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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

A132361

(Contra Costa County
Super. Ct. No. J1100646)

After defendant J.T. pleaded no contest to second degree burglary (Pen. Code, §§ 459, 460, subd. (b)), the juvenile court committed him for six months to the county juvenile rehabilitation facility, and imposed probation on numerous terms and conditions, including “gang” terms and a prohibition against possessing or using “weapons” or “burglary tools.” Defendant challenges these probation conditions. We modify the weapon and burglary tools prohibition to include a “knowledge” requirement and otherwise affirm the probation conditions.

BACKGROUND

On April 14, 2011, the Contra Costa County District Attorney filed a delinquency petition (Welf. & Inst. Code, § 602, subd. (a)) alleging defendant, then aged 16, committed residential burglary (Pen. Code, §§ 459, 460, subd. (a)).

On April 22, 2011, pursuant to an agreement by the prosecutor to reduce the charge to second degree burglary if defendant assisted in the recovery of the stolen items, defendant pleaded no contest to second degree burglary (Pen. Code, §§ 459, 460, subd. (b)).

At the time of his plea, defendant was in custody. When he sought release pending disposition, the probation officer objected. Among other things, the officer stated defendant was habitually truant from school, used marijuana, failed to abide by any parental direction from his mother and “he associates with gangs.” Defendant’s counsel did not take issue with the probation officer’s statements.

However, defendant’s release was part of the negotiated disposition, and the court therefore inquired whether specific interim conditions, including “no gang affiliations,” were necessary if defendant was released on electronic monitoring. The prosecutor responded that numerous terms and conditions, including “gang” terms, “are all terms and conditions of JEM [juvenile electronic monitoring], so if you order him to comply with the rules of JEM they are on the sheet.”

On May 20, 2011, defendant appeared for disposition. On the prosecution’s motion based on the defendant’s assistance in recovering the stolen items, the juvenile court reduced the burglary to a misdemeanor. The court then proceeded with disposition, ordering that defendant be removed from his parents (Welf. & Inst. Code, § 726, subd. (a)(3)), placed in the Orin Allen Youth Rehabilitation Facility for a six-month regular program plus a 90-day conditional release/parole period, and subject to numerous probation conditions, including “gang” terms¹ and a prohibition against possessing or

¹ Specifically, “minor shall not participate in any gang activity and shall not visit or remain in any specific location that minor knows or Probation Officer informs minor to be an area of gang-related activity. [¶] Minor shall not knowingly possess, display or wear any insignia, clothing, logos, emblems, badges or buttons, or display any gang signs or gestures that the minor knows to be or that Probation Officer informs the minor to be gang related. [¶] The minor shall not obtain any new tattoos. The minor shall not post, display or transmit on or through any cellphone any symbols or information that the minor knows to be or the Deputy Probation Officer informs the minor to be gang related.

using any “weapons” or “burglary tools.” Defendant’s counsel stated “we’ll object to the gang clause and restitution,” but did not specify the reason or ground for the objection.

Defendant filed a timely notice of appeal on May 23, 2011.

DISCUSSION

Standard of Review

“Under Welfare and Institutions Code section 730, subdivision (b) the juvenile court ‘may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ ‘A condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality”’ [Citations.] All three factors must be present to invalidate a condition of probation.” (*In re R.V.* (2009) 171 Cal.App.4th 239, 246.) “ ‘An appellate court will not disturb the juvenile court’s broad discretion over probation conditions absent an abuse of discretion. [Citations.] We grant this broad discretion so that the juvenile court may serve its rehabilitative function and further the legislative policies of the juvenile court system.’ ” (*Ibid.*)

“ ‘In fashioning the conditions of probation, the juvenile court should consider the minor’s entire social history in addition to the circumstances of the crime. [Citation.] Thus, “[a] condition of probation which is [legally] impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.” ’ [Citation.]” (*In re R.V., supra*, 171 Cal.App.4th at p. 246.) “ ‘In distinguishing between the permissible exercise of discretion in probationary sentencing by the juvenile court and that allowed in “adult” court, we have advised that, “[a]lthough the goal of both types of probation is the rehabilitation of the offender, “[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment ’ [¶] In light of this difference, a condition of probation that

[¶] For the purposes of these probation conditions, the words ‘gang’ and ‘gang related’ means a ‘criminal street gang’ as defined in Penal code Section 186.22(f).”

would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.”’ [Citation.] ‘[J]uvenile conditions may be broader than those pertaining to adult offenders. This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.’ [Citation.]” (*Id.* at pp. 246-247.)

