Filed 10/30/13 In re I.L. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re I.L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, **Plaintiff and Respondent,** **v.** **I.L.,** **Defendant and Appellant.**	**A137352** **(San Mateo County Super. Ct. No. JV82680)** **ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on October 29, 2013, be modified as follows:

On page 2, the first full paragraph, beginning "Minor now appeals" is deleted and the following paragraph is inserted in its place:

> Minor now appeals, arguing the juvenile court abused its discretion both by failing to hold a hearing to determine his suitability for DEJ and by subjecting him to gang-related probation conditions. As to the first contention, we agree with Minor that the juvenile court was obligated to hold a suitability hearing and that its failure to do so was error. We will therefore remand this case so that the suitability hearing may be held. As to the second contention, we hold the juvenile court did not abuse its discretion in imposing the gang-related probation conditions.

There is no change in the judgment.

Dated: _____ _____, P.J.

Filed 10/29/13 (unmodified version)

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THE PEOPLE, **Plaintiff and Respondent,** **v.** **I.L.,** **Defendant and Appellant.**	**A137352** **(San Mateo County Super. Ct. No. JV82680)**

The San Mateo County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602, subdivision (a)[1] charging I.L. (Minor) with residential burglary and grand theft. The prosecuting attorney also determined Minor was eligible for deferred entry of judgment (DEJ) pursuant to section 790 et seq. Minor later admitted the burglary charge, and the grand theft charge was dismissed. Although Minor was eligible for DEJ, the juvenile court did not hold a hearing to determine Minor's suitability.

The juvenile court declared Minor a ward of the court and placed him in his parents' home under the supervision of a probation officer. Over the objections of

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

Minor's counsel at the disposition hearing, the juvenile court imposed on Minor a number of gang-related probation conditions.

Minor now appeals, arguing the juvenile court abused its discretion both by failing to hold a hearing to determine his suitability for DEJ and by subjecting him to gang-related probation conditions. In the published portion of our opinion, we agree with Minor's first contention. We hold the juvenile court was obligated to conduct a suitability hearing and its failure to do so was reversible error. We will therefore remand this case so that the suitability hearing may be held. In the unpublished portion, we hold the juvenile court did not abuse its discretion in imposing the gang-related probation conditions.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On November 6, 2012, the San Mateo County District Attorney filed an original section 602 wardship petition regarding Minor, alleging felony violations of Penal Code sections 460, subdivision (a) (burglary) and 487, subdivision (a) (grand theft). The district attorney filed a "Determination of Eligibility" form (Judicial Council Form JV-750), finding Minor was eligible for DEJ. Appellant's parents were notified of that determination.

At a hearing on November 7, 2012, Minor's counsel waived further reading of the petition, requested that a pretrial hearing be set, and submitted as to detention. Counsel also waived time for the jurisdictional hearing. The court noted Minor was "DEJ eligible," and requested the probation department to address that issue. It then ordered Minor detained.

The probation officer filed a report with the court on November 29, 2012. Although she acknowledged Minor was eligible for DEJ, she recommended against it, because she believed Minor unsuitable due to marijuana addiction and poor school attendance. The probation officer attached recommended dispositional orders and

[2] The facts of the underlying offenses are not relevant to the issues raised on appeal, and we therefore do not discuss them. (See *In re Sidney M.* (1984) 162 Cal.App.3d 39, 42.)

findings to her report. The recommended orders contained a number of gang-related probation conditions.

At a hearing on December 3, 2012, Minor admitted the burglary count, and the grand theft count was dismissed. The court sustained the petition as to the burglary count, declared Minor a ward of the court, and announced it was prepared to proceed to disposition.

Minor's counsel objected to the imposition of any gang-related probation conditions. After the court indicated its inclination to impose them, counsel clarified that she objected to the proposed condition prohibiting Minor from being "in any areas known to be where gang members meet or get together for gang-related activity[.]" The court then continued the hearing so the probation officer could "actually show on a map or outline the specific perimeters of the territory" subject to the stay-away condition.

