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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF: G.C., a Person Coming Under the Juvenile Court Law	No. S_____ H043281
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. G.C. Defendant and Appellant.	(Santa Clara County Superior Court Number 3-14-JV40902)

APPELLANT'S PETITION FOR REVIEW

After a Published Decision, Filed on September 12, 2018
by the Sixth District Court of Appeal

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In Association with
the Sixth District
Appellate Program

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF: G.C., a Person Coming Under the Juvenile Court Law	S_____ H043281 (Santa Clara County Superior Court No. 3-14-JV40902)
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. G.C., Defendant and Appellant.	

TO THE HONORABLE CANTIL-SAKAYUE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT:

Defendant and appellant G.C. petitions for review following the published decision of the Sixth District Court of Appeal, filed on September 12, 2018. A copy of the opinion, *People v. G.C.*, is attached as Exhibit A.

Review is sought pursuant to California Rules of Court[1], rule 8.500 (b)(1) to secure uniformity of decision.

[1] "Rule" refers to the California Rules of Court.

QUESTION PRESENTED FOR REVIEW

DOES THE FAILURE OF THE JUVENILE COURT TO CLASSIFY A 'WOBBLER' OFFENSE AS A FELONY OR MISDEMEANOR UNDER WELFARE AND INSTITUTIONS CODE SECTION 702 CONSTITUTE AN UNAUTHORIZED SENTENCE THAT CAN BE CORRECTED BY AN APPELLATE COURT IN AN APPEAL STEMMING FROM ON A SUBSEQUENT PETITION?

REASON FOR GRANTING REVIEW

When a juvenile commits an offense that can either constitute a misdemeanor or a felony, the juvenile court must make an affirmative finding as to whether the offense committed constituted a felony or a misdemeanor. (Welf. & Inst.[2] §702 [court shall "declare the offense to be a misdemeanor or felony"]; *In re Manzy W.* (1997) 14 Cal.4th 1199, 1209.) An affirmative finding is made only if the court states its finding on the record. (See, e.g., *In re Ricky H,* (1981) 30 Cal.3d 176, 191, superseded by statute on other grounds as noted in *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) The *Manzy W.* court found the determination under Section 702 to be "obligatory" and not "directory." (*Manzy, supra,* 14 Cal.4th at pp. 1204, 1207.) Here, Justice Greenwood in her dissent also believed that because future adjudications may result in aggregated maximum periods of confinement, the youth may be held beyond the lawful term of confinement if the juvenile court fails to make this determination, and that the failure by the juvenile court to comply with Section 702 results in an authorized order. (Ex. A, dissent at pp. 1 – 2.)

Review of the issue in this case is necessary to secure uniformity of decision. (Rule 8.500(b)(1).) In this case, the majority of the Sixth Appellate District declined to follow the Fourth Appellate District's opinion in *In re Ramon M.* (2009) 178 Cal.App.4th 665. The *Ramon M.* court held that the failure of the juvenile court to designate a wobbler as a felony or a misdemeanor as required by Section 702, constituted an

[2] All future statutory references are to the Welfare and Institutions Code, unless otherwise noted.

unauthorized sentence, and is therefore, cognizable on appeal even when the issue is not previously raised in the juvenile court. (*Id*. at p. 675.) Instead, the court here found that such error does not constitute an unauthorized sentence; therefore appellant could not challenge such error relating to her prior petitions since they were time-barred as related to the notice of appeal from the November 19, 2015 dispositional orders on Petitions A and B, which were the subject of this appeal. (Ex. A, pp. 1 – 2, 8.)

Justice Greenwood, in her dissenting opinion disagreed, concluding that because appellant filed a timely notice of appeal from the juvenile court's orders in December, 2015 and January 2016, the appellate court could properly consider the issue from the prior petitions. She found that there is "an ongoing obligation" under *Manzy W.*, *supra*, 14 Cal.4th 1199 to make a designation as to whether the offenses were misdemeanors or felonies. (Ex. A, dissent, p. 1.)

The Court of Appeal's decision here creates a split of authority regarding. The majority here found that the failure of the juvenile court to designate offenses as misdemeanors or felonies under Section 702 is time-barred when the appellant does not appeal within 60 days of the dispositional order as required by Rule 8.406. The dissent and the *Ramon M.* court found it is an unauthorized sentence and is cognizable on appeal.

Since there is a split in the appellate courts, review in this case would be appropriate. In so doing, this court can provide greater guidance to lower courts to determine whether a juvenile court's failure to select an offense level that can be corrected at any time, even when, as here, the notice of appeal is timely only as to the dispositional hearing from a subsequent petition.

INTEGRATED STATEMENT OF THE CASE AND FACTS[3]

Appellant's Juvenile Court History

Petition A – filed October 2, 2014 in Santa Clara County

On October 2, 2014, a three count petition was filed in the Santa Clara juvenile court which alleged two counts of felony theft or unauthorized use of a vehicle under Vehicle Code section 10851, subdivision (a), and one misdemeanor count of driving while unlicensed under Vehicle Code section 12500, subdivision (a). (CT[4] 7 – 11; "Petition A".) G.C. was not detained. (CT 7.)

On September 15, 2014, G.C. used a shaved key to open a 1996 Honda Accord in Santa Clara County and start the car, which did not belong to her. (CT 9, 91.) While driving the Honda Accord, G.C. crashed into a parked car. (CT 91 - 92.) G.C. could not get out of the Honda Accord and two bystanders pulled her from the car. (CT 91.) When the police arrived, they issued G.C. a citation. (CT 91.)

The following day, G.C. started the ignition in a different 1996 Honda Accord using a shaved key. (CT 92.) Based on damage to the ignition, G.C. thought this car was already stolen. (CT 92.) While driving the Honda Accord to her friend's house, G.C. started swerving the car. (CT 92.) Subsequently she was stopped by the police and arrested for driving a stolen car. (CT 92.)

