

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

P.M.,

Defendant and Appellant.

A141221

(Alameda County
Super. Ct. No. SJ13021269)

17-year-old P.M. (appellant) appeals from the juvenile court’s dispositional order placing him on probation with various conditions. He contends the juvenile court abused its discretion in imposing probation conditions requiring him not to associate with gang members, wear gang colors or items associated with gangs, or obtain piercings. We affirm the order as modified.

FACTUAL AND PROCEDURAL BACKGROUND

On June 18, 2013, the Santa Clara County District Attorney filed a wardship petition (Welf. & Inst. Code, § 602¹) alleging that appellant committed first degree residential burglary (Pen. Code, §§ 459, 460, subd. (a)) and engaged in disorderly

¹All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

conduct—loitering (Pen. Code, § 647, subd. (h)). The information was based on incidents that occurred on March 22 and May 1, 2013.

At about 9:35 a.m. on March 22, 2013, a homeowner returned home and found appellant, who had entered the house through a rear window. The homeowner called police, reported the burglary, and identified appellant as the burglar. Appellant admitted burglarizing the home, and the stolen property was recovered. Appellant was cited and released to his mother.

About 11:48 a.m. on May 1, 2013, Milpitas police saw appellant acting suspiciously near a home in an area of recent home burglaries. When the police contacted appellant, he was speaking to someone on his cell phone. Appellant acknowledged he had prior arrests for residential burglary in San Mateo County and Alameda County. With appellant's permission, the police, purporting to be appellant, used his cell phone to call the last number shown. When the male recipient of the call was told that "the cops had seen him," he replied, "You haven't done anything yet, run to the Lexus." However, the police were unable to locate or identify appellant's cohort or his Lexus. Appellant later told his probation officer that "his friend was acting as his lookout while he was attempt[ing] to gain access to the home." Appellant was cited and released to his mother.

Appellant admitted both counts and the juvenile court ordered the matter transferred to Alameda County for disposition. On July 24, 2013, the Alameda County Juvenile Court accepted the transfer. Appellant's August 26, 2013 disposition report stated: "During the interview [with his probation officer], the minor stated that he enjoys burglarizing people's homes. He stated that if he would not get caught for it, he would continued to do it. . . . [¶] The minor reported that his first burglary was his idea, and he convinced his friends to participate. . . . He informed the [probation officer] that he normally does not act alone and that he has "a team" of people. During the interview it was clear . . . that [the minor] enjoys breaking into people's homes and was not remorseful for his actions." The report noted that appellant's risk for recidivism assessment "place[d] him in the **Moderate** Category for re-offending within the next

year.” Among his “highest . . . risk factors” were “Peer Relations.” The report concluded: “Although this is the minor’s first referral to the probation department, it is very clear that there are numerous concerns. The minor was not attending school on a regular basis, . . . smokes marijuana and consumes cough syrup with codeine on a regular basis, spends most of his time with gang members, and regularly engages in dangerous activity, such as breaking into homes. [He] was not remorseful . . . [¶] . . . [I]t appears that the probation department needs to intervene immediately in order to assist the minor with getting on track.” The report further said appellant’s mother “did not appear to be bothered by any of the things the minor said.” A subsequent disposition report recommended that appellant be placed on probation and ordered to participate in “Gang prevention” counseling.

At disposition, the court detained appellant for violating a court order and placed him on probation with Juvenile Electronic Monitoring (JEM).² On October 31, 2013, the court adjudged appellant a ward of the court (§ 602) and placed him in his mother’s home. The court imposed JEM probation.

On December 10, 2013, the Alameda County District Attorney filed a notice of probation violation (§ 777, subd. (a)). The juvenile court continued appellant as a ward of the court and reinstated probation with terms and conditions including JEM. A second notice of probation violation alleged that appellant had tampered with his JEM device. Appellant admitted the violation and was reinstated on JEM probation. A February 27, 2014 disposition report stated: “[The minor] consumes alcohol on a weekly basis . . . he often gets it from his friends. . . . [¶] . . . [¶] He reported that four out of his ten friends are on probation. He also stated that most of his friends are members of the Norteño gang, whom he met in Newark, Redwood City, and San Jose.”