When the disposition hearing resumed, the probation department provided maps depicting gang territory in East Palo Alto and Redwood City. Because Minor lives in East Palo Alto, the court concluded it would be too difficult to craft a stay-away order for the areas in that city. It did impose stay-away orders for certain areas in Redwood City, however, and allowed Minor to travel within those areas only if accompanied by an adult family member.

Over defense counsel's objection, the court adopted the following probation conditions, which Minor contends are gang-related:[3]

"The Minor shall not be a member of any gang (meaning a "'criminal street gang'" as defined in Penal Code Section 186.22(f));

[3] In the court below, while defense counsel objected to "any gang orders being imposed on [Minor] anyway, including this modified order," she did not identify the objectionable conditions with particularity. Minor's briefs in this court do not list the specific conditions he considers gang-related. His opening brief only paraphrases a number of those to which he objects. The Attorney General's brief suggests that she considers a somewhat more limited list of conditions to be gang-related. In light of our decision, these possible discrepancies are not relevant to our analysis.

“The Minor shall not associate with any person known by the Minor to be a gang member;

“The Minor shall not associate with anyone with whom the Minor knows a parent or probation officer prohibits association;

“The Minor shall not participate in any gang-related activity or any activity the Minor knows is prohibited by the probation officer as gang-related activity;

“The Minor shall not wear, possess, or display any clothing or item or display any hand signs with gang significance or which are indications of gang membership, e.g., colors, symbols, insignias, numbers, monikers, patterns, etc., known by the Minor to be such, as may be identified as such by law enforcement or probation officers;

“The Minor shall not obtain any new tattoos, brands, burns, or voluntary scarring. The Minor shall not obtain any piercing, voluntary eyebrow or hair shaving with gang significance or not in compliance with Penal Code Section 652(a). The probation officer may arrange for, and the Minor must submit to, photographing of any tattoos, brands, sears, or piercing that exist as of the date of this order;

“The Minor shall not be present at a courtroom or court lobby where the Minor knows or the probation officer informs the Minor that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless the Minor is a party, the Minor is a defendant in a criminal action, the Minor is subpoenaed as a witness in a proceeding, or the Minor has prior permission from the probation officer to attend/observe proceedings;

“The Minor shall not possess any graffiti materials, including but not limited to acid, spray paint cans, marker pens, ‘white-out,’ and liquid shoe polish;

“The Minor shall not be in possession of any paging devices or any other portable communication equipment, including, but not limited to, scanners, without the express permission of the probation officer;

“The Minor shall not access or participate in any Social Networking Site, including but not limited to Myspace.com. All Internet usage is subject to monitoring by Probation, parents or school officials;

"The Minor shall not possess a computer which is attached to a modem or telephonic device, or which has an internal modem[.]"

Minor filed a timely appeal on December 12, 2012.

DISCUSSION

Minor contends the juvenile court committed two abuses of discretion. First, he argues that because the district attorney had determined he was eligible for DEJ, the court was required to hold a hearing to determine his suitability. He contends its failure to do so was an abuse of discretion. Second, he asserts the juvenile court abused its discretion by imposing gang-related probation conditions that (1) have no relationship to his crime, (2) restrict noncriminal behavior, and (3) are not reasonably related to any future criminality.

I. *The Juvenile Court Abused its Discretion by Failing to Hold the Suitability Hearing.*

The parties do not dispute Minor's eligibility for DEJ. The People also do not appear to quarrel with the numerous cases from the Courts of Appeal concluding that once the prosecuting attorney determines a minor is eligible for DEJ, and a minor admits the charge in the section 602 petition before a contested jurisdictional hearing, the juvenile court has a mandatory duty to conduct a suitability hearing. (See, e.g., *In re C.W.* (2012) 208 Cal.App.4th 654, 662, quoting *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.)

