and remedies has no effect upon criminal prosecution. [Citation.] Indeed, it is generally considered to be a criminal offense to condition settlement of a civil claim upon nonprosecution of a criminal action. [Citations.] It is only when there has been compliance with a civil compromise statute authorizing a settlement under the supervision of the court that such a disposition is permitted.” (*People v. Moulton* (1982) 131 Cal.App.3d Supp. 10, 19-20.)

We review a trial court’s ruling on a motion for civil compromise for abuse of discretion. (*People v. McWhinney* (1988) 206 Cal.App.3d Supp. 8, 12.)

2. *The trial court’s order is invalid because it failed to comply with the requirements of sections 1377 and 1378*

The procedure used in the instant matter failed to comply with sections 1377 and 1378 in several respects.

First, only a misdemeanor is subject to compromise. (See *People v. Gokcek*, *supra*, 138 Cal.App.4th at p. Supp. 15 [“When a crime is only a misdemeanor, and the person injured ‘has a remedy by a civil action,’ the offense may be compromised”].) “The Legislature has classified most crimes as *either* a felony or a

misdemeanor, by explicitly labeling the crime as such, or by the punishment prescribed.” (*People v. Park* (2013) 56 Cal.4th 782, 789.) “There is, however, a special class of crimes involving conduct that varies widely in its level of seriousness. Such crimes, commonly referred to as ‘wobbler[s]’ [citation], are chargeable or, in the discretion of the court, punishable as either a felony *or* a misdemeanor; that is, they are punishable either by a term in state prison or by imprisonment in county jail and/or by a fine.” (*Ibid.*; § 17, subd. (b); *People v. Feyrer* (2010) 48 Cal.4th 426, 430, 433, fn. 4.) The offenses alleged here – grand theft and forgery – are “wobblers.” (§§ 489, subd. (c); 473, subd. (a); *In re Coley* (2012) 55 Cal.4th 524, 541; *People v. Crossdale* (2002) 27 Cal.4th 408, 410; *People v. Ceja* (2010) 49 Cal.4th 1, 7, fn. 6; *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1307; *People v. Mutter* (2016) 1 Cal.App.5th 429, 434.)

Here, the complaint alleged both crimes were felonies, not misdemeanors. Section 17, subdivision (b)(5), provides that a wobbler is considered a misdemeanor for all purposes when “at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor . . . .” Although the court had discretion to determine the offenses were misdemeanors, the record does not reflect that it actually made such a determination.

Second, the record does not reflect whether the trial court determined that the offenses were committed without the intent to commit a felony. As noted, an offense may not be compromised if it was committed with the intent to commit a felony. (§ 1377, subd. (c).) *People v. Moulton*, *supra*, 131 Cal.App.3d Supp. 10 and *People v. Strub* (1975) 49 Cal.App.3d Supp. 1, provide helpful analysis. In *Strub*, the defendant was charged in a felony



complaint with welfare fraud, a wobbler offense. The trial court reduced the charge to a misdemeanor pursuant to section 17 and granted a civil compromise after the defendant made restitution. (*People v. Strub, supra*, at pp. Supp. 2-3.) The appellate department of the superior court reversed the order. It explained: “Penal Code section 1377, subdivision 3, provides that an act which constitutes a misdemeanor may nevertheless *not* be compromised if that act was committed ‘with an intent to commit a felony.’ Welfare and Institutions Code section 11483 was clearly charged as a felony and, although reduction of that charge pursuant to Penal Code section 17 may have a direct impact on the sentence to be imposed on conviction, it arguably has no impact whatsoever upon the *intent* with which the act was committed. Since the act herein complained of was in fact a felony, the intent to commit that act may or may not have been felonious. If it were felonious, Penal Code section 1377, subdivision 3, would appear to bar any compromise of the offense. In any case, the question is one of fact, and the compromise of the offense as permitted by the trial court clearly denied the People of their right to a trial on that critical preliminary issue.” (*Id.* at p. Supp. 4.)

