# In the Supreme Court of the State of California

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| **In re G.C., a Person Coming Under the Juvenile Court Law.** |
| **THE PEOPLE OF THE STATE OF CALIFORNIA,** |
| **Plaintiff and Respondent,** |
| **v.** |
| **G.C.,** |
| **Defendant and Appellant.** |

Case No. S252057



Sixth Appellate District, Case No. H043281
Santa Clara County Superior Court, Case No. JV40902
The Honorable Kenneth L. Shapero, Judge

## RESPONDENT'S ANSWER BRIEF ON THE MERITS

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## ISSUE

Whether a juvenile court's failure to designate a "wobbler" offense as either a felony or a misdemeanor in contravention of Welfare and Institutions Code section 702 may be challenged on appeal from a dispositional order in a subsequent wardship proceeding.

## INTRODUCTION

Welfare and Institutions Code section 702[1] requires a juvenile court, upon finding that a minor committed a "wobbler" offense, to "declare the offense to be a misdemeanor or felony." A failure of the juvenile court to make an express declaration is called *Manzy* error, after the decision that held the declaration mandatory, not directory, to ensure "the juvenile court is aware of, and actually exercises, its discretion" under the statute. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1207.)

In 2014, G.C. admitted three violations of Vehicle Code section 10851, subdivision (a), the wobbler offense of unlawful driving or taking of a vehicle. She did not appeal the orders, as permitted. (See § 800, subd. (a).) The orders had become final by the time G.C. noticed an appeal from a later 2016 dispositional order in a subsequent wardship petition. However, instead of challenging the 2016 dispositional order, G.C.'s sole contention on appeal asserted *Manzy* error in the prior adjudication. The record of those prior orders does not show the court expressly declared whether the Vehicle Code section 10851 adjudications were misdemeanors or felonies. The Court of Appeal dismissed for lack of appellate jurisdiction.

The order dismissing the appeal should be affirmed because appellate jurisdiction over the judgment in one case did not extend time to appeal the

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

judgment in the earlier case. G.C. views *Manzy* error as a type of unauthorized sentence reviewable whenever it comes to the attention of a reviewing court. G.C. confuses (1) the nonjurisdictional forfeiture doctrine where the lack of an objection to an unauthorized sentence is excused with (2) the jurisdictional prerequisite of a timely notice of appeal that in juvenile cases (as in criminal cases) cannot be excused or extended save in circumstances not pertinent here. The juvenile court's failure to make, as mandated by statute, an express declaration on the record of the character of a wobbler as a misdemeanor or felony is not equivalent to its making a dispositional order that could not have been legally imposed on the minor at all.

Rectifying *Manzy* error does not justify compromising the prerequisite of a timely notice of appeal. Nor do section 702's purposes—providing a record from which the juvenile's term of confinement can be determined and assuring an exercise of discretion by the juvenile court—compel stretching the unauthorized sentence concept into an extension of time in which to appeal the judgment. A ward or a former ward can file a motion in the juvenile court under section 775, to change, modify, or set aside orders if the movant establishes the juvenile court did not perform its mandatory duty of declaring the wobbler offense a felony or a misdemeanor.

## STATEMENT

### A. The Wardship Petitions

In October 2014, two wardship petitions (§ 602, subd. (a); Petitions A and B) alleged that G.C. committed three counts of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) and one count of driving without a license (Veh. Code § 12500, subd. (a)). (Typed Opn. at p. 2.) G.C. admitted allegations in both petitions, apart from the driving without a

license count, which was dismissed. The signed minute order of the jurisdictional hearing identified the three counts of unlawfully driving and taking a vehicle as felonies, but did not indicate whether the court designated them as felonies or misdemeanors. "The court also made no oral declaration that the counts should be felonies or misdemeanors." (Typed Opn. at p. 2.)

In November 2014, a third wardship petition (Petition C) alleged one count of misdemeanor vandalism (Pen. Code, § 594), which G.C. admitted that month. (Typed. Opn. at p. 2.) A fourth petition (Petition D) in February 2015 alleged felony vandalism and was dismissed a few days later when G.C. admitted an added petty theft (Pen. Code, §§ 484, 488) allegation. The court transferred Petitions A through D, "which were all pre-disposition," to Alameda County, where G.C. resided with her mother. (Typed Opn. at p. 2; 1CT 189, 192-195.) The Court of Appeal's opinion states: "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." (Typed Opn. at p. 4, fn. 2.) However, the juvenile court apparently had declared her a ward on January 13, 2015. (8RT 204-205; 1CT 129.) In February 2015, Alameda County accepted the transfer. (Typed Opn. at p. 2.) On March 13, 2015, Alameda County held a dispositional hearing, adjudged G.C. a ward, placed her on probation in a family or group home, and set the maximum time of confinement at four years, six months with 111 days of predisposition credit. (Typed Opn. at pp. 2-3; 2CT 384-385; 1ART 6.)

In July 2015, G.C. admitted possessing burglary tools (Pen. Code, § 466) as alleged in a Santa Cruz County wardship petition. Santa Cruz County transferred the matter to Alameda County for disposition. (Typed Opn. at p. 4.) In September 2015, Alameda County continued G.C. as a ward and ordered she remain on probation with various terms and conditions. (Typed Opn. at p. 4.) On November 9, 2015, G.C. admitted

violating probation as alleged in an October 2015, section 777 probation violation petition (Petition E), and the case was transferred back to Santa Clara County, where G.C. and her mother had relocated. (Typed Opn. at p. 4.)

On November 19, 2015, Santa Clara County accepted the transfer, adjudged G.C. a ward, and incorporated the Alameda County orders in its disposition. (Typed Opn. at pp. 4-5.) The Court of Appeal deemed that order to be the dispositional order pertaining to Petitions A and B. (Typed Opn. at p. 6, fn. 4.) Alameda County apparently had based its March 13, 2015, disposition order on the petitions at issue in this appeal (Petitions A and B). (1ART 1-9.) The Court of Appeal concluded, however, that "the only dispositional order on Petitions A and B was entered on November 19, 2015, in Santa Clara County." (Typed Opn. at p. 6, fn. 4). Regardless, as the Court of Appeal observed, "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." (Typed Opn. at p. 6, fn. 4.)

