

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.E.,

Defendant and Appellant.

A133680

(San Francisco City & County
Super. Ct. No. JW 106564)

I.

INTRODUCTION

Appellant J.E., a minor, appeals from a dispositional order after finding that he came within the provisions of Welfare and Institutions Code section 602. Appellant's sole claim on appeal is a challenge to the juvenile court's probation conditions relating to prohibitions against gang associations, displays, and activities. He claims they must be set aside because the conditions are unconstitutionally vague and overbroad. We disagree, and affirm the judgment.

II. PROCEDURAL BACKGROUND¹

The dispositional order which is the subject of this appeal encompassed three separate juvenile petitions filed by the San Francisco District Attorney seeking to have appellant declared a ward of the court, pursuant to Welfare and Institutions Code section 602. The first petition was filed on November 2, 2010, and alleged one count of second-degree robbery (Pen. Code, §§ 211/212.5, subd. (c)),² and one count of false imprisonment (§ 236). Two subsequent petitions were both filed on May 3, 2011. The first petition filed on that date alleged a separate count of second-degree robbery (§§ 211/212.5, subd. (c)), one count of felony assault (§ 245, subd. (a)(1)), and one count of conspiracy to commit robbery (§ 182, subd. (a)(1)). The second petition filed on May 3, 2011, alleged that appellant was an active participant in a criminal street gang, within the meaning of section 186.22, subdivision (a), and a separate allegation of felony assault (§ 245, subd. (a)(1)). The assault allegation included a special allegation that the crime was committed for the benefit of a criminal street gang, within the meaning of section 186.22, subdivision (b)(1).

A joint pretrial conference was held on all three petitions on August 26, 2011, at which time negotiated jurisdictional admissions were agreed to between the parties, made in open court by appellant, and accepted by the court. As to the November 2, 2010 petition, it was amended to add a misdemeanor count alleging that appellant was an accessory (§ 32), and the original two counts were dismissed by the prosecutor. Similarly, the first May 3, 2011 petition was amended to add a misdemeanor count

¹ While the court record filed on appeal is comprised of more than 400 pages, including numerous orders filed by the juvenile court over a period of nine months, only a few of those pleadings are material to the single issue raised on appeal. We note further that appellant does not challenge the fact that certain gang prohibition conditions were imposed as conditions of his probation. Therefore, only those matters which relate to appellant's contention that the gang conditions imposed were unconstitutionally vague and overbroad are discussed.

² All subsequent statutory references are to the Penal Code unless otherwise stated.

alleging that appellant was an accessory (§ 32), and the original three counts were dismissed by the prosecutor. As to the second May 3, 2011 petition, appellant admitted the felony assault allegation. The criminal street gang count (count one) and the special gang enhancement were dismissed. The matter was continued to September 12, 2011, for disposition.

Prior to the dispositional hearing, the prosecutor filed a sentencing memorandum in which he requested that, in light of “the minor’s age; the circumstances and gravity of the offenses committed; and the minor’s previous delinquency history,” the court impose “Special Conditions of Probation for Gang Members and Associates” (Special Conditions). A copy of the Special Conditions was attached to the memorandum.

At the outset of the dispositional hearing, the court indicated its intention to declare appellant a ward of the court, place him on probation, and order him placed in the home of his mother in Richmond. The court also indicated its intention following disposition to order the case transferred to the Contra Costa County Juvenile Court for any further proceedings.

As to the Special Conditions, the juvenile court initially stated: “Further, I know there is a more detailed order, and I will review this with [the minor], but I must order that you not associate with any person that you know or who the probation officer informs you is a gang member. You’re not to possess, wear, or display any clothing or insignia, tattoo, emblem, badge, or button that you know or the probation officer informs you evidence [*sic*] of affiliation with or membership in a gang. *For purposes of these conditions, the word gang means a criminal street gang as defined in Penal Code section 186.22.*” (Italics added.)

During the hearing, several comments were made by appellant’s counsel, who requested three modifications be made to the Special Conditions. All were accepted by the court. No objections were made to the Special Conditions. Appellant’s counsel stated that once the requested modifications were made “I think that he would be fine with accepting . . . it as presented.”

Turning to the Special Conditions, the following exchange between the court and appellant took place:

“THE COURT: All right. [appellant], I now have before me a . . . [four]-page instrument entitled, ‘Special Conditions of Probation For Gang Members and Associates, Order Imposing Conditions.’ . . . Have you reviewed each and every statement of understanding in this document?

“[APPELLANT]: Yes, Ma’am.

“THE COURT: Have you reviewed each statement of understanding with your attorney?

