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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

A136114

(San Francisco County
Super. Ct. No. JW116255)

Minor J.P. appeals after the juvenile court sustained a petition alleging he committed first degree robbery (Pen. Code,¹ § 212.5, subd. (a)), assault by means of force likely to product great bodily injury (§ 245, subd. (a)(1)), and resisting arrest (§ 148, subd. (a)(1)), and that in committing the robbery and assault, he personally inflicted great bodily injury (§ 12022.7, subd. (a)). On appeal, he challenges the conditions of his probation. We shall order the weapons and alcohol conditions modified, and otherwise affirm the judgment.

I. BACKGROUND

Minor was declared a ward of the court pursuant to Welfare and Institutions Code section 602 and placed on probation in June 2011, after he admitted, and the juvenile court sustained, allegations that he committed grand theft (§ 487, subd. (c)) and assault

¹ All undesignated statutory references are to the Penal Code.

(§ 245, subd. (a)(1)). A second wardship petition was later filed, and in March 2012, upon Minor’s admission, the juvenile court sustained an allegation that he unlawfully possessed a semiautomatic rifle. (§ 29820.) Minor was placed on home detention under probationary supervision.

The petition at issue in this appeal—the third petition—was filed in May 2012, alleging Minor had committed first degree robbery (§ 212.5, subd. (a)), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)), and resisting arrest (§ 148, subd. (a)(1)). The petition also alleged in connection with the robbery and assault allegations that Minor had personally inflicted great bodily injury. (§ 12022.7, subd. (a).) After a contested jurisdictional hearing, the court found the allegations of the third petition true.²

At the dispositional hearing, the juvenile court redeclared wardship and placed Minor on probation on condition that he successfully complete a ranch school program. Among the conditions of probation was the requirement that he “[n]ot possess weapons of any kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition, or anything that looks like a weapon. You are not to possess anything that you could use as a weapon or someone else might consider to be a weapon.”³ Under another condition, Minor was ordered that he “[n]ot possess or have in your possession, use, consume, or sell any controlled substances, alcohol, or intoxicants forbidden by law.”

² The facts underlying these sustained allegations are not germane to the issues on appeal, and we will not recite them here.

³ The language quoted above is found in the printed dispositional findings. At the dispositional hearing, the juvenile court told Minor: “[D]o not possess any weapons such as firearms, ammunition, anything that looks like a weapon, can be used as a weapon or considered by someone to be a weapon.”

II. DISCUSSION

Minor contends the weapon condition and the drug and alcohol conditions are unconstitutionally vague and overbroad.⁴

Under Welfare and Institutions Code section 730, subdivision (b), a juvenile court may impose “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.” In spite of the juvenile court’s broad discretion, “[a] probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) “ ‘The underlying concern of the vagueness doctrine is the core due process requirement of adequate notice: [¶] “ ‘No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.’ [Citations.] . . . [¶] ‘ . . . Thus, a law that is ‘void for vagueness’ not only fails to provide adequate notice to those who must observe its strictures, but also ‘impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’ ” [Citations.]” (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1070.)

Minor first argues the prohibition on possession of weapons does not provide an explicit standard for what objects are encompassed within the prohibition. He asks us to

⁴ We reject the Attorney General’s contention that Minor may not challenge these conditions because they were identical to conditions imposed after the first and second petitions were sustained, which minor did not challenge on appeal. The Attorney General relies on *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1141. That case, however, merely held that a general provision keeping prior court orders in effect does not revive for purposes of appeal a prior order that has become final. Here, on the other hand, the court specifically imposed the conditions in the order at issue in this appeal.

modify the condition to prohibit possession of *deadly or dangerous* weapons. Minor relies on *In re R.P.* (2009) 176 Cal.App.4th 562. There, the court concluded that a probation condition prohibiting a minor from possessing any “ ‘dangerous or deadly weapon’ ” gave sufficient warning of what might result in a violation, and hence was not unconstitutionally vague. (*Id.* at p. 565.) The court reasoned, “[c]ase law confirms the plain meaning definition of ‘deadly weapon’ as ‘ “any object, instrument, or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.” [Citation.]’ [Citation.] This definition encompasses inherently deadly items such as dirks and blackjacks which are specifically designed as weapons and are thus ‘deadly weapons’ as a matter of law, *as well as other items that are not deadly per se but which may be used in a manner likely to cause death or great bodily injury.* [Citation.]” (*Id.* at p. 567.) The court also looked to pattern jury instructions and Black’s Law Dictionary, all of which defined dangerous and deadly weapons. (*In re R.P., supra*, at p. 567.) The court concluded that the term “deadly or dangerous weapon” was thus well-defined and hence “clearly established in the law”; as a result, “the ‘no-dangerous-or-deadly-weapon’ probation condition [was] sufficiently precise for [the minor] to know what is required of him.” (*Id.* at p. 568.)