Petition B – filed October 27, 2014 in Santa Clara County

On October 27, 2014, a one count petition was filed in the Santa Clara juvenile court which alleged felony theft or unauthorized use of a vehicle under Vehicle Code section 10851, subdivision (a). (CT 18 - 22; "Petition B".)

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[3] Given the lengthy history of this case, appellant filed an Integrated Statement of the Case and Facts.

[4] "CT" refers to the Clerk's Transcript; "RT" refers to the Santa Clara Reporter's Transcript, "ACRT" refers to the Alameda County Reporter's Transcript; "Santa Cruz RT" refers to the Santa Cruz Reporter's Transcript.

On October 27, 2014, G.C. saw a car with its window rolled down. (CT 92.) She used a shaved key to start the car. (CT 92.) Police noticed the swerving car and started following G.C. (CT 92.) Later, the car G.C. was driving was surrounded by officers at gun point and G.C. was arrested. (CT 92.)

On October 28, 2014, G.C. admitted two counts of vehicle theft in Petition A and one count of vehicle theft in Petition B, which were sustained as felonies. (CT 56 – 59; 2RT 53 - 58.) The misdemeanor count of driving while unlicensed under Vehicle Code section 12500, subdivision (a) in Petition A was dismissed. (2RT 53.) G.C. was detained in juvenile hall. (2RT 53.)

Petition C – filed November 14, 2014 in Santa Clara County

On November 14, 2014, G.C. was charged in the Santa Clara juvenile court with misdemeanor vandalism under Penal Code section 594, subdivision (a)(b)(2)(A). (CT 80 – 84; "Petition C".)

On October 20, 2014, Santa Clara County Sheriffs stopped the car G.C. was in on Highway 17. (CT 344.) Because G.C. had been reported as missing, the sheriffs detained her. (CT 344.) While G.C. was in the back of the patrol car waiting for officers to return her home, she tagged the backseat of the patrol car; she wrote "13 East Side San Jose X3", "Fuck the Pigs" and "SUR". (CT 344.) On November 19, 2014, G.C. admitted this allegation. (CT 99 – 102; 4RT 117 - 119.)

On December 9, 2014, the Santa Clara juvenile court gave probation the right to release G.C. from juvenile hall on EMP [Pre-Court Electronic Monitoring Program]. (CT 110 – 111; 5RT 140.) G.C. was released from juvenile hall on EMP on December 19, 2014. (CT 118.) On January 8, 2015, G.C. absconded, and an arrest warrant was issued. (CT 115 - 116.; 7RT 182.) On January 13, 2015, the court held a Bench Warrant Status and EMP failure hearing. (CT 127 - 131; 8RT 196.) G.C. was found to have failed EMP, and the court detained her in juvenile hall. (CT 127 - 131.) Because G.C. and her mother planned to move with the family to Seattle, the court ordered an expedited ICPC [Interstate Compact Placement] order. The court authorized the release of G.C. to the plane to Seattle. (CT 131; 8RT 201, 206.) On January 24, 2015, G.C.'s mother moved to

Seattle. (CT 136.) G.C. was released from juvenile hall on January 26, 2015 and transported to the San Jose airport to fly to Seattle. (CT 136.)

Subsequently, G.C. returned to San Jose "without notice." (CT 136.) On February 3, 2015, G.C.'s mother said they were living in Motel 6 in San Jose. (CT 136 - 137) G.C.'s mother said they planned to move back to Tacoma, Washington. (CT 137.) That same day, G.C. was arrested by probation. (CT 136.) On February 4, 2015, the Santa Clara juvenile court held a detention hearing. (CT 145 – 149.) The court gave probation the right to release G.C. from detention. (CT 148; 10RT 215, 217- 218; 11RT 224.)

Petition D - filed February 13, 2015 filed in Santa Clara County

On February 13, 2015, G.C. was charged with felony vandalism in Santa Clara juvenile court under Penal Code section 594, subdivision (a)(b)(1). (CT 152 – 155; Petition "D".) G.C. threw away her EMP transmitter, worth $575.00, on February 10, 2015. (CT 160.)

On February 19, 2015, a second charge of misdemeanor petty theft under Penal Code section 484/488 was added to this petition. (CT 155, 188; 12RT 227.) That same day, G.C. admitted the petty theft charge, and the vandalism charged was dismissed. (CT 187 – 191; 12RT 227 – 229.)

The court found that G.C. and her mother resided in Alameda County and ordered the matter [Petitions A, B, C, and D] transferred there for disposition. The court also ordered G.C. transported to Alameda County. (CT 192 – 195; 12RT 228 - 229.)

Disposition of Petitions A, B, C, and D in Alameda County

On February 27, 2015, the Alameda County juvenile court held a detention and acceptance of transfer hearing and accepted the transfer from Santa Clara County. (CT 358; 13RT 385.) On November 19, 2015, the Alameda County juvenile court held a dispositional hearing on Petitions A, B, C, D. (CT 201 – 203, 331 – 333; ACRT 6 – 9.) The court adjudged G.C. as a ward and released G.C. to her mother. The court also ordered standard terms and conditions of probation. (CT 334 – 336; ACRT 6 - 9.)

On July 23, 2015, the Alameda County juvenile court ordered restitution from Petition A in the amount of $500.00 to Jolene Wong, $1,985.00 to Graciela Garcia, and $4,875.00 to Manuel Dena; from Petition B in the amount of $500.00 to Mario Quezada; and from Petition D in the amount of $575.00 to Santa Clara County Probation Department. The court reserved restitution in Petition C. (CT 290, 346.)

Petition in July, 2015 filed in Santa Cruz County; Disposition in Alameda County

In July, 2015, a one count petition was filed in Santa Cruz County which alleged misdemeanor possession of burglary tools in violation of Penal Code section 466. (CT 267, 274.) On July 14, 2015, G.C. admitted this charge in Santa Cruz. (Santa Cruz RT 304 – 307.) Because G.C. was a resident of Alameda County, the Santa Cruz juvenile court ordered the matter transferred to Alameda County for disposition. (Santa Cruz RT 303 – 304, 307.) On August 7, 2015, the Alameda County juvenile court accepted transfer of the case from Santa Cruz. (CT 288.)