On December 30, 2015, at the disposition hearing on Petition E, Santa Clara County continued G.C. as a ward and returned her "to the custody of the parents on continued Probation" (2CT 402), "but deferred the issue of whether to impose contested gang and electronic search conditions for a contested hearing" (Typed Opn. at p. 5). (See also 2CT 400-401; 17RT 709-716.) At a January 26, 2016, contested dispositional hearing, Santa Clara County "ultimately modified and imposed gang and electronic search conditions." (Typed Opn. at p. 5.) That dispositional order stated that "all prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect." (2CT 458.)

### B. The Court of Appeal's Decision

"On February 1, 2016, G.C. filed a notice of appeal that stated she was challenging the January 2016 dispositional order." (Typed Opn. at p.

5; 2CT 459-460.) Her appeal was pending when G.C.'s probation was dismissed. (Attachment A to Motion to Augment, pp. 3-4.)

Rather than challenge Petition E proceedings, G.C. asserted *Manzy* error in the 2014 and 2015 wardship proceedings on Petitions A and B. (Typed Opn. at pp. 5-6 & fn. 4.) The Sixth District Court of Appeal dismissed the appeal, holding it could not "address this issue because, as G.C. admits, she did not appeal from the dispositional order on these offenses." (Typed Opn. at pp. 6, 8-9.) The court observed that in juvenile cases, minors must file the notice of appeal within 60 days of an appealable order. G.C. filed her notice of appeal "well beyond 60 days" after the dispositional order on Petitions A and B. (Typed Opn. at p. 6.)

The court disagreed with G.C.'s contention, which was based on the Fourth District Court of Appeal's decision in *In re Ramon M.* (2009) 178 Cal.App.4th 665, that her appeal was "not time-barred because the [juvenile] court's error was tantamount to an unauthorized sentence." (Typed Opn. at pp. 2, 6, internal quotation marks omitted.) The court reasoned that the unauthorized sentence rule is "an exception to the *waiver doctrine* [citation], not the *jurisdictional* requirement of a timely notice of appeal." (Typed Opn. at p. 8.) It observed that "'the timely filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction.'" (Typed Opn. at p. 8.) It concluded that because G.C. had not filed a timely notice of appeal from the 2015 dispositional order she challenged, the court lacked jurisdiction to consider the claim. (Typed Opn. at p. 8.)

Presiding Justice Greenwood dissented. She would have deemed the appeal timely. Justice Greenwood reasoned that G.C.'s notice of appeal was "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" and that "the juvenile court had an ongoing obligation to

determine whether her prior offenses were misdemeanors or felonies." (Typed Diss. Opn. at p. 1.)

This Court granted G.C.'s petition for review.

## SUMMARY OF ARGUMENT

The Court of Appeal properly dismissed the appeal. The notice of appeal from the judgment on Petition E did not confer appellate jurisdiction with respect to the *Manzy* claim pertaining to the 2015 dispositional order on Petitions A and B. G.C. did not appeal the latter order, and that order was final when she appealed a different judgment involving subsequent wardship petitions.

Section 702 does not impose an ongoing duty on the juvenile court to examine the record of prior judgments to ensure that a minor's prior wobbler offense has been designated as a felony or a misdemeanor. Rather, the absence of statutory language creating an ongoing duty, section 702's prophylactic purpose of ensuring the accuracy of present and future dispositions, and this Court's *Manzy* jurisprudence show the declaration required of the juvenile court applies to wobbler offenses adjudicated in a current wardship petition, not those in a prior wardship adjudication.

G.C. inappositely relies on the unauthorized sentence exception to the forfeiture rule. Under that exception, a reviewing court, regardless of a minor's failure to object below, can review a disposition that is beyond the power of the court to impose in the particular case, and doubtless the doctrine applies to dispositional orders beyond the power of the juvenile court to declare in wardship proceedings. But the doctrine is inapplicable to the absence of a section 702 declaration in a prior juvenile adjudication. *Ramon M., supra*, 178 Cal.App.4th 665, which incorrectly holds to the contrary, should be disapproved. A juvenile court's failure to make a section 702 declaration of a wobbler's character on the record does not make its dispositional order unauthorized, but instead, inchoate. This

failure of the juvenile court to make a discretionary choice based on evidence in the record is a situation to which the unauthorized sentence exception does not apply. In any event, a minor's claim of a failure of the juvenile court to make a discretionary decision in the wardship proceeding, like *Manzy* error, does not revivify lapsed appellate jurisdiction over a final judgment. Nor does the omitted exercise of discretion provide a reviewing court the power to extend time in which to appeal.

This case does not represent a binary choice either to entertain late appeals or else ignore section 702's mandate. Current and former juvenile wards may seek correction of *Manzy* error by filing a motion under section 775 in the juvenile court, which allows the court to change, modify, or set aside any of its orders at any time.

## ARGUMENT

### I. THE ORDER DISMISSING THE APPEAL SHOULD BE AFFIRMED BECAUSE G.C. FAILED TO FILE A TIMELY NOTICE OF APPEAL FROM THE PERTINENT JUDGMENT

G.C. contends that, because she filed a timely notice of appeal from the dispositional hearing on Petition E, the Court of Appeal had jurisdiction to address the juvenile court's failure to declare on the record under section 702 the character of the wobbler offenses she admitted in Petitions A and B. (OBM 11-12.)[2] Her contention fails because she did not timely appeal the prior judgment, namely the dispositional order on Petitions A and B.

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[2] G.C. incorrectly states that the notice of appeal pertained to the December 30, 2015, "dispositional hearing." (OBM 11-12.) As discussed below, notices of appeal are filed from orders or judgments, not hearings. Further, as the Court of Appeal correctly noted, the notice of appeal specified the January 26, 2016, dispositional order. (Typed Opn. at p. 5; 2CT 459-460.)

### A. The Notice of Appeal Requirement

"A judgment in a proceeding under Section 601 or 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." (§ 800, subd. (a).) "The juvenile court's jurisdictional findings are not immediately appealable and the appeal is taken from the order made after the disposition hearing." (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138.) Generally, in juvenile cases, "a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed." (Cal. Rules of Court, rule 8.406(a)(1).) The notice "is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.405(a)(3).) Minors are precluded from raising issues related to orders not listed in the notice of appeal. (*Shaun R.*, at pp. 1138-1139.)