“[APPELLANT]: Yes, Ma’am.

“THE COURT: And are you representing to the court that you understand each statement of understanding in the document?

“[APPELLANT]: Yes, Ma’am.

“THE COURT: Then the court will order that these special conditions be put into place. Do you understand all the orders of probation?

“[APPELLANT]: Yes, Ma’am.”

A copy of the Special Conditions, as modified, was signed by appellant and his attorney. The court also signed the Special Conditions, ordering them imposed as a condition of probation. At the top of the document, the following admonition appears: *“As used in these conditions, the term ‘gang’ means a criminal street gang as defined in Penal Code section 186.22, subdivisions (e) and (f).”* (Original italics and boldface.)

III.

DISCUSSION

When a juvenile offender is adjudged a ward of the court and placed under the supervision of the probation officer, “[t]he 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.” (Welf. & Inst. Code, § 730, subd. (b).) Conditions imposed on juvenile offenders may be even broader than those pertaining to adult offenders because juveniles are deemed to be more in need

of guidance and supervision than adults and because their constitutional rights are more circumscribed. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033 [prohibiting tattoos]; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 [limiting travel]; *In re Josh W.* (1997) 55 Cal.App.4th 1, 4-5 [requiring revelation of coparticipants]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1241-1243 [limiting association with others].)

Appellant challenges imposition of the Special Conditions, principally arguing that they are unconstitutionally vague because they inadequately defined the term “gang” and “activity.” Respondent correctly points out that no objections were made in the trial court to the imposition of the Special Conditions, and that failure to object constitutes a forfeiture or waiver of those objections on appeal. We disagree. (*In re Sheena K.* (2007) 40 Cal.4th 875, 882, 885-886.) Even if forfeited, in order to forestall any future ineffective assistance of counsel claim, we choose to address the challenge to the Special Conditions on its merits.

Turning to the merits of appellant’s objection, he primarily relies on *People v. Lopez* (1998) 66 Cal.App.4th 615 (*Lopez*). Relevant here, the court in *Lopez* concluded that the word “gang” in a probation condition³ was uncertain in meaning. (*Id.* p. 631.) However, the “fix” employed by the *Lopez* court was to incorporate into the probation condition, the definition of “gang” used in section 186.22, subdivisions (e) and (f). (*Lopez*, at p. 634.) In doing so, the court noted: “Section 186.22 has been upheld against a variety of constitutional challenges, including claims based upon the First Amendment and the due process clause of the Fourteenth. [citations omitted] As these cases have explained, the carefully crafted terms of the statute ensure that mere membership in a

³ The disputed condition of probation in *Lopez* was condition No. 15, which prohibited “[t]he defendant [from] be[ing] involved in any gang activities or associate[ing] with any gang members, nor wear[ing] or possess[ing], any item of identified gang clothing, including: any item of clothing with gang insignia, moniker, color pattern, bandanas, jewelry with any gang significance, nor shall the defendant display any gang insignia, moniker, or other markings of gang significance on his/her person or property as may be identified by Law Enforcement or the Probation Officer.” (*Lopez, supra*, 66 Cal.App.4th at p. 622.)

criminal street gang will not be punished and that groups or associations whose primary purpose is not the commission of crime will be excluded from coverage. [Citations.]” (*Id.* p. 633.)

This is exactly what the juvenile court did in this case. Not only did the judge reference the statute in its admonitions to appellant,⁴ but the copy of the Special Conditions signed by appellant and his attorney stated on the first page in boldface and italicized font: “*As used in these conditions, the term ‘gang’ means a criminal street gang as defined in Penal Code section 186.22, subdivisions (e) and (f).*” (Original italics and boldface.) Appellant was asked specifically if he understood each condition, to which he responded affirmatively.

For purposes of constitutional attack for vagueness or overbreadth, nothing more was needed to be done before the Special Conditions were imposed as conditions of appellant’s probation. Therefore, we reject appellant’s challenge on its merits.

IV. DISPOSITION

The judgment is affirmed.

⁴ “Further, I know there is a more detailed order, and I will review this with [the minor], but I must order that you not associate with any person that you know or who the probation officer informs you is a gang member. You’re not to possess, wear, or display any clothing or insignia, tattoo, emblem, badge, or button that you know or the probation officer informs you evidence [*sic*] of affiliation with or membership in a gang. *For purposes of these conditions, the word gang means a criminal street gang as defined in penal code section 186.22.*” (Italics added.)

RUVOLO, P. J.

We concur:

RIVERA, J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A133680, *In re J.E.*