In *Moulton*, the defendant was charged in a misdemeanor complaint with the wobbler offense of grand theft. (*People v. Moulton, supra*, 131 Cal.App.3d at p. Supp. 14.) The People objected to the defendant’s motion for civil compromise on the ground a wobbler is of necessity committed with the intent to commit a felony, and therefore excluded from the class of offenses subject to civil compromise. (*Id.* at p. Supp. 15.) The trial court rejected this argument, concluding that the People’s election to file a misdemeanor complaint was dispositive. The court

precluded the People from “‘go[ing] into the underlying facts.’” (*Id.* at p. Supp. 16.) The appellate department of the superior court reversed. *Moulton* explained: “neither the fact that the charge might be filed as a felony or a misdemeanor nor the prosecutor’s decision to file a misdemeanor complaint controls the decision of whether the offense is excluded from civil compromise as an offense committed with felonious intent.” (*Ibid.*) The decision to charge a crime as a misdemeanor might be based on many factors, such as the defendant’s age, prior record, problems of proof, and office filing policies. (*Id.* at p. Supp. 17.) Instead, “the issue of whether defendant had [the intent to commit a felony] is a factual one to be resolved at a hearing in which both the People and the defendant have a right to present evidence.” (*Ibid.*) The trial court’s refusal to permit inquiry into the underlying facts was therefore erroneous. (*Ibid.*; see also *People v. Gokcek*, *supra*, 138 Cal.App.4th at p. Supp. 20.)

*Moulton* then turned to the “more difficult question” of the test to be applied in determining whether an offense was committed with the intent to commit a felony. Considering the legislative history of the statute and its genesis in a New York statute, *Moulton* pointed out that the “‘intent to commit a felony’” phrase had “appeared without change in the California civil compromise statutes and their predecessor New York statutes for nearly 170 years and long antedates the more precise distinctions between felonies and misdemeanors appearing in section 17 of the California Penal Code.” (*People v. Moulton*, *supra*, 131 Cal.App.3d at p. Supp. 17.) As originally intended, the phrase simply connoted a distinction between minor offenses and more serious ones. (*Ibid.*) When California’s Criminal Practice Act was subsequently enacted, “it distinguished between

felonies and misdemeanors solely on the basis of whether the offense called for incarceration in the state prison or a county jail as punishment.” (*Id.* at p. Supp. 20; see generally *People v. Park, supra*, 56 Cal.4th at p. 789; *People v. Feyrer, supra*, 48 Cal.4th at p. 433, fn. 4.) After considering the historical development of the phrase, *Moulton* concluded “the language used defies precise definition. A more fruitful approach is to construe such language in light of the purpose of civil compromise statutes.” (*Moulton, supra*, at p. Supp. 19.) The court concluded that the word “felony,” as used in section 1377, subdivision (c), was originally used “in the sense of distinguishing between misdemeanor offenses subject to compromise and the more serious ones, the compromise of which would be contrary to the purpose of the criminal law. Such definition preserves the underlying purpose of the statute.” (*Moulton, supra*, at p. Supp. 21.) *Moulton* then suggested three factors for a court’s consideration when determining whether the offense was committed with felonious intent within the meaning of the statute: (1) whether the civil injury is coextensive with the criminal violation; (2) whether the circumstances are such that through private settlement the injury to the public is fully vindicated; and (3) whether the victim’s settlement agreement is completely voluntary. (*Id.* at pp. Supp. 21-23.)

Here, the trial court did not conduct a hearing into the facts underlying the case, and it is unclear whether the People requested one. The record likewise does not reflect whether the trial court considered the underlying facts of the case. However, it is clear that the record reflects no finding by the trial court that the crime – alleged to be a felony – was not committed with the intent to commit a felony. Without such a finding, made after

consideration of the underlying facts, the grant of civil compromise was improper.

The People appear to argue that the trial court could have made these determinations from the information in the probation report and, based on that information, should have concluded the offense was committed with the intent to commit a felony. They urge that the injury to the Foundation was substantial and Oliva's criminal conduct was ongoing over time. Moreover, Oliva's theft victimized not only the Foundation, but also donors and needy students, the beneficiaries of donations to the Foundation; therefore, the injury to the public cannot be rectified simply by returning the money to the Foundation, and the public injury is not coextensive with that to the Foundation. Further, the probation report recommended that, as a condition of probation, Oliva be prohibited from volunteering or working in a capacity where he had access to funds, a condition the People aver was necessary to protect the public from future crimes.