"A timely notice of appeal, as a general matter, is 'essential to appellate jurisdiction.' [Citation.] It largely divests the superior court of jurisdiction and vests it in the Court of Appeal." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1094.) Without a timely notice of appeal, "'the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.' [Citation.] The purpose of the requirement of a timely notice of appeal is, self-evidently, to further the finality of judgments by causing the defendant to take an appeal expeditiously or not at all." (*Ibid.*) "'In general, an appealable order that is not appealed becomes final and binding and may not subsequently be attacked on an appeal from a later appealable order or judgment.'" (*Shaun R.*, *supra*, 188 Cal.App.4th at p. 1138.) Nor does the appellate court have the power to extend the time in which to appeal the juvenile court's judgment save in circumstances not involved in this case. (Cal. Rules of Court, rules 5.585, 8.66, 8.406(c).)

### B. Welfare and Institutions Code Section 702

Section 702 provides, "After hearing the evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Section 300, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly, and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor." Section 702 further provides, in relevant part, "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." Thus, section 702 "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1204.)

"The mere specification in the petition of an alternative felony/misdemeanor offense as a felony has been held insufficient to show that the court made the decision and finding required by section 702. [Citation.] Similarly, the setting of a felony-level maximum period of confinement has been held inadequate to comply with the mandate of section 702." (*In re Ricky H.* (1981) 30 Cal.3d 176, 191.) "Additionally, a minor's admission of a wobbler offense charged as a felony is not an 'adjudication' of the misdemeanor or felony status of that offense." (*In re Nancy C.* (2005) 133 Cal.App.4th 508, 512; see also *Ricky H.* at pp. 191-192.)

### C. The Notice of Appeal Pertaining to Petition E Did Not Confer Appellate Jurisdiction over the Dispositional Order Pertaining to Petitions A and B

G.C.'s notice of appeal from the January 26, 2016, dispositional order pertained exclusively to Petition E. It did not give the Court of Appeal jurisdiction to address a section 702 issue arising from the 2015 dispositional order as to Petitions A and B. Nor did Santa Clara County have an ongoing duty to declare the offenses in Petitions A and B felonies or misdemeanors at the dispositional hearing on Petition E.

The juvenile court's failure to exercise discretion respecting a *prior* dispositional order did not revivify appellate jurisdiction to review a final judgment in the prior adjudication that G.C. never appealed. Reconsideration of that judgment could come, if at all, only in the manner authorized by law. (See Arg. III, *post.*)

#### 1. The juvenile court did not have an ongoing duty to designate the offenses in Petitions A and B as either felonies or misdemeanors at the dispositional hearing on Petition E

The available record of G.C.'s prior wardship adjudication reflects the juvenile court did not make the requisite section 702 declaration when the Vehicle Code section 10851 offenses in Petitions A and B were before the juvenile court. (See, e.g., 1CT 35 [court did not make section 702 determination when signing the plea form]; 1CT 58 [court did not check box indicating it made the section 702 determination during the jurisdictional hearing]; 1CT 201-203 [Alameda County juvenile court did not make section 702 determination]; 2CT 331-336 [same]; 1ART 5-10 [same]; 2CT 379-383 [no section 702 determination during November 19, 2015, dispositional hearing in Santa Clara County]; 14RT 437-439 [same].)

Section 702 directs juvenile courts to make findings regarding "whether or not the minor is a person described by Section . . . 602." If the

court finds the minor is such a person, "it shall make and enter its findings and order accordingly" and hear evidence to determine "the proper disposition to made of the minor." (§ 702.) Where the court finds the minor committed a wobbler offense, "the court shall declare the offense to be a misdemeanor or felony." (§ 702.) The plain language and context of section 702 shows the juvenile court must designate as a misdemeanor or felony any wobblers adjudicated in a current wardship petition. (See *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901 [first among the principles governing statutory interpretation is honoring "the language of the statute" as "construed in the context of the statute as a whole and the overall statutory scheme" (internal quotation marks omitted)].) Nothing in the language of section 702 mandates a postjudgment review to examine the record of a prior judgment to determine whether it contains a declaration of the misdemeanor or felony character of wobbler offenses adjudicated in a prior petition.

*Manzy W.* held that the juvenile court's failure to exercise section 702 discretion with respect to a wobbler offense in a pending petition before the juvenile court was error requiring remand. (*Manzy W.*, *supra*, 14 Cal.4th at pp. 1201, 1203-1211.) The Court did not consider a claim of an ongoing duty to review prior adjudications for section 702 compliance or arguments relating to appellate jurisdiction. (*People v. Avila* (2006) 38 Cal.4th 491, 566 ["'It is axiomatic that cases are not authority for propositions not considered'"].)

However, the Court recognized one of the purposes of requiring the juvenile court to designate the character of wobblers as either felonies or misdemeanors is "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 W.*, *supra*, 14 Cal.4th at p. 1205.) *Manzy W.* further observed that "[t]he requirement of a declaration by the

juvenile court whether an offense is a felony or misdemeanor was . . . 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.) "If, for example, the juvenile court committed the minor to the Youth Authority for a present offense, the required declaration would constitute a record, for the purposes of determining the maximum term of physical confinement, whether the offense was a misdemeanor or felony. If, on the other hand, the juvenile court imposed probation, the required declaration would constitute a record, for the purposes of determining the maximum term of physical confinement in a subsequent adjudication, whether the prior offense was a misdemeanor or a felony." (*Id.* at pp. 1206-1207.)

The Court's articulation of these purposes shows section 702 is a prophylactic statute requiring the juvenile court to declare the character of wobblers presently before it to aid in calculating maximum confinement in the current or a future adjudication. Had section 702 instead created an "ongoing duty" requiring the juvenile court to revisit past adjudications and declare (or redeclare) the character of wobblers based on the available record, which may be from another county and years old, there would be no need for prophylaxis. The Legislature and appellate courts could and presumably would assume a failure to exercise discretion to assess a wobbler would be duly corrected whenever attention was drawn to the prior in any court and at any time. Ironically, such an "ongoing duty" could instigate the very conundrums about when the court *finally* declares a wobbler's true character that the statute seeks to avoid. Because G.C.'s argument contravenes the plain language and prophylactic legislative purpose of section 702, this Court should reject it. (*People v. Cruz* (1996) 13 Cal.4th 764, 783 [courts should not interpret statutes to provide a result "inconsistent with apparent legislative intent"].)

