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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re NIA N., a Person Coming Under the
Juvenile Court Law.

B235221
(Los Angeles County
Super. Ct. No. MJ19980)

THE PEOPLE,

Plaintiff and Respondent,

v.

NIA N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Robin R. Kesler, Juvenile Court Referee. Appeal dismissed.

Sarah A. Stockwell, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D.
Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

Nia N. appeals, challenging a restitution order entered after the juvenile court placed her on probation for six months without wardship. (Welf. & Inst. Code, § 725, subd. (a)).¹ Nia contends there was insufficient evidence to support the restitution order. After requesting supplemental briefing on the timeliness of the appeal, we dismiss the appeal as untimely.

FACTUAL AND PROCEDURAL BACKGROUND

On August 24, 2010, Nia, then 12 years old, grabbed and punched another female student during lunch at her middle school.² As a result of the incident, a section 602 petition was filed, alleging Nia had committed battery on school property (Pen. Code, § 243.2, subd. (a)).

On February 14, 2011, Nia admitted the allegation. The juvenile court found the allegation true and sustained the petition. Without adjudging Nia a ward of the court, the juvenile court placed her on six months of informal probation, on certain terms and conditions, including that she pay restitution to the victim of the battery as determined by the court.

A contested restitution hearing was held on March 7, 2011. The evidence included testimony from the victim's father supporting \$3,423.06 in restitution, which included payment for his daughter's medical expenses, his lost wages for time off work following the incident, and costs to enroll his daughter in a new and private school. Nia's counsel disputed the lost wages and private school costs as both excessive and a windfall, as well as not reasonably related to Nia's conduct. At the conclusion of the hearing, the juvenile court ordered Nia to pay \$1,920.22 in restitution by August 11, 2011.

At an August 11, 2011, status conference the probation department reported Nia had failed to make victim restitution payments. The juvenile court adjudged Nia a ward

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The underlying facts were taken from the probation officer's report.

of the court and ordered her home on probation, subject to the previously imposed terms and conditions.

On August 12, 2011, Nia filed a notice of appeal from “the restitution order made on 3/7/11. [Nia’s] petition was sustained on 8/11/11.”

DISCUSSION

“It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” (*People v. Mazurette* (2001) 24 Cal.4th 789, 792.) The judgments or orders of a juvenile court which are appealable are restricted to those enumerated in section 800. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 255, citing *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 709, disapproved on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 33-34.) Relevant here, section 800, subdivision (a), provides that “[a] judgment in a proceeding under . . . 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment.” “[T]he “judgment” in a juvenile court proceeding is the order made after the trial court has found facts establishing juvenile court jurisdiction and has conducted a hearing into the proper disposition to be made.” (*In re Henry S., supra*, 140 Cal.App.4th at p. 255, quoting *In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307-1308; citing §§ 725 [“After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows”] and 706 [contemplating that, after jurisdictional finding, court shall consider relevant evidence and render “judgment and order of disposition”].) That is, the appealable “judgment” in a juvenile delinquency proceeding is the order placing the minor on probation without wardship (*In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 590) or the dispositional order (*In re Henry S., supra*, 140 Cal.App.4th at p. 255).

An *order after judgment* is appealable separately from the judgment itself. (§§ 725, subd. (a) and 800, subd. (a); *In re Julian O.* (1994) 27 Cal.App.4th 847, 852

[subsequent restitution order appealable as order after judgment]; *People v. Guardado* (1995) 40 Cal.App.4th 757, 763 [same].)

“[A] notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.” (Former Cal. Rules of Court, rule 8.400(d)(1), now rule 8.406(a)(1).) “[T]he filing of a timely notice of appeal is a jurisdictional prerequisite. ‘Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal.’ [Citations.]” (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.) “The purpose of this requirement is to promote the finality of judgments by forcing the losing party to take an appeal expeditiously or not at all. [Citations.]” (*Ibid.*; *People v. Mendez* (1999) 19 Cal.4th 1084, 1094 [“An untimely notice of appeal is ‘wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.’ [Citations.]”])

From these authorities, we conclude Nia’s appeal was untimely. The rendition of judgment in this case was the February 14, 2011, order placing Nia on probation without wardship. This order was immediately appealable; Nia had 60 days from February 14, 2011, in which to file her notice of appeal from that judgment.

However, Nia’s sole reason for her appeal was to contest the post-judgment “restitution order made on 3/7/11.” Accordingly, Nia had 60 days from that date in which to file her notice of appeal from that order after judgment. The 60-day deadline for appealing from the March 7, 2011, restitution order was May 6, 2011. Nia did not file her notice of appeal from that order until August 12, 2011, well beyond the 60-day deadline.

Nia urges us to allow her notice of appeal to be deemed “constructively filed,” citing *People v. Slobodion* (1947) 30 Cal.2d 362, 365-368 and *People v. Jordan* (1992) 4

Cal.4th 116, 125 dealing with the “prison-delivery rule,” which does not serve to salvage the timeliness of her appeal.³

DISPOSITION

The appeal is dismissed.

WOODS, Acting P.J.

We concur:

ZELON, J.

JACKSON, J.

³ The “prison-delivery rule” was devised to ensure equal access to appellate courts by self-represented prisoners, who may otherwise face obstacles to the timely filing of a notice of appeal, which other litigants could overcome. (*Silverbrand v. County of Los Angeles, supra*, 46 Cal.4th at p. 129.) Under the prison-delivery rule, a notice of appeal by a self-represented prisoner in a civil or a criminal case is deemed filed as of the date the prisoner properly submitted the notice to prison authorities for forwarding to the superior court, so long as it was submitted before the expiration of the 60-day deadline. (*Ibid.*)