IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.R.,

Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Party in Interest.

Case No. S231709

SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT, DEPARTMENT 97

Juvenile Court Petition No. 134953

HONORABLE JAMES P. ARGUELLES, JUDGE (916) 876-9047

Third Appellate District, Case No. C079548
Sacramento County Superior Court, Juvenile Court Petition No. JV134953
The Honorable James P. Arguelles, Judge

PETITIONER'S REPLY TO THE PEOPLE'S ANSWER BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.R., Petitioner, v. SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT, Respondent, PEOPLE OF THE STATE OF CALIFORNIA, Party in Interest.	Case No. S231709 SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT, DEPARTMENT 97 Juvenile Court Petition No. 134953 HONORABLE JAMES P. ARGUELLES, JUDGE (916) 876-9047

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NO. S231709

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

K.R., A Minor And Petitioner, v. SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT, Respondent, PEOPLE OF THE STATE OF CALIFORNIA, Parties in Interest.	COURT OF APPEAL NO. C079548 SUPERIOR COURT OF SACRAMENTO COUNTY, SITTING AS A JUVENILE COURT, DEPARTMENT 97 Juvenile Court Petition No. 134953 HONORABLE JAMES P. ARGUELLES, JUDGE (916) 876-9047

MINOR/APPELANT/PETITIONER'S REPLY TO THE PEOPLE'S ANSWER BRIEF ON THE MERITS

ARGUMENT

SACRAMENTO COUNTY SUPERIOR COURT JUDGE JAMES ARGUELLES, SITTING AS THE JUVENILE COURT, ERRED IN REFUSING TO TRANSFER PETITIONER'S CASE BACK TO SACRAMENTO COUNTY SUPERIOR COURT JUDGE JACK SAPONUR, SITTING AS THE JUVENILE COURT BASED ON *PEOPLE V. ARBUCKLE* TO COMPLETE THE NEGOTIATED DISPOSITION JUDGE SAPUNOR BEGAN MAY 28, 2015.

Respondent's opposition, contentions and arguments are meritless. First, as petitioner pointed out in his petition for writ of mandate, the disposition in petitioner's case would have been completed before the case would have ever gone back before Judge Arguelles on June 4, 2015, but for a request from the probation officer to wait for petitioner's grandmother to get an airline ticket for petitioner. Judge Sapunor had already approved the negotiated settlement and was in the process of pronouncing disposition in the case on May 28, 2015, when the probation officer made the request to have the case continued until June 4, 2015, to allow petitioner's grandmother to show proof of an airline ticket to Nevada to facilitate the interstate transfer. (PRM Exhibit 11.) As far as the disposition was concerned, there was really nothing else to do but calculate custody credits, or if petitioner's grandmother had not secured the ticket for June 4, 2015, to give the probation officer the opportunity to reconstitute the interstate transfer paperwork. As a curtesy to the probation officer, petitioner's counsel agreed to put the matter over a few days to allow petitioner's

grandmother to get an airline ticket. The confusion came when Judge Arguelles sought to commit petitioner to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (or allow petitioner to argue for a Level B placement), because Judge Arguelles had a predetermined outcome in mind for petitioner that did not comport with the recommendation of the probation officer or that of the District Attorney in this case. (See PWM Exhibits 1 and 12.)

Judge Arguelles already had the probation report in his possession or at least at his disposal in the juvenile court file, on a prior court appearance and certainly had he been interested in approving a settlement consistent with the recommendation of the probation officer he could have. Based on his order filed with the Court of Appeal on July 6, 2015, and the way he characterized petitioner in the past, that certainly would not have been the case, and petitioner knew it. Petitioner's *Arbuckle* claim comes in response to Judge Arguelles' insistence that he had a right to disapprove what was practically a completed disposition by Judge Sapunor, simply because the case showed up on his calendar for the purpose of recalculating custody credits and proof of an airline ticket. This matter was effectively a transfer-out case for supervision to Clark County, Nevada, as ordered by Judge Sapunor. (PWM Exhibit 11 at p. 5.) Moreover, it was Judge Sapunor that agreed that "**we** ought to put this out for a week to make sure that the

disposition goes as planned," implying that he would "make sure that the disposition goes as planned. (PWM Exhibit 11 at p. 4.)