The Court of Appeal was without jurisdiction to consider G.C.'s challenge to the earlier order on appeal from the Petition E dispositional order. (*Mendez*, *supra*, 19 Cal.4th at p. 1094; *Shaun R.*, *supra*, 188 Cal.App.4th at pp. 1138-1139.) Although the Petition E dispositional order stated, "All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect" (2CT 458), "such language does not revive a previous order that has become final and is nonappealable. It does not turn an otherwise nonappealable order into an appealable order." (*Shaun R.*, at p. 1133.) G.C. does not contend otherwise.

### 2. G.C.'s interpretation of section 702 as imposing an "ongoing duty" contravenes the plain language of the statute, and *Isaiah W.* is distinguishable

Citing Presiding Justice Greenwood's dissent, G.C. argues her appeal is cognizable because the juvenile court had "'an ongoing obligation'" under *Manzy W.*, *supra*, 14 Cal.4th 1199 to designate her offenses as misdemeanors or felonies, including at the time of the dispositional hearing on Petition E. (OBM 11-12, 19, 22.) That argument inserts language into section 702 that is not there. "[I]nsert[ing] additional language into a statute violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes." (*People v. Guzman* (2005) 35 Cal.4th 577, 587, internal quotation marks omitted.) As discussed, the statute's plain language and purpose show that the required declaration applies to wobblers in a pending petition.

G.C. relies, in part, on *In re Isaiah W.* (2016) 1 Cal.5th 1, where this Court considered whether a claim based on the Indian Child Welfare Act (ICWA) was cognizable on appeal. (OBM 12, 20-22.) That case involved interpretation of the state and federal statutory scheme governing applicability of the ICWA to state dependency proceedings. (*Id.* at pp. 7, 9-

10.) The ICWA provides, "'In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.' (25 U.S.C. § 1912(a).)" (*Id.* at p. 5.) "This notice requirement, which is also codified in California law [§ 224.2], enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe receives the required notice. (25 U.S.C. § 1912(a); see § 224.2, subd. (d).)" (*Ibid.*)

In that case, the juvenile court removed a newborn from his parent's care, placing him in foster care. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 5.) During the proceeding, the juvenile court "concluded there was no reason to know" the child was an Indian child, found ICWA inapplicable, and did not order the Department of Children and Family Services (DCFS) to notify the tribe or other necessary entities. (*Id.* at pp. 5-6.) As relevant here, the child's mother did not appeal from the order placing him in foster care. (*Id.* at p. 6.) However, the mother appealed a later order terminating parental rights, citing DCFS's failure to comply with ICWA's notice requirements. (*Ibid.*) The Court "granted review to decide whether a parent who does not bring a timely appeal from a juvenile court order that subsumes a finding of ICWA's inapplicability may challenge such a finding in the course of appealing from a subsequent order terminating parental rights." (*Ibid.*) The Court held the mother could challenge a finding of ICWA's inapplicability in the subsequent order despite not raising it on appeal from the initial order "[b]ecause ICWA imposes on the juvenile court a continuing duty to inquire whether the child is an Indian child." (*Ibid.*)

The Court looked to the purposes of ICWA's notice requirements, observing they were twofold. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 8.) "First, they facilitate a determination of whether the child is an Indian Child under ICWA." (*Ibid.*) "Second, ICWA notice ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child." (*Ibid.*)

The Court also observed that in "2006, our Legislature enacted provisions that affirm ICWA's purposes (§ 224, subd. (a)) and mandate compliance with ICWA "'[i]n all Indian child custody proceedings.' (*id.*, subd. (b))." (*Isaiah W.*, *supra*, 1 Cal.5th at p. 9.) One of those provisions, "section 224.3, subdivision (a) . . . provides that courts and county welfare departments '*have an affirmative and continuing duty* to inquire whether a child for whom a petition under Section 300 . . . is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any judicial wardship proceedings if the child is at risk of entering foster care or is in foster care.'" (*Ibid.*, italics added.) The Court explained, "The continuing nature of a juvenile court's duty to inquire into a child's Indian status appears on the face of section 224.3(a)." (*Id.* at p. 10.) The Court continued, "The plain language of this provision—declaring an 'affirmative and continuing duty' that applies to 'all dependency proceedings'—means that the juvenile court in this case had a *present* duty to inquire whether [the child] was an Indian child at the April 2013 proceeding to terminate [the mother's] parental rights, even though the court had previously found no reason to know [the child] was an Indian child at the January 2012 proceeding to place [the child] in foster care." (*Id.* at p. 11.) The Court concluded, "Because the validity of the April 2013 order is necessarily premised on the juvenile court's fulfillment of that duty, there is nothing improper or untimely about [the mother's] contention in this appeal that the juvenile court erred in discharging that duty." (*Ibid.*)

The Court supported its conclusion by reading section 224.3, subdivision (a) together with section 224.3, subdivision (e)(3). (*Isaiah W.*, *supra*, 1 Cal.5th at p. 11.) "The latter provision says: 'If proper and adequate notice has been provided pursuant to Section 224.2, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine that the Indian Child Welfare Act (25 U.S.S. Sec. 1901 et seq.) does not apply to the proceedings, provided that the court shall reverse its determination of the inapplicability of the Indian Child Welfare Act and apply the act prospectively if a tribe or the Bureau of Indian Affairs subsequently confirms that the child is an Indian child.' (§ 224.3(e)(3).)" (*Ibid.*) The Court explained, "Section 224.3(e)(3) implicitly recognizes that any finding of ICWA's inapplicability before proper and adequate ICWA notice has been given is not conclusive and does not relieve the court of its continuing duty under section 224.3(a) to inquire into a child's Indian status in all dependency proceedings." (*Ibid.*)