On September 10, 2015, the Alameda County juvenile court held a dispositional hearing on the Santa Cruz petition. (CT 267 – 268.) The court ordered all existing conditions of probation to remain in effect. (CT 267 – 268; AC 604.)

Petition E - filed October 30, 2015 in Alameda County; Disposition in Santa Clara County

On October 30, 2015, G.C. was charged with violating the terms of her probation when she left home without permission and remained AWOL. This petition was filed in Alameda County. (CT 206 - 208, 259 – 261; "E" petition.) On October 28, 2015, no one answered the door when probation went to G.C.'s home. Probation called G.C.'s mother, and she said G.C. had not been home for about one week. (CT 266.)

On November 9, 2015, G.C. admitted the probation violation in Alameda County and the Alameda County juvenile court transferred the case back to Santa Clara County. (CT 215; 4RT 901.) On November 19, 2015, the Santa Clara juvenile court accepted the

transfer of Petition E from Alameda County. (CT 379 – 383, 14RT 434.) G.C. was detained in juvenile hall. (14RT 438.)

On December 30, 2015, the dispositional hearing on Petition E was held in Santa Clara juvenile court and the court ordered G.C. released on probation with various services offered. (CT 400 - 404.) The court continued G.C. as a ward of the court and ordered standard terms and conditions of probation. (CT 400 – 404; 17RT 716, 720.) A hearing on the validity of several gang and electronic search conditions was held on January 26, 2016. (CT 457; 18RT 857 - 878.) The court imposed certain gang and electronic search conditions. (CT 457 – 458; 18RT 874 - 876.)

G.C. filed a notice of appeal on February 1, 2016. (CT 458 – 460.) On September 12, 2018, the Sixth District Court of Appeal issued a published decision. (Ex. A.) The majority held that appellant's appeal from the November 19, 2015 dispositional order of Petitions A and B was not an unauthorized sentence and was time-barred because she did not appeal within 60 days as required by California Rules of Court, rule 8.406. (Ex. A, 8.) Appellant did not file a petition for rehearing.

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE SPLIT OF AUTHORITY ABOUT WHETHER THE FAILURE OF THE JUVENILE COURT TO CLASSIFY A 'WOBBLER' OFFENSE AS A FELONY OR MISDEMEANOR UNDER SECTION 702 CONSTITUTES AN UNAUTHORIZED SENTENCE THAT CAN BE CORRECTED BY AN APPELLATE COURT IN AN APPEAL FOCUSED ON A SUBSEQUENT PETITION

A. Introduction

On appeal, G.C. argued that the juvenile court failed to properly determine whether three of the true findings from prior petitions for vehicle theft, which were wobbler offenses defined by Vehicle Code section 10851, constituted misdemeanors of felonies.

A majority of the court below concluded that the failure of the juvenile court to do so did not constitute an unauthorized sentence, notwithstanding the language of Section 702 and this court's opinion in *Manzy W.* (Ex. A, pp. 7 – 8.) As such, the majority found that the issue could not be considered in the present appeal since no timely notice of appeal was filed from the dispositional hearing on the vehicle theft true findings; a notice of appeal in the present case stemmed only from the dispositional hearing on a subsequent petition. (Ex. A, p. 6.) The majority's conclusion stands in contrast to the prior holding in *Ramon M.* and Justice Greenwood's dissenting opinion in the present case. (Ex. A., dissent, pp. 1 – 3.) The *Ramon M.* court concluded the failure of the juvenile court to state whether a 'wobbler' is a felony or a misdemeanor as required by Section 702 is tantamount to an authorized sentence, and was cognizable on appeal even though the minor did not raise the issue in the trial court. (*Ramon M., supra,* 178 Cal.App.4th at p. 675.)

Review should be granted to clarify the aforementioned split in authority and rectify the misguided conclusion by the appellate court below.

B. Relevant proceedings below

On October 2, 2014, a three count petition was filed in the Santa Clara juvenile court which alleged two counts of felony theft or unauthorized use of a vehicle under Vehicle Code section 10851, subdivision (a), and one misdemeanor count of driving while unlicensed under Vehicle Code section 12500, subdivision (a). (CT 7 – 11; "Petition A".) On October 27, 2014, a one count petition was filed in the Santa Clara juvenile court which alleged felony theft or unauthorized use of a vehicle under Vehicle Code section 10851, subdivision (a). (CT 18 - 22; "Petition B".)

On October 28, 2014, G.C. admitted two counts of vehicle theft in Petition A and one count of vehicle theft in Petition B, which were sustained as felonies. (CT 56 – 59; 2RT 53 - 58.) The court stated," Court does find a factual basis for all counts. The Court finds [G.C.] has knowingly and intelligently waived her rights. Freely and voluntarily

entered an admission to the two petitions." (2RT 58.) The court ordered G.C. detained until the disposition date. (2RT 59.)

The court continued the disposition on November 13, 2014 (CT 71 - 72), November 19, 2014 (CT 99 - 101), December 9, 2014 (CT 110 - 111), December 16, 2014 (CT 113 - 114), January 8, 2015 (CT 115 - 116), and January 27, 2015 (CT 132 - 133). On February 19, 2015, the Santa Clara County ordered the matter transferred to Alameda County for disposition because G.C. was living in Alameda County. (CT 187 – 189.) At none of these hearings did the court affirmatively state on the record that these offenses constituted misdemeanors or felonies; additionally, the record does not establish the court knew of its discretion to treat these offenses as misdemeanors. (See, e.g. 3RT, 4RT, 5RT, 6RT, 7RT, 9RT.)