The parties' disagreement concerns the People's contention that no suitability hearing need be conducted where, as here, the minor admits some, but not all, of the allegations of the petition. The People concede that Division Two of this appellate district has rejected this argument. (*In re Joshua S.* (2011) 192 Cal.App.4th 670, 680-682 (*Joshua S.*).) They ask us to hold that *Joshua S.* was wrongly decided. We decline to do so.

A. *Statutory Authority for Imposing DEJ*

" 'The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in

March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3),[4] 793, subd. (c).)' " (*In re Kenneth J.* (2008) 158 Cal.App.4th 973, 976; *In re Luis B., supra,* 142 Cal.App.4th at pp. 1121-1122.) The procedures for considering DEJ reflect a " 'strong preference for rehabilitation of first-time nonviolent juvenile offenders' " and limit the court's power to deny DEJ such that denial of DEJ to an eligible minor who wants to participate is proper only when the juvenile court finds that " 'the minor would not benefit from education, treatment and rehabilitation.' [Citation.]" (*In re A.I.* (2009) 176 Cal.App.4th 1426, 1434.)

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[4] Section 791, subdivision (a), provides, in relevant part: "The prosecuting attorney's written notification to the minor shall also include all of the following: [¶] . . . [¶] (3) A clear statement that, in lieu of jurisdictional and disposition hearings, the court may grant a deferred entry of judgment with respect to any offense charged in the petition, provided that the minor admits *each allegation contained in the petition* and waives time for the pronouncement of judgment, and that upon the successful completion of the terms of probation, as defined in Section 794, the positive recommendation of the probation department, and the motion of the prosecuting attorney, but no sooner [than] 12 months and no later than 36 months from the date of the minor's referral to the program, the court shall dismiss the charge or charges against the minor. [¶] (4) A clear statement that upon any failure of the minor to comply with the terms of probation, including the rules of any program the minor is directed to attend, or any circumstances specified in Section 793, the prosecuting attorney or the probation department, or the court on its own, may make a motion to the court for entry of judgment and the court shall render a finding that the minor is a ward of the court pursuant to Section 602 *for the offenses specified in the original petition* and shall schedule a dispositional hearing." (Italics added.)

There is no dispute in this case that Minor meets all of the requirements for DEJ set forth in section 790, subdivision (a).[5] Where, as here, a minor meets those requirements, section 790, subdivision (b), provides that "[t]he prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply. If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney." The prosecuting attorney determined Minor eligible and filed a Determination of Eligibility—Deferred Entry of Judgment—Juvenile (form JV-750) with the petition. (See Cal. Rules of Court, rule 5.800(b)(1).)

"The DEJ statutes 'empower the court, under specified conditions, and upon the minor's admission of the allegations of the petition, to place the minor on probation without adjudging him or her to be a ward of the court.' (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308.) Under appropriate circumstances, the court may summarily grant DEJ to the minor. (. . . §§ 790, 791; Cal. Rules of Court, rule 5.800.) If the court does not summarily grant DEJ, it must conduct a hearing at which it must 'consider the declaration of the prosecuting attorney, any report and recommendations from the probation department, and any other relevant material provided by the child or other interested parties.' (Rule 5.800(f).) It is the mandatory duty of the juvenile court to either grant DEJ summarily or examine the record, conduct a hearing, and determine whether the minor is suitable for DEJ, based upon whether the minor will derive benefit

[5] Section 790, subdivision (a) makes a minor eligible for DEJ if all of the following circumstances exist: "(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Youth Authority. [¶] (4) The minor's record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶] (6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code." (§ 790, subd. (a)(1)-(6).)

from ‘education, treatment, and rehabilitation.’ (. . . § 791, subd. (b)[6]; see *In re Joshua S.* (2011) 192 Cal.App.4th 670, 677.) While the court is not required to grant DEJ, it is required to ‘follow specified procedures and exercise discretion to reach a final determination once the mandatory threshold eligibility determination is made.’ (*In re Luis B.*[, *supra,*] 142 Cal.App.4th [at p. 1123].)” (*In re D.L.* (2012) 206 Cal.App.4th 1240, 1243-1244, parallel citations & fn. omitted.) “The juvenile court is excused from its mandatory duty to hold a hearing if, after receiving notice of eligibility for DEJ, the minor nonetheless rejects DEJ consideration by contesting the charges . . . ” (*id.* at p. 1244), or “evinces no interest whatsoever in [DEJ].” (*In re Kenneth J., supra,* 158 Cal.App.4th at pp. 979-980 [after notice, “some measure of consent” is required].)