The Court found that the ICWA statutory scheme, "considered as a whole, make[s] clear that Indian tribes have interests protected by ICWA that are separate and distinct from the interests of parents of Indian children. [Citation.] ICWA's notice requirements are 'intended to protect the interests of Indian children and tribes despite the parents' inaction.'" (*Isaiah W.*, *supra*, 1 Cal.5th at p. 13.) The Court "agree[d] with the majority view among the Courts of Appeal that 'given the court's continuing duty throughout the dependency proceedings to ensure the requisite notice is given [citation], and the protections the ICWA affords Indian children and tribes, the parents' inaction does not constitute a waiver or otherwise preclude appellate review.'" (*Ibid.*)

*Isaiah W.* is readily distinguishable because the plain language and purpose of the statutory scheme in that case established a continuing duty

for juvenile courts to provide the requisite notice throughout dependency proceedings. The language of the ICWA statutes at issue in *Isaiah W.* shows that the Legislature knows how to mandate an ongoing duty if it so wishes. No comparable statutory language or legislative purpose exists in section 702. As shown, the juvenile court's section 702 discretion concerns the offense or offenses adjudicated in the present wardship proceeding.

G.C. analogizes this case to *Isaiah W.*, arguing that, like the ICWA notice requirements in that case, "*Manzy W.* creates an ongoing duty on the juvenile court since it needs to accurately calculate the maximum confinement time on each new petition." (OBM 22.) Yet, G.C. recognizes that "the juvenile court is not required to set the maximum confinement time until the minor is placed out of home. (*In re A.C.* (2014) 224 Cal.App.4th 590, 591-592; see also *In re P.A.* (2012) 211 Cal.App.4th 23, 30-32.)" (OBM 22-23.) Indeed, the dispositional order from which G.C. appealed included no maximum time of confinement because G.C. was placed on probation in her mother's home. (2CT 400-402, 457-458.)

As G.C.'s case shows, the juvenile court's obligation to set a maximum time of confinement is not an "ongoing duty." Therefore, it cannot serve as a valid basis for establishing a correlative ongoing duty with respect to declaring the character of wobblers in prior adjudications. That the juvenile court was not required to, and did not, calculate the maximum time of confinement in the 2016 dispositional order for which G.C. filed a timely notice of appeal underscores that the notice of appeal in this case did not arise from any order attributable to *Manzy* error.

G.C. also cites dependency cases recognizing that a parent may appeal an order terminating parental rights despite not filing the requisite writ petition where an exception to the writ requirement applies. (OBM 22, citing *In re A.A.* (2016) 243 Cal.App.4th 1220, 1239-1245; *In re T.W.* (2011) 197 Cal.App.4th 723, 729-731; *In re Frank R.* (2011) 192

Cal.App.4th 532, 539; *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110; *In re Athena P.* (2002) 103 Cal.App.4th 617, 625.) She points to no exception respecting the juvenile ward's failure to file a timely notice of appeal from the dispositional order.

## II. THE UNAUTHORIZED SENTENCE EXCEPTION TO THE FORFEITURE RULE DOES NOT RENDER G.C.'S CLAIM COGNIZABLE ON APPEAL

G.C. argues that her failure to file a timely notice of appeal should be excused because not designating her earlier Vehicle Code section 10851 offenses as either felonies or misdemeanors under section 702 is "tantamount to an unauthorized sentence." (OBM 12-13, 17-19.) A juvenile court's failure to make a section 702 determination is not an unauthorized sentence. Even if it were, the unauthorized sentence exception to the forfeiture rule does not circumvent the jurisdictional prerequisite of a timely notice of appeal.

### A. A Juvenile Court's Failure To Designate an Offense as a Felony or Misdemeanor Under Section 702 Is Not an Unauthorized Sentence

"[A] sentence is generally 'unauthorized' where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is 'clear and correctable' independent of any factual issues presented by the record at sentencing." (*People v. Scott* (1994) 9 Cal.4th 331, 354.) The failure to make a section 702 determination on a wobbler is a failure to make a discretionary sentencing choice that may or may not impact the juvenile court disposition—such as a maximum term of confinement or probation. That discretionary choice is not independent of the factual record below, and the failure to make it is not "'clear and correctable'" on appeal. (*Ibid.*; cf. *In re M.G.* (2014) 228 Cal.App.4th 1268, 1278-1279 [remanding for a juvenile court determination of whether minor's offense should be treated

as a felony or a misdemeanor in part because "[t]he record is replete with facts showing the offense was eligible for treatment as either a misdemeanor or a felony"].) Indeed, appellate courts lack the authority to make that choice, which is reserved for the juvenile court. (*Manzy W.*, *supra*, 14 Cal.4th at p. 1210 [juvenile court has the discretion and duty to determine whether the wobbler is a felony or a misdemeanor]; *M.G.*, at p. 1277 [same].) Accordingly, G.C.'s claim is more akin to a complaint about a trial court's failure to properly make a discretionary sentencing choice. "[A]ll 'claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices' raised for the first time on appeal are not subject to review." (*People v. Smith* (2001) 24 Cal.4th 849, 852.)

G.C. complains of the juvenile court's failure to make a discretionary sentencing choice in a prior juvenile adjudication that she has never brought to the juvenile court's attention. G.C. did not list the order pertaining to Petitions A and B in her notice of appeal from the judgment in Petition E. (2CT 459-460.) She did not because the dispositional order pertaining to Petitions A and B was final and specifying that as the order from which the appeal was taken could have caused the notice to be deemed inoperative.

G.C. relies on *Ricky H.*, *supra*, 30 Cal.3d 176 (OBM 18), but that case concerned no prior adjudication; rather, it involved a *Manzy* error regarding an offense in the current proceedings that the Court raised on its own (see *id.* at pages 190-192). Tellingly, it held the juvenile court's failure to specify the maximum period of confinement, *not* the *Manzy* error, resulted in an unauthorized sentence. (*Id.* at pp. 180-182, 191.) Recognizing the maximum term calculation was correctible on appeal, the Court deemed the *Manzy* error "another aspect of the case [that] makes remand with directions to the superior court, rather than appellate correction, more

appropriate" (*id.* at p. 191), and directed that "the trial court should determine the character of the offense as required by section 702" (*id.* at p. 192).