On November 19, 2015, the Alameda County juvenile court held a dispositional hearing on Petitions A, B, C, D. (CT 201 – 203, 331 – 333; ACRT 6 – 9.) The court did not make any findings regarding whether the vehicle theft charges under Petitions A and B were misdemeanors or felonies. (CT 201 – 203, 331 – 333; ACRT 1 – 10.)

The disposition for Petitions A and B were held on November 19, 2015. G.C. remained on probation when a subsequent petition was filed in July, 2015. The disposition on Petitions A and B were held on September 10, 2015. Petition E was filed in October 15, 2015, and the dispositional hearing occurred in Santa Clara County on December 30, 2015. G.C. filed a notice of appeal on February 1, 2016. She was on probation the entire time.

C. This issue is cognizable on appeal

G.C. appealed from the January 26, 2015 contested dispositional hearing on Petition E filed October 31, 2015. (CT 459 – 460.). She did not appeal within 60 days of the November 19, 2015 dispositional hearing on Petitions A, B, C, and D. (CT 459 – 460.) G.C. admitted to three counts of felony vehicle theft in Petitions A and B on October 28, 2014. (CT 56 – 59; 2RT 53 - 58.)

The dispositional order of November 19, 2015 failed to state whether the three vehicle theft violations as charged in Petitions A and B were felonies or misdemeanors. This is "tantamount to an unauthorized sentence." (See *Ramon M.*, *supra*, 178 Cal.App.4th at pp. 675 – 676, citing *Ricky H.*, *supra*, 30 Cal.3d at p. 191.) As such, this claim is not time-barred by G.C.'s failure to appeal from the November 19, 2015 dispositional order. (*Ibid*.)

When a juvenile commits an offense that can either constitute a misdemeanor or a felony, the juvenile court must make an affirmative finding as to the level of offenses. (§ 702; *In re Manzy W., supra,* 14 Cal.4th at p. 1204; see also Rule 5.780.) "The requirement is obligatory: '[S]ection 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.' [Citations.]" (*Ibid*.) If the juvenile court fails to make this designation, the matter must be remanded "for strict compliance." (*Ibid*.) Failure to do so could result in an excess confinement of the juvenile." (*Manzy W.,* 14 Cal.4th at p. 1205)." (Ex. A, dissent at pp. 1 – 2.)

Requiring a court to affirmatively declare whether an offense is a misdemeanor or a felony "facilitat[es] the determination of the limits on any present or future commitment to physical confinement for a so-called 'wobbler' offense," (*Manzy W., supra*, 14 Cal.4 th at p. 1206) and also "serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under section 702." (*Id*. at p. 1207.)

If an affirmative finding is not made, the appellate court must determine whether "the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*Manzy W., supra*, 14 Cal.4th at p. 1209.) Appellate courts have found that an affirmative finding was not made even where there was an admission of an allegation charged as a felony (*In re Nancy C.* (2005) 133 Cal.App.4th 508, 512), or where a court calculated the maximum term of confinement as if the offense was a felony (*Manzy W., supra*, 14 Cal.4th at pp. 1207-1208).

In *Ramon M.*, the juvenile court found that a dispositional error which failed to state whether a wobbler is a felony or a misdemeanor is tantamount to an unauthorized

sentence, and held that the failure to comply with Section 702 was cognizable on appeal even though the minor failed to raise it in the trial court. (*Ramon M, supra,* 178 Cal.App.4th at p. 675.) The *Ramon M.* court was clear when it stated that 'Section 702 states "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.' This provision requires strict compliance. (*Manzy W*., *supra*, 14 Cal.4th at p. 1204)." (*Ramon M., supra*, 178 Cal.App.4th at p. 675.)

The *Ramon M.* court dismissed the argument made by the Attorney General that the claim was not cognizable on appeal, stating: "Ramon argues that a dispositional order that fails to state whether the offense is a felony or a misdemeanor is tantamount to an unauthorized sentence. (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 191) Given the California Supreme Court's recent ruling on the use of juvenile adjudications as strikes, we feel that Ramon has the better argument on this point. (*People v. Nguyen* (2009) 46 Cal.4th 1007)." (*Ramon M., supra,* 178 Cal.App.4th at p. 675.)

In addition, the court in *Ramon M.* found that the juvenile court intended to treat the prior adjudications as felonies, as evinced by the minute orders, but the appellate court was bound by case law that minute orders are insufficient, and the juvenile court must state on the record whether the offense should be treated as a felony or a misdemeanor. (*Ibid.*, citing, *Ricky H., supra*, 30 Cal.3d at pp. 191 – 192.)

While the issue of whether there was an unauthorized sentence was not before the appellate court in *Ricky H*., the court did find that because section 702 requires that …"the court shall declare the offense to be a misdemeanor or felony," and the record did not indicate that the juvenile court made an express finding as to whether the offense was a misdemeanor or a felony, the matter must be remanded to the juvenile court to "determine the character of the offense as required by section 702." (*Ricky H., supra,* 30 Cal.3d at pp. 191 – 192.)

The majority here disagreed with the holding in *Ramon M.*, finding that its reliance on *Ricky H*. was misplaced. The majority found that *Ricky H*. "had nothing to do with the jurisdictional requirement that an appellant file a timely notice of appeal"

and that the unauthorized sentence in *Ricky H.* did not involve an untimely notice of appeal. (Op. at p. 8.) In addition, the majority here stated that the *Ramon M*. court's reliance on *People v. Nguyen* (2009) 46 Cal.4th 1007 was also incorrect, because it did not involve an untimely notice of appeal. (Ex. A, at p. 8.)

The majority was incorrect when it failed to follow *Ramon M*. The court in *Ramon M.* found that Section 702 "requires strict compliance," citing *Manzy W*., 14 Cal.4th at p. 1204, and that a claim is not forfeited because the juvenile court's failure to make affirmative findings is tantamount to an unauthorized sentence that may be raised on appeal at any time. (*Ramon M*., *supra*, 178 Cal.App.4th at p. 675.)