To the extent the People intend to argue civil compromise could not have been granted in this matter under any circumstances, we decline to so hold at this juncture. As is clear from our recitation of the facts, *ante*, the record before us is scanty. While it is clear the matter must be reversed and remanded because the trial court did not comply with the procedures required by sections 1377 and 1378, we lack sufficient information to determine whether, as a matter of law, the offense falls outside the class of crimes for which civil compromise is available. For example, the Alvarez declaration stated that Oliva had provided a "reasonable explanation for his actions." Based on the record before us, we cannot say it is impossible that Oliva committed the offenses without the intent to commit a felony, or

that the other factors cited by the *Moulton* court were met. These are questions for the trial court on remand.

Third, the victim neither appeared before the court nor was his declaration signed under penalty of perjury. As *Moulton* explained: “By requiring personal presence of the victim or in lieu thereof other trustworthy evidence, the section affords the court the opportunity to assure itself that satisfaction is complete or a settlement voluntary. Instances in which the victim has been subjected to coercion to dismiss charges are not without precedent.” (*People v. Moulton, supra*, 131 Cal.App.3d at p. Supp. 23.) Because the victim neither appeared nor provided a declaration signed under penalty of perjury, and the record does not reflect that the court found the victim’s agreement was completely voluntary, the grant of civil compromise did not comply with the mandates of section 1378. (See *People v. Moulton, supra*, at p. Supp. 23; *People v. McWhinney, supra*, 206 Cal.App.3d at p. Supp. 12; *People v. Strub, supra*, 49 Cal.App.3d at p. Supp. 4.)

Finally, the trial court failed to state its reasons for allowing the civil compromise. “The reasons and factual basis for the order *must* be set forth in the order and entered in the minutes.” (*People v. Gokcek, supra*, 138 Cal.App.4th at p. Supp. 15; § 1378; *People v. Stephen, supra*, 182 Cal.App.3d at p. Supp. 22; *People v. McWhinney, supra*, 206 Cal.App.3d at p. Supp. 11.) “In order to comply with section 1378, the trial court must state the *factual* basis for approving the civil compromise. It is not sufficient to simply state that the case was dismissed pursuant to a civil compromise, without setting forth the factual basis for the ruling.” (*People v. McWhinney, supra*, at p. Supp.

11.) In the absence of such a statement of reasons, the dismissal is invalid. (*People v. Stephen, supra*, at pp. Supp. 22-23.)<sup>3</sup>

Because the civil compromise order did not comply with the mandates of sections 1377 and 1378, it is invalid.

### 3. *Forfeiture*

Oliva argues that any flaws in the procedure employed or order entered by the trial court have been forfeited. Citing *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364, he urges that a party must raise objections below or waive them. As noted, the trial court stated on the record that it was granting the civil compromise over the People's objection. Neither the court nor the deputy district attorney stated the specific basis for the People's objection on the record, although presumably its nature was made clear during the parties' off-the-record discussions. Oliva argues that the People's failure to

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<sup>3</sup> The cases holding the reasons for the order must be stated in the minutes analogized to former section 1385, which provided that when a judge or magistrate dismisses an action in furtherance of justice, the "reasons for the dismissal must be set forth in an order entered upon the minutes. . . ." (*People v. McWhinney, supra*, 206 Cal.App.3d at p. Supp. 11, fn. 2; *People v. Stephen, supra*, 182 Cal.App.3d at pp. Supp. 17-23.) Section 1385 was amended effective January 1, 2015 to eliminate the requirement that the court's reasons for dismissal must be stated in a written order. Instead, when dismissal is ordered pursuant to section 1385, current law requires that the court orally state its reasons for dismissal; a written order is required only if requested by either party or in cases in which the proceedings are not recorded. (*People v. Fuentes* (2016) 1 Cal.5th 218, 223 fn. 2, 231-232.) The mandatory language of section 1378 has not been changed, however, and the amendment to section 1385 does not affect the analysis of section 1378's requirement.

ensure the record reflected the basis for their objection precludes their challenge to the trial court's order.