*Ramon M.*, *supra*, 178 Cal.App.4th 665 departs from ordinary rules of appellate jurisdiction, and G.C. does not show otherwise. (OBM 13, 18-19.) In *Ramon M.*, the minor appealed the juvenile court's "fail[ure] to declare on the record whether [his] offenses were felonies or misdemeanors." (*Ramon M.*, at p. 668.) The People argued the minor's claim was time-barred because he did not file a notice of appeal within 60 days. (*Id.* at p. 675.) The minor argued that the juvenile court's error was "tantamount to an unauthorized sentence" that could be corrected at any time, and thus the claim was not time-barred. (*Ibid.*) The Court of Appeal agreed: "Given the California Supreme Court's recent ruling [in *People v. Nguyen* (2009) 46 Cal.4th 1007] on the use of juvenile adjudications as strikes, we feel that [the minor] has the better argument on this point." (*Ibid.*)

*Ramon M.*'s cursory analysis did not explain how a failure to designate a minor's offense as a felony or a misdemeanor meets the definition of an unauthorized sentence. Nor did the *Ramon M.* court explain how *Nguyen* is authority for reviewing dispositional errors in a judgment from which no timely appeal was taken. *Nguyen* held that using a juvenile adjudication as a prior strike under the "Three Strikes" law does not violate a criminal defendant's right to a jury trial. (*Nguyen*, *supra*, 46 Cal.4th at pp. 1022, 1028.) *Nguyen* is not authority for the proposition that a failure to file a timely notice of appeal is excused or that a reviewing court acquires the power to extend time to appeal when a juvenile alleges a prior adjudication is an unauthorized sentence.

*Ramon M.* reflects concern that a *Manzy* error might impede a later determination of whether the minor's offense is usable as a prior juvenile adjudication under the Three Strikes law. G.C. echoes that concern,

pointing to *Ramon M.*'s reliance on *Nguyen* as showing "the practical import of juvenile adjudications (including, potentially, felony/misdemeanor determinations) in future proceedings." (OBM 19.) But the potential for such a consequence does not transmute a juvenile court's failure to make a discretionary choice under section 702 into an unauthorized sentence. It instead shows a juvenile court's failure to exercise its discretion under section 702 *could* result in the imposition of an unauthorized sentence *in a later proceeding*. That a prior juvenile adjudication of a wobbler is not accompanied by a record of a *Manzy* declaration simply means the character of the wobbler was not declared in the required manner at the time. *Ramon M.*'s conclusion that the failure to make a section 702 determination amounts to an unauthorized sentence should therefore be disapproved.

As noted, the juvenile court was not required to, and did not, calculate a maximum time of confinement in the dispositional order pertaining to Petition E for which G.C. filed her notice of appeal. Absent that calculation, the juvenile court's failure to exercise its section 702 discretion in Petitions A and B did not affect the disposition in Petition E. Accordingly, there is no basis to construe the appeal as taken from an unauthorized sentence imposed in proceedings on Petition E.

### B. The Unauthorized Sentence Exception to the Forfeiture Rule Does Not Circumvent the Jurisdictional Prerequisite of a Timely Notice of Appeal

Even if the *Manzy* error resulted in an unauthorized sentence, the Court of Appeal properly dismissed the appeal. As the court below held, the unauthorized sentence exception to the forfeiture rule does not provide appellate jurisdiction over proceedings in which the defendant failed to file a timely notice of appeal.

The unauthorized sentence exception is "a narrow exception to the waiver rule." (*Smith*, *supra*, 24 Cal.4th at p. 852.) The exception allows appellate courts to review "sentences entered in excess of jurisdiction" despite a party's failure to raise "an objection or argument . . . in the trial and/or reviewing court." (*Ibid.*, internal quotation marks omitted.) By contrast, "[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. 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." (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113, internal quotation marks and citations omitted.) "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 of a party or on its own motion.'" (*Mendez*, *supra*, 19 Cal.4th at p. 1094.) Without the requisite notice, a court does not have jurisdiction to entertain the alleged error on appeal even if the error amounts to an unauthorized sentence.

G.C.'s position contravenes the purpose of a timely notice of appeal. (*Silverbrand*, *supra*, 46 Cal.4th at p. 113; *Mendez*, *supra*, 19 Cal.4th at p. 1094.) Under her argument, minors may wait a potentially unlimited amount of time to appeal a juvenile court's failure to designate an offense as a misdemeanor or felony, perhaps hoping that records are lost or that transcript notes are destroyed. G.C. does not explain where the line should or could be drawn for belated unauthorized-sentence appeals.

Moreover, a late-discovered unauthorized sentence that is no longer appealable may be corrected in the juvenile court. Although, in general, "[t]here is no statutory authority for a trial court to entertain a postjudgment

motion that is unrelated to any proceeding then pending before the court[,]" there are "exceptions to the rule precluding postjudment motions." (*People v. Picklesimer* (2010) 48 Cal.4th 330, 337, fn. omitted, internal quotation marks omitted.) One such exception pertains to a motion seeking to correct an unauthorized sentence, "which the trial court would have had jurisdiction to correct at any time." (*Id.* at p. 338; see also *People v. Fares* (1993) 16 Cal.App.4th 954, 958 ["There is no time limitation upon the right to make [a] motion to correct the sentence"].) Because a juvenile court already has jurisdiction to correct an unauthorized sentence at any time, there is no need to expand appellate jurisdiction to correct late-discovered unauthorized sentences.

## III. THE PROPER AVENUE FOR RELIEF FOR PERSONS IN G.C.'S POSITION IS A MOTION UNDER SECTION 775 IN THE JUVENILE COURT THAT FAILED TO MAKE THE *MANZY* DETERMINATION

G.C. cites numerous collateral consequences that might arise in the future as the result of a juvenile court's failure to make a section 702 determination, including problems in calculating the maximum term of confinement and sealing records under section 786. (OBM 23.) As this Court has recognized, the failure to make a section 702 determination "may . . . have substantial ramifications in future criminal adjudications of the minor, including under Penal Code section 667, subdivision (d)(3)(A)—the 'Three Strikes' law . . . ." (*Manzy W.*, *supra*, 14 Cal.4th at p. 1209.) But there is no need to eschew the notice of appeal requirement and broaden the unauthorized sentence exception to the forfeiture rule to avoid those ramifications and provide persons in G.C.'s position with relief. Wards and former wards may file a motion under section 775 in the juvenile court that failed to make the required *Manzy* determination to remedy the error.