The majority here incorrectly concluded that the alleged errors were not tantamount to an unauthorized sentence. In finding that Section 702 requires the juvenile court to make a determination, the court in *Ricky H*. recognized "the setting of a felony-level maximum period of confinement has been held inadequate to comply with the mandate of section 702. [Citation omitted]." (*Ricky H, supra*, 30 Cal.3d at p. 191.) Juveniles face serious collateral consequences if the juvenile court fails to make a determination as to whether the offense is a misdemeanor or a felony. As argued by Justice Greenwood in the dissent, "[t]he Supreme Court based its decision on its recognition that Section 702 provides equal protection to youthful offenders by ensuring that a minor not be held "in physical confinement longer than an adult convicted of the same offense. (*Manzy W., supra*, 14 Cal.4th at p. 1205)." (Ex. A., dissent at p. 1.) Moreover, as argued in the dissent, the designation impacts "future adjudications." (*Manzy W., supra*, 14 Cal.4th at p. 1205)." (Exh. A., dissent at p. 2.) Because the juvenile court often aggregates current and prior offenses, if the juvenile court fails to designate whether the offense was a misdemeanor or a felony, the juvenile could be held in physical custody longer than the lawful term. (*Ibid*.) This holding precludes a later appeal from an unlawful term of confinement. (*Ibid*.)

In addition, prior juvenile records which are not sealed can be used against the defendant in sentence aggravation in adult. If a defendant is convicted of a felony in adult criminal court, the court considers certain enumerated criteria when deciding whether to

grant probation. (Rule 4.414(b) [criteria affecting probation].) The court also considers factors in aggravation and mitigation when determining whether to sentence the defendant to the low, middle, or high term of a determinate sentence to state prison. (Rule 4.420(b) [selection of term of imprisonment], rule 4.421(b) [aggravating factors], and Rule 4.423(b) [mitigating factors]. When making these determinations, the court is permitted to consider whether or not the defendant suffered a prior sustained petition as a juvenile.

The determination of the offense level is not just an academic issue. It has real world and practical consequences and as such, this would support the court's determination that it is an unauthorized sentence. In some cases, a record under Section 786 may only be sealed if the juvenile court determines the offense is a misdemeanor. Some of the offenses include assault under Penal Code section 245, criminal threats under Penal Code section 422, throwing acid or flammable substances under Penal Code section 244, shooting from a vehicle under Penal Code section 12022.55, and discharge of a firearm into a building with people inside under Penal Code section 12022.5. Without a determination, a record which could be sealed if the court determines it is a misdemeanor, the record may not be sealed.

The failure to designate affects record sealing. The policy implications of record sealing cannot be underestimated. The California legislature recently enacted Section 786, which mandates youth must have their juvenile record sealed immediately upon satisfactory completion of probation. Expungement typically allows offenders to tell prospective employers, landlords, licensing agencies, loan agencies, and other that they have never been arrested or convicted. The legislature intended the streamlined process for sealing be simple so that any youth without a section 707, subdivision (b) case could have his or her record sealed. (*In re Y.A.* (2016) 246 Cal.App.4th 523, 527; § 786; Leg. Counsel's Deg., Sen. Bill No. 1038, ch. 240 (2013 – 2014 Reg. Sess.); see also *In re A.V.* (2017) 11 Cal.App.5th 697, 708.)

D. This Court should accept review

The appellate court erred when it found appellant's claim was time-barred and that the juvenile court's order was not tantamount to an unauthorized sentence. Under *Manzy W*., the juvenile court is mandated to make determination as to whether the wobbler offenses were misdemeanors or felonies. (*Manzy W., supra,* 14 Cal.3d at p. 1209). The failure of the juvenile court to select an unauthorized sentence can be corrected at any time, even when the notice of appeal is timely only as to a dispositional hearing from a subsequent petition. (*Ramon M., supra*, 178 Cal.App.4th at p. 675.)

CONCLUSION

For the reasons expressed above, review should be granted.

Dated: October 19, 2018

Respectfully submitted,

SIDNEY S. HOLLAR

Attorney for Appellant
G.C.

Certificate of word count

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that Appellant's Petition for Review in *People v. G.C.* contains 4782 words, according to the computer program I used to prepare this brief.

DECLARATION OF SERVICE

People of the State of California v. G.C., H043281, Santa Clara Superior Court JV-40902

I, SIDNEY S. HOLLAR, declare that I am over 18 years of age, and not a party to the within cause; my business address is 5214F Diamond Heights Blvd., #127, San Francisco, CA 94131. I served a true copy of the attached:

APPELLANT'S PETITION FOR REVIEW

G.C.
(appellant)

Sixth District Court of Appeal
333 W. Santa Clara Street, #1060
San Jose, CA 95113

Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

Santa Clara County Public Defender
120 W. Mission Street
San Jose, CA 95110

Santa Clara County Office of District Attorney
70 W. Hedding Street
San Jose, CA 95113

Each envelope was then, on October 19, 2018 sealed and deposited in the United States Mail at San Francisco, California, San Francisco County, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 2018, at San Francisco, California.

SIDNEY S. HOLLAR

Filed 9/12/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re G.C., a Person Coming Under the Juvenile Court Law.	H043281 (Santa Clara County Super. Ct. No. 3-14-JV40902)
THE PEOPLE, Plaintiff and Respondent, v. G.C., Defendant and Appellant.	

Appellant G.C. contends that the juvenile court erroneously failed to expressly declare her three 2014 Vehicle Code section 10851 violations to be either felonies or misdemeanors.[1] The dispositional order for the 2014 Vehicle Code section 10851 offenses was entered on November 19, 2015. G.C.'s notice of appeal was filed on February 1, 2016. Since the notice of appeal was untimely as to the November 2015 dispositional order, and G.C. raises no issues as to any other orders, we dismiss her appeal. We publish this opinion to express our disagreement with the Fourth District Court of

[1] A violation of Vehicle Code section 10851 is punishable as either a felony or a misdemeanor. (Veh. Code, § 10851, subd. (a).) "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court *shall declare* the offense to be a misdemeanor or felony." (Welf. & Instit. Code, § 702, italics added.) A failure to make such a declaration is known as *Manzy* error. (*In re Manzy W.* (1997) 14 Cal.4th 1199.)