B. *Joshua S. Was Not Wrongly Decided.*

The People contend DEJ is not available when a minor admits only some of the allegations of the original petition, pursuant to a negotiated resolution. They recognize that *Joshua S., supra,* 192 Cal.App.4th 670, holds otherwise, but argue that case was incorrectly decided. We disagree.

In *Joshua S. supra,* 192 Cal.App.4th 670, the court held that, although a juvenile court is not required to consider DEJ suitability for a minor who denies the allegations of the petition and insists upon a jurisdictional hearing, it is required to consider DEJ suitability when a minor does not request such a hearing and admits the allegations of an amended petition. (*Id.* at pp. 681-682.) A section 602 petition was filed, alleging that

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[6] Section 791, subdivision (b), provides: “If the minor consents and waives his or her right to a speedy jurisdictional hearing, the court may refer the case to the probation department or the court may summarily grant deferred entry of judgment if the minor admits the charges in the petition and waives time for the pronouncement of judgment. When directed by the court, the probation department shall make an investigation and take into consideration the defendant’s age, maturity, educational background, family relationships, demonstrable motivation, treatment history, if any, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs would accept the minor. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, and rehabilitation of the minor.”

Joshua S. possessed cocaine base for sale and falsely represented his identity to a peace officer. He was determined to be eligible for DEJ. (*Id.* at p. 674.) Thereafter, the possession count was amended to allege that Joshua S. was an accessory to a felony. Joshua S. admitted the amended count and the second count was dismissed. (*Ibid.*) Another wardship petition was filed, alleging four felony counts—possession of marijuana for sale, two counts of transportation or sale of marijuana, and unlawful carrying of a loaded firearm. Joshua S. was again determined to be eligible for DEJ. He then admitted an amended count 1 (possession of cannabis) and the remaining counts were dismissed. The juvenile court committed Joshua S. to a juvenile rehabilitation facility, without considering DEJ. (*Id.* at pp. 674-675.)

On appeal, Joshua S. argued that the matter must be remanded because the juvenile court failed to exercise its mandatory discretion to grant or deny DEJ. (*Joshua S., supra,* 192 Cal.App.4th at p. 675.) The court reviewed the DEJ procedures outlined above and observed: " 'While the court retains discretion to deny DEJ to an eligible minor, the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory, as is the duty of the juvenile court to either summarily grant DEJ or examine the record, conduct a hearing, and make "the final determination regarding education, treatment, and rehabilitation . . . ." [Citations.] . . . ' [Citation.]" (*Id.* at pp. 677-678.)

Joshua S. contended that the prosecutor's burdens had been met, but that the juvenile court failed to make the DEJ determination required by sections 790 and 791. (*Joshua S., supra,* 192 Cal.App.4th at p. 678.) Division Two rejected the People's argument that the juvenile court properly did not consider DEJ because Joshua S. had not admitted all of the allegations of the petitions, but rather, had negotiated a plea to reduced charges. (*Id.* at pp. 678-679.) The court reasoned: "Appellant did not initially admit the allegations of the petition, but neither did he insist on a jurisdictional hearing. [¶] . . . [¶] [A] minor is not required to forego the right to a suppression hearing in order to accept DEJ. No part of a jurisdictional hearing was undertaken in the present case. When the suppression motion was denied . . . , [Joshua S.] admitted a reduced charge. In the

[other] case, [Joshua S.] apparently did not pursue the suppression motion but rather admitted an amended petition. . . . [Joshua S.] did not reject DEJ and then seek to take advantage of it after contesting the allegations against him. [¶] We are not persuaded by respondent's assertion that the DEJ procedures require the minor to admit the charge initially alleged in the petition rather than a reduced one, as long as the admission *precedes* a contested jurisdictional hearing. A minor is not entitled to DEJ where he or she does not ' "admit the allegations" of the section 602 petition . . . " 'in lieu of jurisdictional and dispositional hearings.' " ' [Citations.] . . . Here, however, no jurisdictional hearing was held." (*Id.* at pp. 679-680.)