We conclude that the prohibition on “weapons” is likewise sufficiently precise here. “Weapon” is defined in Black’s Law Dictionary as “An instrument used or designed to be used to injure or kill someone.” (Black’s Law Dict. (8th ed. 2004) p. 1624.) A standard dictionary defines “weapon” as “something (as a club, knife, or gun) used to injure, defeat, or destroy.” (Merriam-Webster’s Collegiate Dictionary (11th ed. 2004) p. 1417.) Moreover, the condition explains that the prohibition on weapons “means no guns, knives, clubs, brass knuckles, attack dogs, ammunition.” A reasonable person can understand the plain meaning of the term “weapons” as used in the probation condition.

We agree with Minor, though, that the prohibition on “possess[ing] anything that [he] could use as a weapon” does not provide adequate notice of what objects it encompasses. As worded, the condition is broad enough to include any object that *could*

injure someone, even an ordinary household object, regardless of Minor’s intent in possessing it. The condition therefore does not give Minor adequate notice of what behavior it prohibits. We shall therefore order the condition modified to prohibit Minor from possessing any object that he *intends* to use as a weapon.

Minor additionally argues that the condition must be modified to include a scienter requirement. A probation condition that forbids certain conduct is impermissibly vague and overbroad unless it includes a knowledge requirement. (See *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 891–892 [in absence of express requirement of knowledge, probation condition limiting association with anyone disapproved of by probation was unconstitutionally vague].) Where a probation condition suffers from this defect, the appellate court may modify the condition to include the missing knowledge requirement. (See *id.* at pp. 889, 892; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 912–913, 931 (*Victor L.*) [modifying probation condition prohibiting presence where dangerous or deadly weapons, firearms, or ammunition exist to include express knowledge requirement]; *People v. Freitas* (2009) 179 Cal.App.4th 747, 752–753 [modifying probation condition to specify that defendant not *knowingly* possess guns and ammunition].) The Attorney General argues, however, that an express scienter requirement is unnecessary because a trial court may not revoke probation unless the defendant willfully violated the terms of probation.⁵ (*People v. Moore* (2012) 211 Cal.App.4th 1179, 1186–1187 [declining to require express knowledge requirement for weapons prohibition]; *People v. Patel* (2011) 196 Cal.App.4th 956, 960–961 [stating that in future, it would construe all probation conditions proscribing a probationer’s presence, possession, or association to require the action be undertaken knowingly without necessity for express scienter requirement].) As explained in *Victor L.*, however, in modifying a weapon condition to include an express scienter requirement, “[w]hile the

⁵ The Attorney General does concede that the portion of the condition prohibiting Minor from possessing anything that “ ‘someone else might consider to be a weapon’ ” is vague, and that it should be amended to state he may not possess anything that he *knows* someone else might consider to be a weapon.

requirement of proof of willfulness may save [the minor] from an unconstitutional finding of guilt based on an unknowing probation violation, that is cold comfort to a probationer who suffers from an unfounded arrest and detention based on the whim or vengeance of an arbitrary or mean-spirited probation officer.” (*Victor L.*, *supra*, 182 Cal.App.4th at p. 913.) We shall adhere to the practice of modifying probation conditions to add an express knowledge requirement.

Finally, we agree with Minor that the prohibition of Minor using or possessing alcohol or controlled substances should be modified to include a knowledge requirement.

III. DISPOSITION

The weapon probation condition is modified to read: “The minor shall: . . . Not knowingly possess weapons of any kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition, or something that looks like a weapon. You are not to knowingly possess anything that you intend to use as a weapon or that you know someone else might consider to be a weapon.”

The alcohol and drug condition is modified to read: “The minor shall: . . . Not knowingly possess or have in your possession, use, consume, or sell any controlled substances, alcohol, or intoxicants forbidden by law.”

As so modified, the judgment is affirmed.

Rivera, J.

We concur:

Reardon, Acting P.J.

Humes, J.