Appeal's decision in *In re Ramon M.* (2009) 178 Cal.App.4th 665 (*Ramon*), which held that a failure to make an express declaration may be challenged in an appeal from a subsequent dispositional order.

I. Background

An October 2, 2014 petition (Petition A) alleged two violations of Vehicle Code section 10851, subdivision (a) (driving or taking a vehicle) by G.C. in September 2014 along with a Vehicle Code section 12500, subdivision (a) (driving without a license) violation. An October 27, 2014 petition (Petition B) alleged an additional violation of Vehicle Code section 10851, subdivision (a) committed by G.C. in October 2014.

On October 28, 2014, G.C. admitted the three driving or taking a vehicle counts, and the prosecution dismissed the driving without a license count. G.C., who admitted to being a Sureno gang member, told the probation officer that she had taken the vehicles "so she can sell their parts so she can purchase drugs and food." The signed minute order from the October 28 jurisdictional hearing identified the counts as felonies, but it did not indicate that the court had considered whether the counts should be felonies or misdemeanors. The court also made no oral declaration that the counts should be felonies or misdemeanors.

A third petition (Petition C) was filed on November 14, 2014, and it alleged a single count of misdemeanor vandalism (Pen. Code, § 594). On November 19, G.C. admitted the vandalism allegation. On February 13, 2015, a fourth petition (Petition D) was filed alleging a single count of felony vandalism. On February 19, Petition D was amended to add a misdemeanor petty theft (Pen. Code, §§ 484, 488) allegation, which G.C. admitted, and the felony count was dismissed. The four petitions, which were all pre-disposition, were then transferred to Alameda County.

Alameda County accepted the transfer on February 27, 2015, and a disposition hearing was set for March 13. At the March 13 hearing, G.C.'s trial counsel said she "was a little confused" about the status of the case. "My understanding is that this was a dispo,

the most recent event for the ankle bracelet. I know Probation has included restitution claims from a prior petition. I need to research whether that was already dealt with at Santa Clara prior to the transfer for what happened, if anything." The court responded: "I'm in confusion, because I thought all of these petitions were transferred in for dispo. You're saying that's not the case." G.C.'s trial counsel responded: "I assume the prior petitions had already been dispo'd because she was on probation, but I need to research that because the prior petitions were in October of last year. She had been released on GPS. It's a little confusing to me. It was my impression that it was just the most recent misdemeanor . . . ."

The colloquy continued: "THE COURT: I'm looking at the minute order dated February 19th of 2015. It says the matter is transferred to Alameda County for disposition, further proceedings for all four petitions -- A, B, C and D. I think that's where Probation -- [¶] MS. PORTNOW [G.C.'s trial counsel]: It just seems strange to me that she wouldn't have been dispo'd for the other events. The only thing I'm asking --" The court said: "Even if she's already dispo'd on the others, Ms. Portnow, this would be her fourth finding."

After a bit more discussion, the court stated: "All right. Let's assume that that's the case. It is four findings in a period of five months. . . . It's going to have to be a three-C order, and I have to start all over because I have no idea what probation conditions are from Santa Clara County. So I am going to impose all new conditions." The court seemed to accept G.C.'s counsel's understanding that only the most recent petition was before the court for disposition. "I don't know much about her since she was transferred over here *on this last petition* . . . ." (Italics added.) "Pursuant to 726 (a) (2) of the Welfare and Institutions Code, the Court finds that [G.C.], *a ward of the court, has been tried on*

probation in the custody of her mother, [A.C.], and has failed to reform."[2] (Italics added.) "*The current probation order* is set aside with the exception of wardship and any financial obligations. [G.C.] will be declared a ward of the Court and committed to the care, custody and control of the probation officer with the minor to be removed from the home of her mother . . . ."[3] (Italics added.) "Credit for time served is 111 days. The Court sets the maximum custody time at four years, six months."

At some point prior to July 2015, G.C. and her mother moved from Alameda County to Santa Clara County. In July 2015, G.C. admitted a July 2015 petition in Santa Cruz County that alleged a single misdemeanor count of possession of burglary tools (Pen. Code, § 466). The Santa Cruz court transferred the matter to Alameda County for disposition. In September 2015, G.C. appeared before the Alameda County court for disposition on the Santa Cruz petition. The Alameda court continued her as a ward and ordered that she remain on probation with essentially the same terms and conditions. On October 30, a Welfare and Institutions Code section 777 supplemental petition was filed alleging that G.C. had violated her probation. On November 9, G.C. admitted the allegation in the Welfare and Institutions Code section 777 petition, and the case was transferred back to Santa Clara County.

On November 19, 2015, Santa Clara County accepted the transfer, detained G.C., and initially stated that it was ordering that "[o]n the A through D petitions" G.C. "will continue . . . as a ward in Santa Clara County." The court officer interrupted the court and explained that this "was a mistake" because G.C. needed "to be adjudged a ward of the Court, not continued" because she had not had a dispositional hearing in Santa Clara

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[2] G.C. had not yet been declared a ward of the court and was not on probation because no disposition hearings had yet been held.

[3] However, the court ordered that "[t]he minor is released to mother on GPS monitoring."