The *Joshua S.* court also rejected the People's contention that Joshua S. should not be considered for DEJ after negotiating a plea agreement reducing his legal responsibility because to do so "would remove [a] minor's incentive to 'expedite the process by a full admission of responsibility.' " (*Joshua S., supra*, 192 Cal.App.4th at p. 681.) The court explained: "[T]he process in the present case *was expedited*: [Joshua S.] admitted the allegations of the (amended) petition right after the denial of his suppression motion . . . , with no attempt to litigate the petitions. Thus, DEJ could have been granted, if found appropriate, 'in lieu of jurisdictional and disposition hearings' (§ 791, subd. (a)(3)). And [Joshua S.] did admit responsibility for his offenses, albeit not full responsibility for the initially charged offenses. In requiring a minor to 'admit[] each allegation contained in the petition,' section 791, subdivision (a)(3), does not specify that the petition cannot be amended where, as here, the amendment does not follow and is not the consequence of the minor contesting one or more of the allegations of the initial petition. [Citation.] The circumstances of this case are consistent with the goal of expediting juvenile wardship proceedings and avoiding contested jurisdictional hearings. Further, making DEJ unavailable to a minor who admits an amended petition without contesting the allegations of the initial petition would not serve the [stated statutory] goal of increasing rehabilitation for first-time nonviolent juvenile offenders . . . . [Citations.]" (*Id.* at p. 681, italics added.) Accordingly, the matter was remanded so that the juvenile court could determine whether to grant or deny DEJ. (*Id.* at pp. 673, 682.)

We are not persuaded by the People's argument that the *Joshua S.* holding conflicts with the plain language of section 791, subdivisions (a)(3) and (a)(4). We find no basis to distinguish it, and we decline to find that it was wrongly decided. Similar to Joshua S., in this case Minor admitted the allegations of the petition, albeit pursuant to a negotiated resolution that dismissed one charge, without requesting a contested jurisdiction hearing. Likewise, Minor did not reject DEJ and then seek to take advantage of it after contesting the allegations against him. (*Joshua S., supra*, 192 Cal.App.4th at p. 680.) The authority the People rely on is distinguishable. (See, e.g., *In re T.J.* (2010) 185 Cal.App.4th 1504, 1512, fn. omitted [minor not entitled to DEJ suitability hearing because "[he] had not *admitted* any allegations, and he necessarily had not done so *in lieu of* the jurisdictional hearing that had just been conducted"]; *In re R.C.* (2010) 182 Cal.App.4th 1437, 1441-1443 [minor not entitled to DEJ suitability hearing because he admitted only a misdemeanor]; *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1329 [DEJ law does not violate equal protection by denying benefits to first-time juvenile misdemeanants]; *In re V.B.* (2006) 141 Cal.App.4th 899 [minor under 14 was not eligible for DEJ].) We therefore follow the holding in *Joshua S.*, and we decline the People's invitation to hold it was wrongly decided.

C. *The People's Remaining Arguments Are Unpersuasive.*

The People emphasize the contractual principles governing both DEJ and negotiated admissions, and the general rule that " '[a] defendant may not retain the favorable aspects of his negotiated disposition and at the same time jettison its unfavorable aspects.' " (*People v. Miller* (2012) 202 Cal.App.4th 1450, 1461.) They contend that allowing Minor to take advantage of a negotiated admission and then for the first time on appeal to seek a DEJ suitability hearing "amounts to *trifling with the court*, a tactic courts do not countenance." (*In re V.B., supra*, 141 Cal.App.4th at p. 906.) They argue that Minor and his counsel were aware of his DEJ eligibility, but "did not press for DEJ, but instead opted to pursue a negotiated settlement." In their view, Minor should not now be permitted to seek DEJ on appeal.