Respondent (and the Court of Appeal essentially) argues now that there is no *Arbuckle* right, and that any plea agreement must contain what amounts to an "express" condition that the judge that took the plea (admission) will be the judge that imposes sentence (disposition). This notion makes for great theoretical, academic or intellectual pursuits, but as the overwhelming numbers of criminal defense practitioners and prosecutors in trial courts know, it is simply unrealistic and unworkable. As recently observed by Justice Kennedy in *Missouri v. Frye* (2012) 132 S.Ct. 1399, there is a "simple reality" to the criminal justice system; that being plea bargaining has become central to the administration of justice to the extent that "it is not adjunct to the criminal justice system; it *is* the criminal justice system." (*Id.* at p. 1407. Italics in original.) In reality, countless pleas are taken every day that go off without a hitch by visiting judges, regularly appearing judges, rotating judges, etc., in countless different types of schedules, regularly appearing or otherwise, throughout the 58 California counties. To now undo almost 40 years of understanding because of a few confused parties is a bridge to far. There is no outcry by trial judges for some wholesale change to *Arbuckle*. There isn't even an outcry from "the People" at the trial court level in this case for any change (or from any other District Attorney). What we have here is simply a judge

that was determined to punish petitioner, which would have been against public policy because in petitioner's estimation it was retaliatory, instead of simply sending this case back to the judge that took the admission, who was ready, willing and able, moreover available, to carry out the disposition. Now is not the time to create a new rule requiring a new express condition of every plea agreement when the current rule as survived almost four decades without any change by this Court.

Respondent relies on the Court of Appeal's finding that there was no express term to the parties' plea agreement that Judge Sapunor would complete the disposition in this case (PAB[1] 14-16), and cases that supposedly support the proposition that petitioner did not have a reasonable expectation to be sentenced by Judge Sapunor. In this particular case, short of an express term of the plea that Judge Sapunor would complete the disposition, there was certainly an implication that Judge Sapunor's orders would be carried out. Judge Arguelles' order concluded that there was no basis to conclude that petitioner had a reasonable expectation that he would be sentenced by Judge Sapunor, which the Court of Appeal agreed. However, what is for certain in this case is **petitioner did not have a reasonable expectation** that the respondent court would refused to carry out the negotiated disposition; that respondent court would refuse to

[1] "PAB" refers to the People's Answer Brief.

transfer the case back to the court that approved the negotiated disposition, knowing that the judicial officer that took the admission was, and would be, available in the very near future, capable of finishing the disposition; and that he would accept a predetermined disposition of DJF (or be allowed to argue for Level B). Also, unlike any of the cases cited by respondent, petitioner immediately objected when Judge Arguelles began the process of rejecting the agreed recommendations and disposition.

Respondent's insistence on the applicability of *People v. Ruhl* (1985) 168 Cal.App.3d 311, and a so-called "shift" in the understanding of *Arbuckle* (PAB 11-12), is misplaced, but certainly instructive here. The settlement process that Ruhl went through in his negotiated settlement is remarkably different than the procedures petitioner underwent in juvenile court. Ruhl pled guilty in municipal court and was bound over to superior court. As part of the negotiated settlement, Ruhl had to wait until the completion of a cohort's trial before sentencing, which amounted to "a necessarily indefinite period of postponement during which judicial assignments could reasonably be expected to change." (*People v. Ruhl*, *supra*, at p. 316.) The court went on to observe:

> [A] fundamental purpose of the *Arbuckle* rule would not be served by its application here. One reason *Arbuckle* implies (as a "general principle") a right to be sentenced by the judge taking the plea is because the propensity in sentencing demonstrated by a particular judge is often an inherently significant factor in a defendant's decision whether to plead

> guilty. (*People v. Arbuckle* [1978] 22 Cal.3d at p. 757.) Here, the circumstances make clear that defendant Ruhl decided to plead guilty well before he ever got to superior court; the identity of the judge taking his plea clearly did not influence his decision. [Citations.]

