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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

E.Z.,

Defendant and Appellant.

A142070

**(Marin County
Super. Ct. No. JV25863B)**

After the juvenile court sustained allegations in a wardship petition filed under Welfare and Institutions Code section 602,¹ it imposed on appellant E.Z. (Minor) a condition of probation prohibiting him from associating with anyone Minor knows or reasonably should know is a member of a criminal street gang. Minor now appeals from the juvenile court's dispositional order and contends the gang-related probation condition is invalid.

On the record before us, we conclude the juvenile court did not abuse its discretion in imposing the condition. We will therefore affirm the dispositional order.

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

FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2014, Minor was a student at County Community School. On that day, he was involved in an altercation in a classroom in which he struck the school's probation officer. As the probation officer tried to get control of Minor, the latter struggled. The probation officer pushed Minor against a wall to try to get control and told Minor to give him his hands, but Minor refused. The probation officer eventually got Minor to the floor, and Minor was placed in handcuffs.

A Marin County deputy sheriff arrived in the classroom in response to a call from the school's principal. In the deputy's presence, the probation officer searched Minor. He found a Bic lighter and a small bag containing less than an ounce of marijuana.

On April 4, 2014, the Marin County District Attorney filed a section 602 petition alleging Minor had committed misdemeanor battery on a peace officer (Pen. Code, § 243, subd. (b)), misdemeanor resisting or obstructing a peace officer in the performance of his duties (Pen. Code, § 148, subd. (a)(1)), and possession of less than an ounce of marijuana (Health & Saf. Code, § 11357, subd. (b)). Following a contested jurisdictional hearing on April 17, 2014, the juvenile court sustained the allegations of battery and possession of marijuana, but did not sustain the allegation of resisting/obstructing.

At the dispositional hearing on May 21, 2014, Minor's counsel objected to imposition of proposed gang-related terms of probation. She stated, "I would object to all the conditions recommended relating to the gang conditions, not to be a member of or to wear, as there's no relationship to the crime of which [Minor] was convicted so I don't believe that's an appropriate condition of probation." The district attorney argued the conditions were appropriate because "there doesn't have to be a relationship to the crime if the order is based on [Minor's] rehabilitation." The district attorney also noted the probation officer believed the conditions were appropriate to the minor's rehabilitation.

At the conclusion of the hearing, the juvenile court imposed the following modified gang-related condition: "You must not be a member of or associate with any person that you know or that you should reasonably know to be a member of or to be

involved in the activities of a criminal street gang.” It placed Minor on probation for one year with various other terms and conditions.

Minor filed a timely notice of appeal on June 3, 2014.

DISCUSSION

Minor challenges the juvenile court’s imposition of the gang-related probation condition on two grounds. First, he contends it is invalid because it is not reasonably related to either the battery offense or to future criminality. Second, Minor contends the condition is overbroad because it infringes on his constitutional right to freedom of association.² We address each of these arguments after setting forth our standard of review.

I. *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.” The reasonableness and propriety of the conditions imposed are measured not just by the circumstances of the current offense, but by the minor’s entire social history. (*In re Walter P.* (2009) 170 Cal.App.4th 95, 100.) “ ‘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 R.V.* (2009) 171 Cal.App.4th 239, 246.) “Conversely, a condition of probation which requires or forbids conduct which is not 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

² We note that Minor does not challenge the condition’s prohibition on gang membership. He contests only the prohibition on association with gang members or those involved in the activities of a criminal street gang.

function of rehabilitating wards and furthering 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.) Even conditions that infringe on a minor’s constitutional rights may be permissible if specifically tailored to meet the needs of the juvenile. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 82, disapproved on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

II. *The Probation Condition Is Reasonably Related to Future Criminality*

Minor argues the gang condition is unrelated to future criminality because the record contains no evidence of his “concrete gang involvement.” But in cases involving the imposition of gang-related probation conditions on juvenile offenders, “[w]hether the minor was *currently* connected with a gang has not been critical.” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624, italics added.) 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.*).