The initial flaw in this argument is that it is based on the People's view that a minor must either elect a negotiated resolution of the charges or admit *all* charges so that he may be considered for DEJ. As we have explained, *Joshua S., supra,* 192 Cal.App.4th 670, holds otherwise. In addition, although the People claim Minor did not "press for DEJ," they cite to nothing in the record that would indicate that Minor or his counsel waived the suitability hearing. Indeed, the probation officer's report reflects that "[o]n November 7, 2012, the Minor's attorney wanted Probation to consider [DEJ]." In addition, no jurisdictional hearing was held prior to Minor's admission of the charge. The People cite no authority holding that a minor must "press for DEJ," and the case law we have cited makes clear that where, as here, all of the statutory conditions are met, it is the juvenile court's duty to conduct a suitability hearing. (E.g., *In re C.W., supra,* 208 Cal.App.4th at pp. 661-662.)

The People also argue that permitting Minor a suitability hearing after a negotiated resolution is contrary to the goal of accountability for minors. They argue these goals were reaffirmed by the voters when they enacted Proposition 21. While we agree that holding juvenile offenders accountable was one of the goals of Proposition 21, an equally important goal was rehabilitation. (See *Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 561 [noting that uncodified findings and declarations of Prop. 21 "express not only a strong preference for rehabilitation of first-time nonviolent juvenile offenders but suggest that under appropriate circumstances DEJ is required"].)

We emphasize that we are only remanding the matter so the juvenile court may conduct a suitability hearing. (*Joshua S., supra,* 192 Cal.App.4th at p. 682.) We express no view on whether Minor is indeed suitable for DEJ. That is a determination for the juvenile court to make in the first instance. We are unwilling to assume that court will fail to hold Minor appropriately accountable.

II. *The Juvenile Court Did Not Abuse its Discretion in Imposing Gang-Related Probation Conditions.*

Although we will remand the matter to the juvenile court so that it may conduct a suitability hearing in accordance with California Rules of Court, rule 5.800(f), we will

address Minor's challenge to the gang-related probation conditions. We do so for the guidance of the juvenile court on remand, since even if that court determines Minor is suitable for DEJ, it will still be required to consider imposing probation conditions. (See § 794; Cal. Rules of Court, rule 5.800(f)(4).) Moreover, the issue has been fully briefed by the parties, and our resolution of it serves the interests of judicial economy.

Minor challenges the juvenile court's imposition of gang-related probation conditions. Minor argues the gang-related probation conditions have no relationship to his crime and that they restrict noncriminal behavior. The People do not appear to contest these assertions, arguing instead that "although associating with gang members is not criminal, it is reasonably related to his future criminality." Because the parties apparently do not dispute that the gang-related probation conditions imposed here involve noncriminal conduct and are unrelated to the crime of which Minor was convicted, we must decide whether the conditions are reasonably related to a risk that Minor will reoffend.[7] (*People v. Brandão* (2012) 210 Cal.App.4th 568, 574.) On the record before us, we cannot say the juvenile court abused its discretion in concluding the conditions were reasonably related to the risk of future criminal activity.

A. *Standard of Review*

Section 730, subdivision (b) empowers the juvenile court to "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 . . . ." [Citation.] (*In re R.V.* (2009) 171 Cal.App.4th 239, 246.) "Conversely, a condition of probation which requires or forbids conduct which is not

[7] In addressing the question of reasonable relationship to future criminality, Minor's opening brief does not distinguish among the various gang-related probation conditions the juvenile court imposed. He challenges all of the conditions as having no reasonable relationship to any future criminality. We therefore have not been asked to analyze whether each individual condition satisfies this criterion.

itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*People v. Lent* (1975) 15 Cal.3d 481, 486.)