Section 775 provides a procedural mechanism for correcting *Manzy* error even after the time for appeal has expired. Section 775 states, "Any order made by the court in the case of any person subject to its jurisdiction may *at any time be changed, modified, or set aside, as the judge deems meet and proper*, subject to such procedural requirements as are imposed by this article." (Italics added.) Section 775 "explicitly give[s] the juvenile court the authority to modify prior orders." (*In re Ray M.* (2016) 6 Cal.App.5th 1038, 1053.) Accordingly, section 775 allows juvenile courts to remedy *Manzy* error in a prior juvenile proceeding upon a movant's request.

Other statutes do not preclude utilizing section 775 as an avenue for relief. Section 778, subdivision (a), provides that a minor "may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order previously made." A minor would not need to present a change of circumstance or new evidence under section 775 to seek amelioration of *Manzy* error. The phrase "subject to such procedural requirements as are imposed by this article" in section 775 cannot be construed as meaning every section in the article applies to all requests for modification under section 775. For example, the requirements for removing the minor from parental custody (§ 777); changing, modifying or setting aside an order of commitment to the Division of Juvenile Facilities (§ 779);[3] returning the minor to the committing court (§ 780); sealing and destroying records (§§ 781, 781.5, 786, 786.5); and petitioning to terminate jurisdiction (§ 785) cannot all

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[3] Section 779 refers to the Division of Juvenile Facilities as the California Youth Authority. However, they are the same authority. (*In re Jose T.* (2010) 191 Cal.App.4th 1142, 1145, fn. 1.)

apply to correcting *Manzy* error. The only procedural requirement apparently applicable to a *Manzy* error is section 776's requirement of adequate notice of the request for modification. (§ 776; see also *In re David H.* (2003) 106 Cal.App.4th 1131, 1137 ["section 775 . . . permits modification, at any time, of any order made by a juvenile court, but notice of an application for such a modification must be given"].)[4]

Section 775 is still available as an avenue for relief even after the juvenile court loses continuing jurisdiction over a ward. Indeed, G.C. will turn 21 years old during the pendency of this appeal. (1CT 7, 18, 88 [reflecting a birthdate in the first half of 1998].) Therefore, the juvenile court's continuing wardship jurisdiction will expire before G.C. will be able to file a section 775 motion in that court. (§ 607, subd. (a).) However, the language of section 775 should be construed as allowing persons like G.C. to file a motion in the juvenile court to correct *Manzy* error notwithstanding the juvenile court otherwise losing continuing jurisdiction over them. Unlike the jurisdictional time limits governing appeal, section 775 allows a juvenile court to change, modify or set aside a prior order "*at any time* . . . subject to such procedural requirements as are imposed by this article." (Italics added.) Thus, the plain language of the statute allows a juvenile court to change or modify any of its prior orders even after the expiration of its continued jurisdiction over the minor, *provided the*

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[4] If a ward is in actual or constructive custody on a wardship petition in which the juvenile court committed *Manzy* error, habeas relief could conceivably lie by demonstrating ineffective assistance for counsel's failure to bring the *Manzy* error to the juvenile court's attention. (See *Picklesimer*, *supra*, 48 Cal.4th at p. 339 [a defendant may seek habeas relief if she is "still in actual or constructive custody"]; accord, *People v. Kim* (2009) 45 Cal.4th 1078, 1099.) However, a section 775 motion is a superior vehicle for remedying *Manzy* error because it does not require a showing of prejudice. A section 775 motion is also available to wards who, like G.C., are no longer in actual or constructive custody.

*procedural requirements for such a change or modification are met.* As noted, the only procedural requirement that pertains to correction of the failure to make a section 702 determination is the notice requirement. (§ 776.)

Our suggested interpretation of section 775 is limited and does not mean that former wards may challenge any aspect of a prior juvenile judgment on that basis. For instance, a former ward could not use section 775 to set aside a juvenile court's final jurisdictional findings. Sections 775 and 778 "must be read in conjunction." (*In re Corey* (1964) 230 Cal.App.2d 813, 832.) As noted, section 778 allows a "person having an interest in a child who is a ward of the juvenile court" to, "upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of [the] court previously made or to terminate the jurisdiction of the court." (§ 778, subd. (a)(1).) Although, for the reasons discussed, section 778 is inapplicable to remedying *Manzy* error, it governs motions challenging a juvenile court's jurisdictional findings. "Though motions for a new jurisdictional hearing are not specifically authorized by the Welfare and Institutions Code, they have been deemed tantamount to motions under sections 775 and 778 . . . , and courts have in that way subjected them to the same rules as are applicable to motions for new trial in adult criminal cases." (*In re Edward S.* (2009) 173 Cal.App.4th 387, 398, fn. 3.) Indeed, several cases have treated challenges to a juvenile court's jurisdictional findings as properly brought under section 775 and 778. (See, e.g., *In re Steven S.* (1979) 91 Cal.App.3d 604, 605-608 [juvenile court should have considered minor's new trial motion based on new evidence of identification as a motion "coming under . . . sections 775 and 778"]; *Corey*, at pp. 831-832 [treating challenge under sections 775 and 778 to judgment based on third-party confession as statutorily authorized].)

