

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

A142651

(San Francisco County  
Super. Ct. No. JW136181)

M.L. appeals from the juvenile court’s jurisdictional and dispositional orders, contending that two of his probation conditions are unconstitutionally vague. We will modify the probation conditions and, with this modification, affirm the orders.

**I. FACTS AND PROCEDURAL HISTORY**

In a previous wardship proceeding in May 2013, M.L. admitted allegations of two counts of grand theft (Pen. Code, § 487, subd. (c)).<sup>1</sup> He was declared a ward of the juvenile court and placed on probation in June 2013.

In May 2014, a juvenile wardship petition alleged that M.L. committed a robbery (§§ 211, 212.5, subd. (c)) and received stolen property (§ 496, subd. (a)). At a contested jurisdictional hearing with two co-responsible minors in June 2014, evidence was

<sup>1</sup> Except where otherwise indicated, all statutory references are to the Penal Code.

introduced that M.L. and the two other minors surrounded their victim at a BART station in May 2014 and demanded his jacket, cell phone, and wallet (containing approximately \$730 in cash). After the victim complied, they fled. A bystander phoned 911, reported the incident, and provided descriptions of the suspects. San Francisco police officers responded to the robbery dispatch and later arrested M.L. and the two co-responsible minors. One of the co-responsible minors was caught holding the victim's cell phone, the other was identified by the victim at an in-field lineup, and officers found \$591 in M.L.'s shoe. At the contested jurisdictional hearing, the victim identified M.L. and the two co-responsible minors as the robbers. The court sustained the allegations against M.L.

At the dispositional hearing, the court continued M.L.'s wardship, placed him on probation on the condition that he successfully complete a program at the Log Cabin Ranch School, committed him to the Log Cabin Ranch School, and calculated the maximum term of confinement to be seven years. Other terms and conditions of his probation included the two conditions at issue in this appeal, which essentially prohibited him from possessing any weapons and from possessing or using any controlled substances or alcohol. As discussed *post*, the court's minute order set forth the conditions in greater detail.

This appeal followed.

## II. DISCUSSION

### A. Probation Conditions

M.L. contends the probation conditions prohibiting his possession of weapons and possession or use of controlled substances and alcohol are unconstitutionally vague on their face.

#### 1. Law

Under Welfare and Institutions Code section 730, subdivision (b), a juvenile court may impose any reasonable probation condition that is "fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." The court has broad discretion to select probation conditions to promote reformation and

rehabilitation of the minor and protection of the public. (*In re Walter P.* (2009) 170 Cal.App.4th 95, 99-100.) A probation condition that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130, 139.)

Nonetheless, “[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.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*)) We consider whether, in context, an ordinary person would understand what behavior is prohibited by the condition. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018; *In re Ramon M.* (2009) 178 Cal.App.4th 665, 678.) A probation condition is not void for vagueness if a “ “reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.” ’ ” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630 (*Lopez*)).

In addition, “[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 constitutionally overbroad.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) As a general rule, a probation condition is not overbroad if it burdens no constitutionally protected right more than necessary to protect a significant government interest. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1120.)<sup>2</sup>

## 2. Possession of Weapons

At the dispositional hearing, the juvenile court stated that M.L. “may not possess any weapons.” The written minute order displays a check mark next to the corresponding

---

<sup>2</sup> An appellate challenge to a probation condition on the ground that it is unconstitutional on its face—that is, “capable of correction without reference to the particular sentencing record developed in the trial court”—can be raised despite the absence of an objection in the lower court. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 885, 887-888.) The parties agree that M.L.’s contentions are cognizable on appeal.

probation condition that reads as follows: “[M.L. shall not] possess weapons of any kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition or something that looks like a weapon. [M.L. is] not to possess anything that [he] could use as a weapon or someone else might consider to be a weapon.”<sup>3</sup>

M.L. contends the probation condition is unconstitutionally vague because he (and anyone charged with enforcing the condition) will not be certain whether an object qualifies as a “weapon.” (See *Lopez, supra*, 66 Cal.App.4th at p. 630.) He queries whether he would violate the condition if he had a screwdriver tucked into his pocket, intending to use it to repair a bicycle, since a screwdriver could conceivably be used or viewed as a weapon. To eliminate this uncertainty, M.L. proposes that the probation condition be limited to prohibiting his control and custody of “deadly or dangerous” weapons, which has an established meaning. (*In re R.P.* (2009) 176 Cal.App.4th 562, 566-570 [probation condition prohibiting minor from possessing any “dangerous or deadly weapon” was not unconstitutionally vague because the well-established meaning of the phrase was that it included items specifically designed as weapons as well as items not created as weapons (e.g., pencils, screwdrivers, chisels) that the possessor uses or intends to use to cause death or great bodily injury].)