We review conditions of probation for abuse of discretion. (*In re R.V., supra,* 171 Cal.App.4th at p. 246.) The juvenile court enjoys broad discretion so that it may serve its function of rehabilitating wards and further the legislative policies of the juvenile court system. (*Ibid*.) Conditions of probation that would be legally or constitutionally impermissible for an adult criminal defendant may be permissible for juvenile defendants under the supervision of the juvenile court. (*Id*. at pp. 246-247.) " '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.' " (*Id*. at p. 247.)

B. *The Juvenile Court Could Properly Conclude the Challenged Conditions Are Reasonably Related to the Risk of Minor's Future Criminality.*

We discern no abuse of discretion by the juvenile court. Minor emphasizes the facts that he is not a gang member and has no gang affiliation, has not been "jumped into" a gang, and has no family members with gang ties. In cases involving the imposition of gang-related probation conditions on juvenile offenders, however, "[w]hether the minor was currently connected with a gang has not been critical." (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624.) Such conditions have been upheld on the ground that " '[a]ssociation with gang members is the first step to involvement in gang activity[.]' " (*Ibid*., quoting *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1501 (*Laylah K.*).)

In *Laylah K., supra,* 229 Cal.App.3d 1496, the court rejected the minors' challenges to gang-related probation conditions, including a challenge based on the minors' contention that they were not gang members. (*Id.* at pp. 1500-1501.) The court also rejected as "extremely shortsighted" the minors' argument that "mere association with gang members does not justify terms aimed at known gang members[.]" (*Id*. at p. 1501.) Further, the appellate found that the juvenile court "properly showed a great deal of concern over [the minors'] friendliness with gang members . . . ." (*Ibid*.)

While we agree with Minor that the facts of his case are perhaps not as strongly indicative of gang associations as those in *Laylah K.*, on this record we cannot hold that the juvenile court abused its discretion.[8] Minor initially told the probation officer that he has "associated" with *Norteños* and later admitted that he "'hangs out'" with Fair Oaks *Norteños* and *Sureños*. As Minor himself concedes, he is struggling at school and dealing with drug use. The probation officer reported that Minor "is habitually truant, failing most of his classes, and has an extensive behavioral incident history for truancy, leaving campus, failing to attend detention, not dressing for physical education, being under the influence of alcohol, possession of marijuana and a lighter, and inappropriate comments." (See *Laylah K., supra,* 229 Cal.App.3d at p. 1501 [noting one minor was a "frequent truant"].) Given Minor's "increasingly undirected behavior" and his admitted acquaintance with gang members, the juvenile court's concern that Minor might become a member of a gang was not unreasonable. (*Ibid*.) "Where a court entertains genuine concerns that the minor is in danger of falling under the influence of a street gang," imposition of gang-related probation conditions is not an abuse of discretion. (*Id*. at p. 1502.) "Evidence of current gang membership is not a prerequisite to imposition of conditions designed to steer minors from this destructive path." (*Ibid*.)

Minor contends that gang members live in his neighborhood and thus it would be unlikely for him not to know or associate with them. He argues that the maps provided by the probation officer show that his home is "pretty much engulfed" by gang territory.[9] As the People note, however, Minor is not prohibited from knowing gang members, only from associating with them. That he may live in an area in which gang members also reside does not require him to associate with members of gangs.

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[8] Minor complains that the record contains only characterizations of his responses to questions during detention intake and the probation interview. "Of course, [Minor] could have challenged the probation officer's factual statements or conclusions and presented evidence" to the contrary. (*Laylah K., supra,* 229 Cal.App.3d at p. 1500, fn. 2.)

[9] The maps contained in the record do not indicate where Minor lives, and we are unable to discern the location of his residence ourselves. In the court below, the prosecutor had the same difficulty, stating, "I can't tell from the map where [Minor] resides."

DISPOSITION

The dispositional order is reversed, and the matter is remanded for the juvenile court to determine whether Minor should be granted deferred entry of judgment.

_____

Jones, P.J.

We concur:

_____

Needham, J.

_____

Bruiniers, J.