(*People v. Ruhl*, *supra*, at p. 316.)

In this instance, Judge Sapunor's participation in the settlement of petitioner's case was certainly the most significant factor in petitioner's decision to admit to the violation of probation and to resolve his case. Petitioner's case had been before Judge Arguelles long before he appeared before Judge Sapunor. (See PWM Exhibits 3-5, and 10.) On or about April 20, 2015, a full five weeks before petitioner resolved his case before Judge Sapunor, Judge Arguelles and all the parties were well aware of the probation officer's recommendation that if petitioner admitted the violation of probation he should be released to his mother in Nevada with curtesy supervision by Clark County, Nevada. (PWM Exhibits 10 and 13.) Moreover, based on the history Judge Arguelles had with petitioner, the parties most certainly would have known that Judge Arguelles would not have approved the probation officer's recommendation. (See Judge Arguelles' Order filed July 9, 2015; PWM Exhibits 1 and 12.) Most certainly the parties, District Attorney, petitioner, petitioner's counsel, and the probation officer, saw an opportunity for a more reasonable outcome with Judge Sapunor and seized upon the negotiated settlement agreement and probation recommendation.

More telling is the fact that the day Judge Arguelles refused to complete the disposition that Judge Sapunor had begun, all the parties were aware that Judge Sapunor was available within just a few days to complete the disposition.[2] Judge Arguelles' refusal to transfer the case back to Judge Sapunor during his availability, in retrospect, is clear indication that Judge Sapunor was a "significant factor" in petitioner's decision to admit the violation and enter into the settlement. Petitioner's counsel was also well aware that Judge Arguelles had a history of refusing to carry out the orders of other superior court judges[3] which would have factored into her decision to enter the negotiated plea and disposition in front of Judge Sapunor and to immediately object when Judge Arguelles refused to carry out the negotiated disposition.

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[2] It is not an uncommon practice for routinely visiting judges to approve a negotiated settlement which another court may not agree with at the time of sentencing. However, in cases where the judge that took the plea is readily available at a near future date, the case is usually continued to a time in which the judge that took the plea can impose sentence on the negotiated plea, rather than just insisting on undoing the settlement of the case.

[3] Petitioner's counsel in the instant case was also trial and appellate counsel in *Steven R. v. Superior Court* (2015) 214 Cal.App.4th 812, in which Judge Arguelles dismissed the sustained petition from a San Francisco County Superior Court Judge Sitting as the Juvenile Court. The issue in that case was whether the court erred when it dismissed the jurisdictional findings of another court from another jurisdiction pursuant to Welfare and Institutions Code section 782, to make a child eligible for a commitment to the California Department of Corrections and Rehabilitation Division of Juvenile Facilities. Petitioner's counsel was well aware that Judge Arguelles had a history of dismissing decisions of other juvenile court

More importantly, and something this Court must consider, Judge Sapunor (retired) is one of a few regularly visiting judges that sit as juvenile delinquency judicial officers in Sacramento County. As pointed out by trial counsel; as everyone knows in Sacramento County juvenile court; and as was known by all of the parties on the day petitioner entered into the negotiated settlement in this case, Judge Sapunor routinely sits in Sacramento County juvenile court and participates in settlement conferences in hundreds of cases over the past years. If the result of this case is that minors cannot rely on the decisions of Judge Sapunor, and the other regularly scheduled visiting judges, any negotiated settlement approved by those judges will be viewed with caution and speculation as to their viability at disposition. Following the findings, suggestions and arguments made by Judge Arguelles, the Court of Appeal, and the Attorney General in this case, will have a significant chilling effect on future plea negotiations throughout the state, simply because counsel and minors will not know to what degree of certainty they can rely on the negotiated settlement.