---

<sup>3</sup> M.L. urges us to review the probation conditions as expressed orally by the court at the dispositional hearing, rather than as they appear in the minute order, since oral pronouncements usually prevail. (Citing *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) Respondent urges that we review the conditions as expressed in the minute order, since the minute order is more comprehensive. (See *People v. Rodriguez* (2013) 222 Cal.App.4th 578, 586 (*Rodriguez*); *People v. Thrash* (1978) 80 Cal.App.3d 898, 901-902 [court need not spell out probation condition in great detail].) In our view, the court’s recitation of the conditions at the hearing was merely a shorthand of the probation conditions set forth in the preprinted minute order. But in any event, we reach our disposition in this appeal based on the parties’ arguments as to how the intended probation conditions should be phrased, regardless of how they were phrased, and our modification of the conditions supersede both the oral statement and the written statement of the conditions. Although we agree the conditions should be modified, we do not hold that they would necessarily be unenforceable as unconstitutionally vague.

Respondent counters that the written probation condition provides clear notice of what M.L. is prohibited from doing as it is, because it prohibits *any* weapons and lists examples. Respondent adds that M.L. would not violate the condition by possessing a household item such as a screwdriver, unless he intended to use it as a weapon. (See *People v. Page* (2004) 123 Cal.App.4th 1466, 1471-1473 [pencil]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1107 [screwdriver].)

In our view, both the oral and written pronouncements of the probation condition plainly express an intention to prohibit M.L. from possessing *any* weapons. The juvenile court judge used the phrase “*any* weapons.” (Italics added.) The minute order refers to “weapons of *any* kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition, or something that looks like a weapon,” as well as “anything that [M.L.] could use as a weapon or someone else might consider to be a weapon.” (Italics added.) Therefore, if there is any uncertainty in the meaning of “weapons,” or the phrases “something that looks like a weapon” or “[that] someone else might consider to be a weapon,” the cure for that uncertainty cannot be found in M.L.’s suggestion that we change the probation condition so that it prohibits possession of deadly and dangerous weapons only.

Instead, sufficient clarity may be achieved by focusing on the legal principle both parties embrace: M.L. cannot be prohibited from possessing a household item unless he intends to use it as a weapon. On this basis, the intent behind the probation condition may be properly expressed by stating that M.L. is prohibited from possessing “weapons of any kind, which means (1) no guns, knives, clubs, brass knuckles, or attack dogs; (2) no ammunition; and (3) nothing that might be used as a weapon, with the intent of using it as a weapon or indicating to another person that he has a weapon.”

M.L. further contends the probation condition is unconstitutionally vague (or overbroad) because it does not expressly require that he know he is possessing a prohibited item. (*Sheena K.*, *supra*, 40 Cal.4th at p. 892; see *People v. Freitas* (2009) 179 Cal.App.4th 747, 750-753; *People v. Piralì* (2013) 217 Cal.App.4th 1341, 1351; *People v. Moses* (2011) 199 Cal.App.4th 374, 381; *In re Victor L.* (2010) 182

Cal.App.4th 902, 913.) Respondent counters that an express knowledge requirement need not be added because there is already an implied knowledge requirement in probation conditions that prohibit the possession of specified items. (*Rodriguez, supra*, 222 Cal.App.4th 578, 593-594 [probation condition prohibiting possession of weapons and ammunition was not unconstitutionally vague because there was an implicit scienter requirement]; *People v. Moore* (2012) 211 Cal.App.4th 1179, 1185 [modification of a probation condition prohibiting weapons to include an express knowledge requirement is “unnecessary because a knowledge requirement is already ‘manifestly implied’ ”]; *People v. Kim* (2011) 193 Cal.App.4th 836, 843, 847 [probation condition prohibiting firearms and ammunition did not have to include an express knowledge requirement; statutes prohibiting felons from possessing firearms and ammunition contain an implied knowledge requirement].)

Even if a knowledge requirement were implicit, there is no prejudice in making it explicit. We will therefore add the word “knowingly” to the probation condition so that it reads as follows: “M.L. shall not knowingly possess weapons of any kind, which means (1) no guns, knives, clubs, brass knuckles, or attack dogs; (2) no ammunition; and (3) nothing that might be used as a weapon, with the intent of using it as a weapon or indicating to another person that he has a weapon.”<sup>4</sup> (See *In re Kevin F.* (2015) 239 Cal.App.4th 351, 366 [modifying the probation condition 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. In addition, 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.”].)