County. This colloquy occurred: "THE COURT: Um, she's not a ward now? [¶] COURT OFFICER: In our county, not yet. [¶] THE COURT: Well, has she had a disposition hearing on A through D? [¶] COURT OFFICER: No, Your Honor. We transferred her case out to Alameda County. [¶] THE COURT: And they didn't take a disposition hearing? They sent it back? [¶] COURT OFFICER: They did adjudge her a ward of the Court over there. [¶] THE COURT: So she is a ward of the Court. [¶] COURT OFFICER: In Alameda County. [¶] THE COURT: Okay. [¶] COURT OFFICER: So line No. 1 we just would like to amend it to be adjudged a ward of the Court instead of continue. [¶] THE COURT: In A through D? [¶] COURT OFFICER: Yes, sir. [¶] THE COURT: Okay. I see. I will do that. [¶] But we need to have a disposition hearing on E; is that correct? [¶] COURT OFFICER: Yes, Your Honor." The court's signed minute order stated: "Minor is adjudged a ward of the juvenile court in and for the County of Santa Clara" and incorporated the Alameda County probation orders as "ORDERS OF THE COURT."

On December 30, 2015, the court "continued" G.C. "as a ward of the court" for the Welfare and Institutions Code section 777 petition but deferred the issue of whether to impose contested gang and electronic search conditions for a contested hearing. At the January 26, 2016 contested hearing, the court asked: "Let me ask one brief question right up front. Is the minor on probation . . . for her other matters? Or her earlier matters?" The probation officer responded: "Yes." The court ultimately modified and imposed gang and electronic search conditions. On February 1, 2016, G.C. filed a notice of appeal that stated she was challenging the January 2016 dispositional order.

II. Analysis

G.C.'s sole contention on appeal is that the juvenile court erred in failing to expressly declare that her Vehicle Code section 10851 offenses were either felonies or

misdemeanors. However, we cannot address this issue because, as G.C. admits, she did not appeal from the dispositional order on these offenses.

An appeal in a juvenile case must be filed within 60 days of an order. (Cal. Rules of Court, rule 8.406.) G.C.'s February 1, 2016 notice of appeal was filed well beyond 60 days after the court's November 19, 2015 dispositional order on Petitions A and B.[4] G.C. contends that her appeal is "not time-barred" because the court's error was "'tantamount to an unauthorized sentence.'" She relies on the Fourth District's decision in *Ramon*, while the Attorney General argues that the Fourth District reached an inaccurate conclusion in *Ramon*.

We decline to follow the Fourth District's decision in *Ramon*. Ramon timely appealed from a 2008 dispositional order requiring him to serve a year in county jail. (*Ramon*, *supra*, 178 Cal.App.4th at p. 670.) He argued that the 2008 dispositional order should have allowed him to serve his commitment in a juvenile facility, rather than in jail. (*Ramon*, at p. 668.) Ramon also claimed in his 2008 appeal that "as to prior adjudications, the court failed to declare on the record whether the offenses were felonies or misdemeanors." (*Ramon*, at p. 668.) The dispositional order for two of the three "prior adjudications" in question had been entered in October 2005. (*Ramon*, at pp. 668, 675.) It was unclear when the dispositional order for the third offense had been entered except that it was sometime between the October 2005 dispositional order and the June 2008 dispositional order. (*Ramon*, *supra*, 178 Cal.App.4th at p. 675.)

The Attorney General contended that Ramon was precluded from challenging the dispositional orders for those three prior adjudications because he had not filed a timely

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[4] We note that G.C. is under the mistaken impression that the dispositional order on these offenses, which were alleged in Petitions A and B, was entered on March 13, 2015 in Alameda County. In fact, the only dispositional order on Petitions A and B was entered on November 19, 2015 in Santa Clara County. The difference is immaterial in this case as both of these orders occurred more than 60 days before G.C. filed her notice of appeal.

notice of appeal from those orders. The Fourth District rejected the Attorney General's argument in a single paragraph. "Respondent argues this claim should be time-barred, noting that Ramon failed to file a notice of appeal within 60 days as required by the California Rules of Court, rule 8.400(d). Ramon argues that a dispositional order that fails to state whether the offense is a felony or a misdemeanor is tantamount to an unauthorized sentence. (*In re Ricky H.* (1981) 30 Cal.3d 176, 191 [178 Cal.Rptr. 324, 636 P.2d 13], superseded by statute on other grounds as noted in *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396 [234 Cal.Rptr. 103].) Given the California Supreme Court's recent ruling on the use of juvenile adjudications as strikes, we feel that Ramon has the better argument on this point. (*People v. Nguyen* (2009) 46 Cal.4th 1007 [95 Cal.Rptr.3d 615, 209 P.3d 946].)" (*Ramon*, at p. 675.)

We disagree with the Fourth District's decision in *Ramon*. The California Supreme Court's decision in *In re Ricky H.* (1981) 30 Cal.3d 176 (*Ricky*) had nothing to do with the jurisdictional requirement that an appellant file a timely notice of appeal. Ricky was challenging a December 1978 dispositional order committing him to the California Youth Authority (CYA). (*Ricky* at p. 180.) He claimed that the juvenile court had abused its discretion in committing him to the CYA and had not granted him the correct amount of credit against his CYA term. (*Ricky*, at pp. 182, 184-185.) After addressing Ricky's contentions, the court addressed "several deficiencies in the superior court's dispositional order, not raised by either party, which have become apparent to this court during its review of this case." (*Ricky* at pp. 190-191.) One of these "deficiencies" was the juvenile court's failure to expressly declare that Ricky's assault offense was a felony or a misdemeanor. (*Ricky* at p. 191.) The court remanded the case to the juvenile court for the court to make the requisite declaration. (*Ricky*, at p. 192.)

The passage in the *Ricky* opinion relied upon by the Fourth District and G.C. did not concern the express declaration issue at all. The juvenile court in *Ricky* had erroneously set Ricky's maximum term at three years rather than four years. (*Ricky*, *supra*, 30 Cal.3d at

p. 191.) The California Supreme Court pointed out this error and then stated: "Authority exists for an appellate court to correct a sentence that is not authorized by law whenever the error comes to the attention of the court, even if the correction creates the possibility of a more severe punishment." (*Ricky*, at p. 191.) It remanded the case with directions to correct the maximum term error. (*Ricky*, at p. 192.)