However, section 778 applies only to cases involving present juvenile wards, not former wards. The plain language of the statute expressly states that the person bringing the motion must have "an interest in a child *who is a ward of the juvenile court.*" (§ 778, subd. (a)(1).) The plain language of section 775 makes clear that its provisions are "subject such procedural requirements as are imposed by this article," one of which is section 778 (see Welf. & Inst. Code, pt. 1, ch. 2, art. 20). Because section 778, in conjunction with section 775, governs proceedings challenging a juvenile court's jurisdictional findings, and section 778 applies only to present wards, former wards are precluded from relying on section 775 to challenge prior juvenile jurisdictional findings.[5] Similarly, section 775 cannot be used to circumvent the more specific statutes governing the sealing and destroying of juvenile records. (See §§ 781, 781.5, 786, 786.5; cf. *In re Brent F.* (2005) 130 Cal.App.4th 1124, 1128 [the more specific provisions of section 777 rather than the more general provisions of section 778

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[5] It should be noted that it appears former wards may already seek dismissal of a petition under section 782, which provides, "A judge of the juvenile court in which a petition was filed may dismiss the petition, or may set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. Nothing in this section shall be interpreted to require the court to maintain jurisdiction over a person who is the subject of a petition between the time the court's jurisdiction over that person terminates and the point at which his or her petition is dismissed." (See, e.g., *In re David T.* (2017) 13 Cal.App.5th 866, 870-873, 878 [juvenile court dismissed robbery finding and petition when former ward filed a motion to set aside the finding and dismiss the petition under section 782 at age 38].)

govern proceedings where "the juvenile court is being asked to modify placement by committing a ward to CYA"].)

Our interpretation of section 775 comports with the Legislature's intent to "vest[] in juvenile courts broad powers to amend dispositional orders." (*In re Owen E.* (1979) 23 Cal.3d 398, 406 (dis. opn. of Bird, J.).) "The adult law includes no provisions comparable to section[] 775." (*Id.* at p. 409.) "The court's broad powers to change juvenile dispositions under th[is] section[] [is] in keeping with the special concern of the Juvenile Court Law with the welfare and rehabilitation of young people under its jurisdiction." (*Id.* at pp. 409-410, italics omitted.) "Flexibility is the hallmark of juvenile court law." (*In re Greg F.* (2012) 55 Cal.4th 393, 411.) "The statutory scheme governing juvenile delinquency is designed to give the court 'maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it.'" (*Ibid.*)

The language of section 775 and the flexible nature of juvenile court law support the conclusion that section 775 contemplates the correction of a juvenile court's failure to make a section 702 determination even after the court otherwise loses continuing jurisdiction over the ward. As noted above, *Manzy* error has the potential to impact sealing proceedings (§ 781) and future criminal proceedings in adult court once the ward is no longer subject to continuing juvenile court jurisdiction. There is no statute conferring jurisdiction on the adult court to fix the error. But, as discussed, section 775 can be interpreted to vest such jurisdiction in juvenile courts even after a minor is otherwise no longer eligible for treatment within the juvenile justice system.

Furthermore, section 702 specifically pertains to proceedings before the juvenile court. (See § 702 [describing juvenile court's jurisdictional and dispositional duties].) Allowing a juvenile court to correct its failure to make a section 702 determination even after a ward attains the age of 21

ensures the fairness and accuracy of any future proceedings—an outcome beneficial both to the welfare and rehabilitation of the former ward and to the government's interest in accurate and just judgments. (Cf. *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106 [in dependency proceedings, the state "'has an urgent interest in child welfare and shares the parent's interest in an accurate and just decision'"].)

## IV. THE JUVENILE COURT'S FAILURE TO EXERCISE ITS DISCRETION UNDER WELFARE AND INSTITUTIONS CODE SECTION 702 DID NOT VIOLATE G.C.'S DUE PROCESS RIGHTS

Finally, G.C. argues "the failure to correct [section 702] error would deprive [the minor] of her Fourteenth Amendment right to due process." (OBM 25.) She maintains, "The misapplication of state law results in the deprivation of an individual's liberty interest in violation of the due process clause," and cites *Hicks v. Oklahoma* (1980) 447 U.S. 343 in support of her assertion. (OBM 25.) *Hicks* held the state law error *in that case*—the denial of a statutory right to jury sentencing—rose to the level of a due process violation. (*Hicks*, at pp. 345-347.) "*Hicks* is limited to the jury trial context and holds 'only that where state law creates for the defendant a liberty interest in having the jury make particular findings, the Due Process Clause implies that appellate findings do not suffice to protect that entitlement.'" (*People v. Gonzales* (2013) 56 Cal.4th 353, 385, quoting *Cabana v. Bullock* (1986) 474 U.S. 376, 387, fn. 4.) Because section 702 does not implicate the right to a jury trial, *Hicks* has no application to this case. Minors have no right to a jury trial and a juvenile court does not substitute for the required factfinder by failing to declare whether a wobbler is a misdemeanor or felony.

Generally, a court's misapplication of state law does not necessarily violate the federal due process clause. (*People v. Osband* (1996) 13 Cal.4th 622, 695 ["'A state-law violation is *not* automatically a violation . . . of

federal constitutional due process . . .'"]; accord, *Engle v. Isaac* (1982) 456 U.S. 107, 121, fn. 21 ["If the contrary were true, then 'every erroneous decision by a state court on state law would come [to the United States Supreme Court] as a federal constitutional question'"].) State law does not provide for extending time to appeal despite *Manzy* error in a prior juvenile adjudication. That does not arbitrarily deprive G.C. of any statutory rights as all minors are subject to the rule. Accordingly, the state has not "withheld a nonconstitutional right or benefit guaranteed by state law within the meaning of *Hicks v. Oklahoma*, *supra*, 447 U.S. 343." (*People v. Thompson* (2016) 1 Cal.5th 1043, 1112.)

Finally, even if a late-discovered *Manzy* error created a possible due process problem, there would be no need to correct it by way of a belated appeal. As discussed, a section 775 proceeding is available to remedy the error and thereby alleviate any possible due process concerns.

## CONCLUSION

Accordingly, the order dismissing the appeal should be affirmed.

Dated: April 18, 2019

Respectfully submitted,

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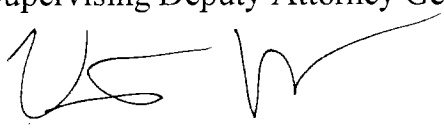

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## CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 9,528 words.

Dated: April 18, 2019

XAVIER BECERRA
Attorney General of California

VICTORIA RATNIKOVA
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## DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. G.C.** No.: **S252057**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On April 18, 2019, I electronically served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on April 18, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 18, 2019, at San Francisco, California.

E. Rios
Declarant

E. Rios
Signature

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