“ ‘[W]hen the state asserts jurisdiction over a minor, it stands in the shoes of the parents. A parent may curtail a child’s exercise of constitutional rights because a parent’s own constitutionally protected “ ‘ “liberty” ’ ” includes the right to “ ‘ “bring up children” ’ ” and to “ ‘ “direct the upbringing and education of children.” ’ ” ’ [Citation.]” (*In re R.V.*, *supra*, 171 Cal.App.4th at p. 248.) The juvenile court may therefore “ ‘impose probation conditions that infringe on constitutional rights if the conditions are tailored to meet the needs of the minor.’ [Citation.]” (*Ibid.*)

“Gang” Conditions

The appellate courts have routinely allowed “gang” probation conditions where there is some evidence connecting the juvenile defendant with a gang, gang members, or gang activity. (E.g., *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1134-1136 [when arrested, minor was wearing gang clothing, had gang references on his cell phone, and had two gang-associated tattoos, and admitted gang affiliation]; *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616 [minor was a self-confessed member of local gang]; *In re Vincent G.* (2008) 162 Cal.App.4th 238, 242 [minor wore gang colors and gang paraphernalia including a belt buckle with the letter “N”]; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500-1501, disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2, 983, fn. 13, [minors asked assault victim why she was wearing red clothing, minors’ aunt said minors associated with gang members, minors admitted to having friends who were gang members, one minor admitted a gang member was with the minors when they committed the assault, one minor had stopped attending school, the other was frequently truant, and they were runaways and beyond their parents’ control].) “Association with gang members is the first step to involvement in gang activity.” (*In re*

Laylah K., *supra*, at p. 1501.) Accordingly, the condition may be reasonably related to preventing future unlawful conduct. (*Ibid.*)

Defendant contends no evidence supports “gang” conditions in this case. To begin with, defendant has waived this assertion by failing to adequately object to the conditions in the juvenile court. His counsel’s generic assertion “we would object” did not identify the ground(s) on which the objection was made and thus failed to apprise the court of the asserted problem with the condition (i.e., did defendant contend it was unsupported and therefore unreasonable, or did he contend it was impermissibly vague). (See *People v. De Soto* (1997) 54 Cal.App.4th 1, 9-10 [“defendant’s general objections did nothing to give the trial court a meaningful opportunity to correct any sentencing errors” and he therefore waived his right to raise specific objections on appeal]; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 878 [failing to object to imposition of probation conditions forfeits all claims except a challenge “based on the ground the condition is vague or overbroad and thus facially unconstitutional”].)

There is also evidence in the record supporting the conditions. The hearing information sheet prepared and filed in connection with the initial detention hearing reported that defendant admitted to associating with Sureños and Norteños, but denied gang membership. Defendant’s counsel never disputed the information sheet. When defendant raised the issue of his release, following his no contest plea and pending disposition, the probation officer opposed release for several reasons, including because “he associates with gangs.” Defendant’s counsel did not take issue with the probation officer’s statements. Nor did defendant take issue with the conditions of his release on JEM pending disposition, which included “gang” prohibitions. The probation report prepared for disposition further stated defendant is almost never in school, was truant and failed to appear for detention while on JEM pending disposition, and had had 16 prior disciplinary referrals during the school year, including for assault, disruption and defiance. He had been “beyond” his mother’s control for a year. Given this state of the record, the “gang” conditions have a sufficient nexus to preventing future unlawful conduct, and the juvenile court did not abuse its discretion in imposing them.

Weapons and burglars tools

Defendant contends the probation condition prohibiting him from using or possessing “weapons” and “burglary tools” is unconstitutionally vague and/or overbroad. Although he did not object to this condition, he nevertheless can pursue his vagueness challenge on appeal. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 878.) Although the Attorney General does not agree this condition is unconstitutionally vague and/or overbroad without an explicit scienter requirement, she agrees the condition “may be modified to provide that [defendant] may not use or possess any instrument or item he knows may be used as a burglar’s tool, or any instrument or item he knows may be used as a weapon.” Indeed, the Attorney General “respectfully requests” such a modification, and we will therefore order such.

DISPOSITION

The juvenile court’s order imposing probation conditions is modified in part to provide that defendant may not use or possess any instrument or item he knows may be used as a burglar’s tool, or any instrument or item he knows may be used as a weapon. In all other respects, the order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.