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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.L., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B293567  
(Super. Ct. No. NJ29531)  
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

M.L. appeals the juvenile court's order sustaining a wardship petition charging him with committing second degree robbery (Pen. Code, § 211; Welf. & Inst. Code,<sup>1</sup> § 602). Appellant was declared a ward, placed home on probation with various terms and conditions, and ordered to pay a \$100 restitution fine pursuant to section 730.6. Appellant contends the court erred in

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

imposing the restitution fine without first considering his ability to pay, as contemplated in *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). We affirm.

### **STATEMENT OF FACTS**

In January 2018, Emmitt C. used Snapchat to arrange for the sale of movie tickets to an individual who identified himself as “Louie.” Emmitt arranged to meet “Louie” at Mayfair High School. When Emmitt arrived, he discovered that “Louie” was appellant. Emmitt knew appellant because they had attended the high school together. As Emmitt was about to give the tickets to appellant, someone tackled Emmitt and began choking him. Appellant put a bandana over the lower portion of his face and joined in the attack on Emmitt. Appellant and his two companions took Emmitt’s wallet, cellphone, and skateboard before running away. Emmitt subsequently identified appellant from a photographic lineup.

### **DISCUSSION**

In his sole claim on appeal, appellant contends the juvenile court violated his due process rights by ordering him to pay a \$100 restitution fine under section 730.6 without considering whether he had the ability to pay that fine, as contemplated in *Dueñas, supra*, 30 Cal.App.5th 1157. The People respond, *inter alia*, that (1) the claim is barred by appellant’s failure to first seek correction of the alleged error below, as provided in Penal Code section 1237.2; and (2) the claim is forfeited because appellant did not object when the fine was imposed.

Penal Code section 1237.2<sup>2</sup> does not apply here. That statute, by its express terms, applies only to appeals “from a

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<sup>2</sup> The statute provides that “[a]n appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty

judgment of conviction.” (Pen. Code, § 1237.2.) This case does not involve an appeal from a judgment of conviction, but rather an appeal from an order sustaining a juvenile wardship petition. (See *In re Leonard R.* (1977) 76 Cal.App.3d 100, 104 [recognizing, for purposes of Penal Code section 669 that “[a] declaration of wardship is not a ‘conviction’ and a dispositional order of the juvenile court is not a ‘sentence’”].)

We agree with the People, however, that the claim is forfeited. While section 730.6 requires imposition of a restitution fine regardless of a minor’s ability to pay (§ 730.6, subds. (a)(2)(A), (b), (c)), the statute also states that the fine may be waived “if the court finds that there are compelling and extraordinary reasons” for doing so (*id.*, subd. (g)(1)). The statute further provides that “[i]n setting the amount of the fine . . . the court shall consider any relevant factors including, but not limited to, the minor’s ability to pay.” (*Id.*, subd. (d)(1).) Section 730.6 also states that “[t]he consideration of a minor’s ability to pay may include his or her future earning capacity” and that “[a] minor shall bear the burden of demonstrating a lack of his or her ability to pay.” (*Id.*, subd. (d)(2).)

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assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant’s request for correction. This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal.” (Pen. Code § 1237.2.)

Appellant did not object to the restitution fine on any ground below. In light of the statute, which expressly authorizes consideration of a minor's ability to pay and places the burden on the minor to demonstrate an inability to pay, appellant's failure to raise the issue amounts to a forfeiture. (See, e.g., *People v. Nelson* (2011) 51 Cal.4th 198, 227; *People v. Avila* (2009) 46 Cal.4th 680, 729.)

Even if we were to excuse appellant's failure to raise the issue below, we would reject his claim. This case presents no parallel to the unique factual circumstances presented in *Dueñas*, which involved a defendant who made a showing that she was chronically indigent and suffering from cerebral palsy, was a mother of two young children, was largely unemployed and receiving public assistance, had limited education, and had been unable to pay prior citations and fees. (*Dueñas, supra*, 30 Cal.App.5th at pp. 1160–1163.) Here, there is nothing in the record demonstrating or otherwise indicating that appellant will be unable to pay a \$100 restitution fine.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

John H. Ing, Judge  
Superior Court County of Los Angeles

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Tonja R. Torres, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,  
Assistant Attorney General, Steven D. Matthews and Roberta L.  
Davis, Deputy Attorneys General, for Plaintiff and Respondent.