We disagree. It is certainly true that, in the absence of a timely and specific objection, challenges to a great many evidentiary, sentencing, and other errors are forfeited. (See, e.g., Evid. Code, § 353, subd. (a) [verdict or finding shall not be set aside on the ground evidence was erroneously admitted absent timely and specific objection]; *People v. Scott* (1994) 9 Cal.4th 331, 356 [challenge to trial court's discretionary sentencing choices forfeited absent objection]; *People v. Linton* (2013) 56 Cal.4th 1146, 1205-1206 [claim of prosecutorial misconduct forfeited absent timely and specific objection]; *People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218 [challenge to restitution award forfeited absent objection].) However, it is also true that the forfeiture doctrine does not apply when the trial court's actions exceeded its statutory authority. (See, e.g., *People v. Anderson* (2010) 50 Cal.4th 19, 26 & fn. 6; *People v. Andrade* (2002) 100 Cal.App.4th 351, 354; *People v. Scott, supra*, at p. 354.) Section 1379 provides that "No public offense can be compromised . . . *except as provided in this Chapter.*" (Italics added.) As we have explained, the trial court failed to make the findings required by sections 1377 and 1378. Further, as discussed, only a misdemeanor committed without the intent to commit a felony is eligible for civil compromise. None of these requirements were satisfied. Absent these requirements being fulfilled, civil compromise is not permitted. Allowing civil compromise when the statutory mandates are not met exceeds a trial court's authority and is therefore not subject to the forfeiture doctrine.

Oliva's citations to *Protect Our Water v. County of Merced*, *supra*, 110 Cal.App.4th 362 and *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130 do not compel a contrary conclusion. In *Protect Our Water*, a California Environmental Quality Act (CEQA) case, the appellate court reversed because the large administrative record provided by the parties was so disorganized as to be inadequate for review. Many documents could not be identified, and key findings by the administrative agency were "impossible to find – let alone sufficient to enable [the court] to determine whether they [were] supported by substantial evidence." (*Protect Our Water*, *supra*, at pp. 364-365, 372.) *Protect Our Water* is factually distinguishable from the case at bar and provides no support for Oliva's contention that the People's challenge has been forfeited.

In *In re Marriage of Arceneaux*, the court concluded a litigant who fails to bring to the attention of the trial court alleged deficiencies in the court's statement of decision waived the right to complain of such errors on appeal pursuant to Code of Civil Procedure section 634. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1132.) Code of Civil Procedure section 632 provided that a party could request that the court issue a statement of decision explaining the basis of its determination. (*In re Marriage of Arceneaux*, *supra*, at p. 1133.) Under Code of Civil Procedure section 634, a party was required to state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party. The "clear implication" was that a party who did not bring such deficiencies to the trial court's attention waived the right to claim on appeal that the statement was deficient. (*In re Marriage of Arceneaux*, *supra*, at pp. 1133-1134.) *Arceneaux* also stated that it "would be unfair to



allow counsel to lull the trial court and opposing counsel into believing the statement of decision was acceptable, and thereafter to take advantage of an error on appeal although it could have been corrected at trial.” (*Id.* at p. 1138.) Further, it would be undesirable to allow a losing litigant to delay proceedings by appealing the statement on procedural grounds, wait for the appellate court to remand for a proper statement, and then appeal any substantive claims. (*Ibid.*) But, in *Arceneaux*, a civil case involving entirely different statutes, there was no claim that the trial court exceeded its statutory authority. While this alone makes *Arceneaux* distinguishable, we also observe that here the People did object to the civil compromise, although for reasons undisclosed by the record; therefore, neither the trial court nor defendant could have been lulled into believing the People had no objection to the dismissal.

For the foregoing reasons, we reverse the trial court’s order and remand for further proceedings at which the victim may either appear or provide a declaration signed under penalty of perjury, and the trial court can determine whether the offenses should be declared misdemeanors pursuant to section 17, whether the crimes were committed with the intent to commit a felony, and whether the victim’s agreement was completely voluntary. If the trial court determines civil compromise is permissible under sections 1377 and 1378, it must state the reasons for its order and set them forth on the minutes as required by section 1378. The trial court should, at that time, determine whether payment of any costs incurred is required. (§ 1378.)

## **DISPOSITION**

The order granting defendant's motion for civil compromise pursuant to sections 1377 and 1378 is reversed and the matter is remanded for further proceedings consistent with the opinions expressed herein.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ALDRICH, J.

We concur:

EDMON, P. J.

STRATTON, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.