This Court announced in *In re Mark L.* (1983) 34 Cal.3d 171, reiterating the rule in *Arbuckle*, that "'whenever a judge accepts a plea bargain and retains sentencing discretion under the agreement, an implied

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judicial officers to make minors eligible for DJF commitments and would

term of the bargain is that sentence will be imposed by that judge. Because the range of dispositions available to a sentencing judge, the propensity in sentencing demonstrated by a particular judge is an inherently significant factor in the defendant's decision to enter a guilty plea. [Citations.]' Thus, the sentence imposed by a judge other than the one who took the plea 'cannot be allowed to stand. [Citations.] . . .' [Citation.]" (*In re Mark L.*, *supra*, at pp. 176-177.) Citing *In re Ray O.* (1979) 97 Cal.App.3d 136, the Supreme Court further observed that *Arbuckle* was extended to dispositions by judges in juvenile cases. (*Id.*, at p. 177) *In re Mark L.*, leaves no doubt that "there was an actual assumption by the court and parties that the officer taking the plea would have final and exclusive dispositional authority." (*Ibid.*) Here Judge Sapunor was clear when he used the personal pronoun, **"we,"** and declared, "**we** ought to put this out for a week to make sure that the disposition goes as planned," implying he would carry out his disposition orders. (See PWM Exhibit 11 at p. 4.)

In this instance, the record affirmatively demonstrates a basis on which petitioner reasonably expected Judge Sapunor would be the dispositional judge. Although Judge Sapunor did not complete the dispositional orders, based on the probation officers request to put the matter over for petitioner's grandmother to secure an airline ticket for

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have avoided Judge Arguelles in this case, which in fact was the case.

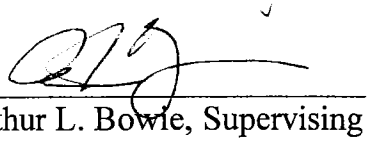
petitioner, Judge Sapunor certainly anticipated the plea/admission agreement and disposition would be carried out as agreed. As Judge Sapunor stated, "we ought to put this out for a week to make sure that the disposition goes as planned," implying he would carry out his disposition orders. (See PWM Exhibit 11 at p. 4.)

Because the record does reflect an affirmative basis on which petitioner reasonably could have expected Judge Sapunor would impose the disposition, no *Arbuckle* waiver could have been implied in the plea bargain. Accordingly, the terms of the plea bargain were violated when Judge Arguelles attempted to hold a disposition hearing and refused to send petitioner's case back to Judge Sapunor for completion of the disposition hearing pursuant to the negotiated plea/admission.

CONCLUSION

Having shown that the juvenile court erred in not imposing the negotiated disposition in this case, and thereafter further erred by not sending petitioner's case back to the judge that took his admission began the disposition hearing without an *Arbuckle* waiver, petitioner respectfully request this Court reverse the decision of the Court of Appeal and issue a writ of mandate, ordering respondent court to imposed the previously approved negotiated disposition or send petitioner's case back to the court that took his admission to complete the disposition hearing it began on May 28, 2015.

Respectfully submitted,



Arthur L. Bowie, Supervising
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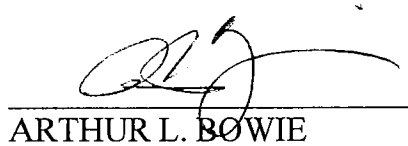
BRIEF FORMAT CERTIFICATION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.504

Pursuant to California Rules of Court, rule 8.504, I certify that the foregoing brief contains 3,151 words, according to the word-count function of Microsoft Word, which was used to prepare the brief.



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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I, Arthur L. Bowie, am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 9605 Kiefer Blvd., Room 302, Sacramento, California 95827.

On May 31, 2016, I served the attached

MINOR/APPELLANT/PETITIONER'S REPLY TO THE PEOPLE'S ANSWER BRIEF ON THE MERITS

by placing a true copy thereof in an envelope addressed to the persons named below at the addresses shown, and by sealing and depositing the envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 31, 2016, at Sacramento, California.