The "unauthorized sentence" rule referenced in *Ricky* has nothing to do with an untimely notice of appeal. The "unauthorized sentence" rule generally permits a defendant to "challenge an unauthorized sentence on appeal *even if they failed to object below* . . . ." (*People v. Hester* (2000) 22 Cal.4th 290, 295 (*Hester*); see also *People v. Scott* (1994) 9 Cal.4th 331, 354 ["the 'unauthorized sentence' concept constitutes a narrow exception to the general requirement that only those claims properly raised and preserved by the parties are reviewable on appeal."].) That rule is an exception to the *waiver doctrine* (*Hester*, at p. 295), not to the *jurisdictional* requirement of a timely notice of appeal.

The Fourth District's reliance on *People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*) was misplaced. In *Nguyen*, the California Supreme Court rejected an adult criminal defendant's claim that a prior juvenile adjudication for a serious felony could not be used in a subsequent adult proceeding to enhance his sentence because there had been no right to a jury trial in the juvenile proceedings. (*Nguyen*, at pp. 1014-1015.) *Nguyen* did not concern the timeliness of a notice of appeal.

The California Supreme Court has "steadfastly adhered to the fundamental precept that the timely filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction." (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 670.) Because G.C. failed to file a timely notice of appeal from the dispositional order that she now seeks to challenge, we lack appellate jurisdiction over that order. As her appeal does not raise any issues concerning the January 2016 order that she timely appealed, we dismiss her appeal.

III. Disposition

The appeal is dismissed.

_____
Mihara, J.

I CONCUR:

_____
Elia, J.

In re G.C.
H043281

Greenwood, P.J., dissenting

I respectfully dissent. The majority dismisses the appeal on the ground that G.C. failed to file a timely notice of appeal from the failure to designate two offenses as misdemeanors or felonies under Welfare and Institutions Code section 702 (Section 702). But G.C. filed her notice of appeal on February 1, 2016—within the 60-day filing deadline for appeals from the juvenile court's orders of December 7, 2015, December 17, 2015, December 30, 2015, and January 26, 2016. Her notice of appeal cites the last of these orders. I would conclude she timely appealed because the juvenile court had an ongoing obligation to determine whether her prior offenses were misdemeanors or felonies.

G.C.'s appeal is based on *In re Manzy W.* (1997) 14 Cal.4th 1199 (*Manzy*), in which our Supreme Court held that the requirement under Section 702 that the juvenile court explicitly designate "wobbler" offenses as misdemeanors or felonies is mandatory. "The language of [Section 702] is unambiguous. It requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*Id.* at p. 1204.) "The requirement is obligatory: '[S]ection 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.' [Citations.]" (*Ibid.*) When challenged on appeal, a juvenile court's failure to adhere to this mandate requires "remand of this matter for strict compliance." (*Ibid.*)

The Supreme Court based its decision on its recognition that Section 702 provides equal protection to youthful offenders by ensuring that a minor not be held "in physical confinement longer than an adult convicted of the same offense." (*Manzy*, *supra*, 14 Cal.4th at p. 1205.) The court noted that a juvenile court may be required to determine the "maximum term of imprisonment when it order[s] physical confinement on multiple counts to be imposed consecutively or, in the case of repeat offenders, aggregate[s] the period of physical confinement for present and prior offenses." (*Id.* at p. 1206.)

In articulating this rule, the Supreme Court was looking not only to the minor's current adjudication, but to future adjudications as well. "[Section 702] serves the

collateral administrative purpose of providing a record from which the maximum term of physical confinement for an offense can be determined, *particularly in the event of future adjudications*." (*Manzy*, *supra*, 14 Cal.4th at p. 1205, italics added.) "The requirement of a declaration by the juvenile court whether an offense is a felony or misdemeanor was thus directed, in large part, at facilitating the determination of the limits on any present or future commitment to physical confinement for a so-called 'wobbler' offense." (*Id.* at p. 1206.) "But the purpose of the statute is not solely administrative. [. . .] [T]he requirement that the juvenile court declare whether a so-called 'wobbler' offense was a misdemeanor or felony also serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under [S]ection 702. For this reason, it cannot be deemed merely 'directory.' " (*Id.* at p. 1207.)

When a minor is a repeat offender, the juvenile court often aggregates prior and current offenses to determine the maximum period of confinement for that youth under section 726. If the prior court errs by failing to designate a "wobbler" offense as a misdemeanor or felony under Section 702, the current juvenile court can easily incorporate that error, with the result that the minor can be confined beyond the lawful term of confinement. It follows that the juvenile court has an ongoing duty to consider, when adjudicating later petitions, whether the court in prior adjudications exercised its discretion to determine the "wobbler" offenses as misdemeanors or felonies. While G.C did not serve a term of excess confinement, the rule set forth by the majority would preclude a court of review from correcting such an order for other youths by dismissing such appeals. I do not believe this avenue of appeal from the unlawful incarceration of juveniles should be eliminated.

Accordingly, I would conclude the juvenile court's ongoing failure to adhere to Section 702 constituted an abuse of discretion and resulted in unauthorized orders with respect to the subsequent disposition of G.C.'s case. (See *In re Ricky H.* (1981) 30 Cal.3d 176, 191; *In re Ramon M.* (2009) 178 Cal.App.4th 665, 675.) I would further conclude

G.C. timely appealed from the last of these orders. For these reasons, I respectfully dissent.

Greenwood, P.J.

Trial Court:	Santa Clara County Superior Court
Trial Judge:	Honorable Kenneth L. Shapero
Attorney for Defendant and Appellant:	Sidney Sue Hollar Under Appointment by the Sixth District Appellate Program
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In re G.C.
H043281

STATE OF CALIFORNIA
Supreme Court of California

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