For example, in *Laylah K.*, the court rejected the minors’ challenges to gang-related probation conditions, including a challenge based on the minors’ contention they were not gang members. (*Laylah K.*, *supra*, 229 Cal.App.3d 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 the juvenile court “properly showed a great deal of concern over [the minors’] friendliness with gang members” (*Ibid.*)

While we agree the facts of his case are not as strongly indicative of gang associations as those in *Laylah K.*, on this record we cannot hold the juvenile court abused its discretion. Minor concedes his social history shows “a number of salient problems.” (*In re Walter P.*, *supra*, 170 Cal.App.4th at p. 100 [reasonableness of

probation condition judged on consideration of minor's entire social history].) According to the supplemental disposition report, available records indicate Minor has been "out of control since at least age 13." One of Minor's schools was concerned about his possible gang involvement because he had worn red to school. Although both Minor and his mother denied he was involved in a gang,³ his mother "was extremely worried over the path her son was heading. She explained her son often left home on Friday evenings and returned on Sundays." His whereabouts were sometimes unknown to her. She did not approve of her son's choice of friends. Minor has exhibited poor school attendance, has used marijuana regularly, and has been defiant at school. Minor has been referred to the probation department five times for truancy and five times for running away. (See *Laylah K.*, *supra*, 229 Cal.App.3d at p. 1501 [noting one minor was a "frequent truant"].)

The probation officer noted he was recommending "*preventative* gang terms and conditions." (Italics added.) Given Minor's "increasingly undirected behavior," the juvenile court's concern that Minor might become a member of a gang was not unreasonable. (*Laylah K.*, *supra*, 229 Cal.App.3d at p. 1501.) "Where a court entertains genuine concerns that the minor is *in danger* of falling under the influence of a street gang, an order directing a minor to refrain from gang association is a *reasonable preventive measure in avoiding future criminality* and setting the minor on a productive course. Evidence of current gang membership is not a prerequisite to imposition of conditions designed to steer minors from this destructive path." (*Id.* at p. 1502, italics added.)

In short, the juvenile court need not await conclusive proof that a minor has become involved in a gang before imposing properly tailored probation conditions restricting association with known gang members. We conclude the gang-related probation condition is reasonably related to future criminality

³ The probation officer noted Minor may have been able to manipulate his mother when he was growing up. Like her son, she was characterized as "somewhat resistant and in denial[.]" The juvenile court could certainly take these factors into consideration in evaluating Minor's mother's assessment of her son's potential gang involvement.

III. *The Probation Condition Is Not Unconstitutionally Overbroad.*

Minor argues the gang-related probation condition infringes on his freedom of association. He contends it is overbroad on its face, in part because “[i]n effect, [he] was enjoined against even associating with associates of gangs.” We disagree both with Minor’s reading of the condition and with his contention it is overbroad.

“A [probation] restriction is unconstitutionally overbroad . . . if it (1) ‘impinge[s] on constitutional rights,’ and (2) is not ‘tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.’ [Citations.] The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

Initially, we do not think the condition will bear the interpretation Minor places on it. It does not, as he suggests, enjoin him from associating even with “associates of gangs.” Instead, the condition prohibits him from associating with those he knows or reasonably should know are actual members of gangs or are involved in the activities of criminal street gangs. Thus, Minor would not be prohibited from associating with a person who associated with gang members, *unless* he knows or should know that person is actually involved in the activities of a criminal street gang. Put another way, Minor’s overbreadth challenge is based on his overbroad reading of the condition. As we read the condition, it is not vulnerable to constitutional challenge. (See *In re H.C.* (2009) 175 Cal.App.4th 1067, 1072 [approving modified probation condition that minor “ ‘will not associate with any person known to you to be . . . a member of a criminal street gang’ ”]; *In re Vincent G.* (2008) 162 Cal.App.4th 238, 247 [approving modified probation condition stating, “ ‘You are not to associate with any person whom you know, or whom the probation officer informs you, is a gang member.’ ”].)

Minor argues the condition infringes on his right of association for “ ‘a wide variety of political, social, economic, educational, religious, and cultural ends.’

[Citation.]” (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1110-1111 (*Acuna*)). His brief does not specify what those ends might be, and in any event, *Acuna*, the case upon which he relies, *rejected* a freedom-of-association challenge to an injunction, concluding association with gang members is not conduct protected by the First Amendment. (*Id.* at pp. 1110-1112.) The case therefore provides no support for his argument. Similarly, *In re Victor L.* (2010) 182 Cal.App.4th 902, upon which Minor also relies, involved a probation condition prohibiting the minor from being in an area of gang activity. The problem in that case, however, was not overbreadth but rather the distinct issue of vagueness. (*Id.* at pp. 914-918; see *In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153 [objections of vagueness and overbreadth “are conceptually quite distinct”].)

“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.” (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018 [upholding probation condition forbidding minor from associating with persons known to be disapproved by probation officer].) We conclude the probation condition does not impermissibly infringe on Minor’s freedom of association. (*In re H.C.*, *supra*, 175 Cal.App.4th at p. 1072; *In re Vincent G.*, *supra*, 162 Cal.App.4th at p. 247.)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.