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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re R.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.L.,

Defendant and Appellant.

A139803

(Del Norte County

Super. Ct. No. JDSQ11-6160)

Following a contested probation violation hearing, minor R.L. appeals from the juvenile court's dispositional order. Appellant's counsel has briefed no issues and asks this court to review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, to determine whether it contains any arguable issues. Counsel has notified appellant he can file a supplemental brief with the court. No supplemental brief has been received from appellant. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellant was declared a ward of the court on November 17, 2011 after the juvenile court found he had committed nine counts of vandalism. (Pen. Code, § 594, subd. (a)(2).) A petition to revoke appellant's probation under Welfare and Institutions Code section 777 (section 777) was filed by the Del Norte County Probation Department

on May 8, 2012, alleging appellant “provided a urine sample, which revealed the use of marijuana.” The court sustained this petition following a contested hearing.

Commencing in July 2012 through May 14, 2013, seven subsequent section 777 petitions were sustained typically because appellant either tested positive for marijuana or failed to provide a urine sample. On May 31, 2013, another section 777 petition was filed, this time alleging appellant violated school rules by assaulting another student. The court sustained the petition noting appellant’s actions amounted to “a technical assault, but minor’s [*sic*] considered this action horseplay.”¹ In addition, two Welfare and Institutions Code section 602 petitions were sustained, one in which appellant admitted committing petty theft (Pen. Code, §§ 484, subd. (a)/488), and one in which he admitted being drunk in public and in possession of a controlled substance without a prescription (Pen. Code, § 647, subd. (f); Bus. & Prof. Code, § 4060). Thereafter, during drug court review proceedings in March 2013, after appellant once again tested positive for marijuana, he was ordered to serve between 48 and 96 hours in juvenile hall.

The subject of this appeal is a section 777 petition filed on September 6, 2013 alleging appellant violated probation by testing positive for alcohol, violating curfew, and failing to provide a urine sample. At the contested probation revocation hearing several witnesses testified regarding the various alleged violations. Del Norte County Sheriff’s Deputy Mark Shaffer testified that on September 3, 2013 he responded to a call around midnight regarding “an intoxicated juvenile that was knocking on trailers at the park.” When Shaffer responded, he found appellant sitting on the front porch of a residence and asked him what he was doing there. Appellant was unable to answer the question. Shaffer noticed appellant’s pupils were dilated and did not react to light. After a second officer, Deputy Gill, performed an “11550 evaluation” on the appellant, he determined

¹ The record reflects a section 777 petition was filed on June 11, 2013, the same date as the contested hearing on the May 31 section 777 petition. However, we have been unable to find in the record either an order sustaining the June 11 petition or a corresponding dispositional order, although a dispositional report filed June 21, 2013 states the court “Found true” the allegations in both the May 31 and June 11 section 777 petitions.

appellant was under the influence of a controlled substance.² Appellant was detained and transported by ambulance, accompanied by Shaffer, to Sutter Coast Hospital. During the transport, Shaffer questioned appellant asking him if he had “taken any drugs, if he knew where he was at.” According to Shaffer, appellant was unable to directly answer the questions; “He would go off speaking about other unrelated topics.” At this point in the proceedings, the court found appellant was in violation of his probation by being out beyond curfew. The matter was then continued for presentation of evidence relating to the other allegations in the section 777 petition.

At the continued hearing, probation officer Ryan King testified about his normal practice in taking urine samples from wards for testing, that he used his usual practice to take a sample from appellant, and the sample was placed in a FedEx box for shipment to a toxicology lab in Santa Rosa.

John Martin of the Redwood Toxicology Laboratory in Santa Rosa first testified regarding the initial intake process and testing of samples received from the Del Norte County Probation Department. He explained he received a sample labeled with appellant’s name and a security seal. Martin also testified there was no problem with the integrity of the sample, and the sample tested positive for the biomarkers, ethyl glucuronide or ETG and ethyl sulfate or ETS, both caused by the breakdown of ethyl alcohol, specifically ethanol, in the body. Following his testing of the sample, Martin concluded, “That most likely that the levels associated with the sample that were taken were from the ingestion of ethanol.” On cross-examination, Martin elaborated that the level of ETG in appellant’s sample could have in the alternative been the result of excessive use of a product containing ethanol such as NyQuil.

The final witness, Del Norte County probation officer Tamara Sweeney, testified appellant, a “daily tester,” reported to juvenile hall on September 4, 2013 to provide a

² Health and Safety Code section 11550, subdivision (a) provides, “No person shall use, or be under the influence of” specified controlled substances. Any person convicted of violating this section is guilty of a misdemeanor.

urine sample. Sweeney reviewed the records regarding appellant's testing on September 4 and stated there was no record of appellant "testing" on that date.

At the conclusion of the hearing, the court sustained the allegations finding appellant failed to provide a sample on September 4, and provided a sample on August 26 that was positive for alcohol use.

Appellant was later ordered released on probation to be placed with out-of-state relatives, an aunt and uncle, in Idaho.

DISCUSSION

Appellant was ably represented by counsel throughout the proceedings. We find no indication in the record counsel provided ineffective assistance.

Substantial evidence supports the juvenile court's findings appellant violated his curfew, refused to provide a urine sample, and tested positive for alcohol all in violation of his probation conditions.

There was no dispositional error. Taking into consideration appellant's numerous and continuing failures to follow his conditions of probation while in his mother's custody, the probation department believed it was "clear that the minor's mother is not able to maintain the minor in her home at this time" and recommended placement with appellant's aunt and uncle in Idaho. The court acted reasonably in following the probation department's recommendation since all other attempts at rehabilitation had proven unsuccessful.

The court has reviewed the entire record and finds no arguable issues requiring further briefing.

Accordingly, the judgment is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Becton, J.*

* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.