At disposition on February 27, 2014, the juvenile court terminated JEM and continued appellant as a ward on formal probation with various terms and conditions. The court ordered appellant to participate in substance abuse treatment at the Fremont

²On October 10, 2013, appellant appeared in San Mateo County Juvenile Court regarding a pending burglary charge.

Youth and Family Services Bureau. Over appellant’s objection, the court ordered: “So you’re not to belong to any criminal street gang or associate with anyone you know or should reasonably know is a member of a criminal street gang. [¶] You’re not to [wear] gang colors, clothing or emblems or get any tattoos or piercings. [¶] You’re not to possess any burglary tools or graffiti materials.” The list of conditions as set forth in the minute order from that hearing differs from what the court stated in one way; instead of ordering appellant not to “get any tattoos or piercings,” the minute order states that appellant is “not to acquire any new tattoos or gang-related piercings”

DISCUSSION

Appellant contends the juvenile court abused its discretion by ordering him not to “associate with anyone you know or should reasonably know is a member of a criminal street gang,” not to wear “gang colors, clothing or emblems,” and not to get any “piercings.” The Attorney General concedes the “court’s oral pronouncement regarding the piercing prohibition . . . is admittedly in need of modification,” and asks this court to “modify the court’s oral condition.” We agree the condition should be modified to state that appellant is prohibited from getting any *gang-related* piercings. We conclude, however, that the condition, as modified, is appropriate, and that the other gang-related conditions were also proper.

The juvenile court has broad discretion to impose probation conditions. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033; § 730, subd. (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”].) “Conditions of juvenile probation may confer broader authority on the juvenile probation officer than is true in the case of adults.” (*People v. O’Neil* (2008) 165 Cal.App.4th 1351, 1358, fn. 4; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018 [“The juvenile court, acting in *parens patriae*, could limit appellant’s right of association in ways that it arguably could not limit an adult’s”].) According to *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), on which appellant relies, 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.’ ” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 6 [applying *Lent* to juvenile probation orders].) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379.)

Here, the juvenile court did not abuse its discretion in imposing the gang-related conditions. The piercing condition, as modified, was also proper. As noted, appellant told his probation officer that most of his friends were members of the Norteño gang. He said he did not act alone and always had a “team” of people with him when he committed crimes. He admitted it was his idea to commit the burglary and that he had convinced his friends to join him. Four of his ten friends were on probation. He enjoyed breaking into people’s homes and did not show any remorse for his actions, stating he would continue to do it if he would not get caught.

In light of the fact that most of appellant’s friends were Norteños, and the fact that appellant acted in concert with his friends in committing the crimes for which he was on probation, the court could reasonably determine that appellant’s cohorts included members of the Norteño gang. The conditions the court imposed, therefore, were related to the crimes appellant committed. The conditions were also reasonably related to future criminality because appellant’s actions and statements showed there was a high likelihood that he would continue to associate with gang members and commit crimes with them. (See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242 [condition prohibiting association with persons of a specific status is consistent with the rehabilitative purpose of probation]; *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1145 [approving condition prohibiting the display of gang clothing, logos, emblems, badges, or buttons]; *In re Antonio C.*, *supra*, 83 Cal.App.4th at p. 1035 [approving the prohibition of gang-related piercings as “sufficiently related to his rehabilitation” and “a reasonable exercise of the juvenile court’s supervisory function to provide for his safety and protection”].) The conditions therefore satisfied *Lent* and the court did not abuse its discretion in imposing them.

DISPOSITION

The probation condition prohibiting appellant from getting any piercings is hereby modified to state that appellant may not get any gang-related piercings. In all other respects, the order is affirmed.

McGuinness, P.J.

We concur:

Pollak, J.

Siggins, J.