---

<sup>4</sup> This language is very close to the wording M.L. proposes in his reply brief, except we do not limit the condition to deadly and dangerous weapons. M.L. proposes: “Appellant [ ]shall not knowingly possess deadly and danger[ous] weapons of any kind, which means no guns, knives, clubs, brass knuckles or attack dogs. Appellant shall not knowingly possess ammunition. Appellant shall not knowingly possess anything that he could use as a weapon, with the intent to inflict death or great bodily injury.”

### 3. Possession or Use of Controlled Substances or Alcohol

At the dispositional hearing, the court stated that M.L. “may not possess, use or have in [his] possession any drugs, alcohol or controlled substances.” The minute order has a check mark next to the following probation condition: “[M.L. shall not] possess or have in [his] possession, use, consume, or sell any controlled substances, alcohol, or intoxicants forbidden by law.”

M.L. contends the probation condition prohibiting his possession of “any drugs, alcohol, or controlled substances” is vague because he is “an ordinary person who is neither a medical professional nor a pharmacist.” He further argues that the probation condition must include an express knowledge requirement. In his reply brief, he suggests that the probation condition should be modified to read: “Appellant shall not knowingly possess, consume or sell any alcohol, controlled substances or intoxicants forbidden by law, including prescription-only drugs for which appellant does not have a valid and current prescription.”

Respondent urges that the probation condition is clear as it is, since it explicitly applies only to substances that are “forbidden by law,” and no express knowledge element is required. (See *Rodriguez, supra*, 222 Cal.App.4th at pp. 592-594 [scienter element is reasonably implicit in condition prohibiting possession of alcohol, intoxicants, narcotics, or other controlled substances without a prescription].)

The only difference between the probation condition as stated in the minute order and the condition suggested by M.L. is the addition of the word “knowingly,” the omission of the word “use,” and an explanation regarding prescription drugs. There is no prejudice to respondent in adding “knowingly” (since respondent acknowledges there is already an implicit knowledge requirement) or including the explanation regarding prescription drugs (since it derives from respondent’s brief). However, because “use” is not necessarily the same as “consume” as it appears in the probation condition, the word “use” should not be omitted.

We will therefore modify the probation condition to read as follows: “M.L. shall not knowingly possess, use, consume or sell any alcohol, controlled substances or

intoxicants forbidden by law, including prescription-only drugs for which he does not have a valid and current prescription.”

B. Proposition 47

In his opening brief in this appeal, M.L. argued that this court should modify the dispositional order under Proposition 47, which became effective November 5, 2014, so that his violation of section 496, subdivision (a) is reclassified as a misdemeanor and his maximum term of confinement is recalculated accordingly. (See § 1170.18.)

In its respondent’s brief, respondent pointed out that relief under Proposition 47 must be sought directly in the juvenile court.

In his reply brief, M.L. now represents that on June 19, 2015, while this appeal was pending, the juvenile court granted his petition under section 1170.18, subdivision (a), reclassified his section 496, subdivision (a) violation as a misdemeanor, and recalculated his maximum term of confinement. He therefore “withdraws the request for modification because the juvenile court’s granting of appellant’s [s]ection 1170.18 petition moots any need for appellate review on this issue.”

The juvenile court’s order reclassifying M.L.’s violation and recalculating his maximum term of confinement is not in the appellate record. However, based on M.L.’s representations and voluntary withdrawal of this issue, we need not and do not decide any issue regarding Proposition 47. Nor do we express any opinion as to the validity of the action by the juvenile court.

III. DISPOSITION

As to the dispositional order of June 17, 2014, we modify the probation condition pertaining to possession of weapons to read as follows: “M.L. shall not knowingly possess weapons of any kind, which means (1) no guns, knives, clubs, brass knuckles, or attack dogs; (2) no ammunition; and (3) nothing that might be used as a weapon, with the intent of using it as a weapon or indicating to another person that he has a weapon.” In the same dispositional order, we modify the probation condition pertaining to possession of drugs and alcohol as follows: “M.L. shall not knowingly possess, use, consume or sell

any alcohol, controlled substances or intoxicants forbidden by law, including prescription-only drugs for which he does not have a valid and current prescription.” As so modified, the dispositional order is affirmed. The jurisdictional order is also affirmed.

---

NEEDHAM, J.

We concur.

---

JONES, P.J.

---

BRUINIERS, J.

(A142651)