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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

A142857

(Solano County
Super. Ct. No. J42289)

D.M. appealed after the juvenile court continued his wardship and granted probation. His counsel asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We requested briefing on whether any of D.M.’s probation conditions are unconstitutionally vague. We conclude, and the Attorney General concedes, that four conditions must be modified, but we otherwise affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

In February 2014, 17-year-old D.M. was adjudged a ward of the juvenile court and placed on probation. Five months later, he led a police officer on a high-speed chase through Fairfield after the officer attempted to pull him over for a headlight violation.

The Solano County District Attorney then filed a new petition under Welfare and Institutions Code section 602, subdivision (a) alleging a felony count of driving with a willful and wanton disregard for the safety of others while evading a peace officer and a misdemeanor count of driving without a license.¹

After a contested jurisdictional hearing, the juvenile court sustained both counts. It then continued D.M.'s wardship and placed D.M. on probation with various conditions, including several preprinted conditions under the heading "GANG RELATED TERMS AND CONDITIONS OF PROBATION/DEJ."²

II. DISCUSSION

D.M. contends that four of the gang-related conditions of probation are unconstitutionally vague because they do not provide sufficient notice of what is prohibited.³ We accept the Attorney General's concession that these conditions must be modified.

A juvenile court has broad discretion to impose conditions of probation "and may impose ' "any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' " " " (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889.) A probation condition must, however, " '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,' " or else it is unconstitutionally vague. (*Id.* at p. 890.)

D.M. first argues that a condition that he "not be present in any building, vehicle or be in the presence of any person or persons to whom [he] knows possesses a firearm,

¹ The felony count was brought under Vehicle Code section 2800.2, subdivision (a), and the misdemeanor count was brought under Vehicle Code section 12500, subdivision (a).

² The instant offenses do not appear to be gang-related, but the record indicates D.M. was associated with a gang.

³ D.M. objected to only one of these conditions on vagueness grounds, but his claim as to the other conditions is nevertheless preserved. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

ammunition, or other dangerous or deadly weapons or where such objects exist” is confusingly worded and does not require him to know a building or vehicle contains weapons or ammunition.⁴ We agree that the condition must be modified to require D.M.’s knowledge that a building or vehicle in which he is present contains weapons or ammunition.⁵ (See *In re Victor L.* (2010) 182 Cal.App.4th 902, 912-913 [ordering modification of similar condition].)

Next, D.M. claims a condition that he “not wear any known or identified gang-related clothing (RED) or emblems” is vague because it does not specify “who must know[] or who must identify the prohibited items.” He also claims a condition that he “not possess any known or identified gang-related paraphernalia” suffers from the same problem. We agree both conditions must be modified to expressly require *his* knowledge that the clothing, emblems, and paraphernalia are gang-related. (See *In re H.C.* (2009) 175 Cal.App.4th 1067, 1071-1072 [prohibition on association with “ ‘any known probationer, parolee, or gang member’ ” modified to require juvenile’s knowledge].) We also accept the parties’ agreement that these conditions be modified to refer to identification by D.M.’s probation officer, which is consistent with other conditions in the order.

⁴ Throughout this opinion, we quote from the written conditions in the dispositional order. Despite some misreading, the juvenile court clearly meant to read these conditions into the record, and it signed the order containing them. Under such circumstances, the written conditions control over the court’s oral pronouncement. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346 [in determining which probation conditions control, “though the older rule is to give preference to the reporter’s transcript where there is a conflict, the modern rule is that if the clerk’s and reporter’s transcripts cannot be reconciled, the part of the record that will prevail is the one that should be given greater credence in the circumstances of the case”].)

⁵ The Attorney General’s proposed modifications to the conditions missing a knowledge requirement are phrased in terms of what D.M. knows or reasonably should know. It is true that a condition requiring actual or constructive knowledge passes constitutional muster. (*People v. Mendez* (2013) 221 Cal.App.4th 1167, 1170.) But none of the other conditions that do include a knowledge requirement are phrased in terms of constructive knowledge, and we therefore limit our modifications to correspond with those other conditions.

Finally, D.M. contends a condition that he “not be present at any gang-related Court proceeding to which [he] is not a party, defendant, or a subpoenaed witness unless permitted to be present by the Court or his[] Probation Officer” is vague because it does not require him to know a court proceeding is gang-related. Again, we agree the condition must be modified to add an express knowledge requirement. (See *People v. Leon* (2010) 181 Cal.App.4th 943, 949-950 [modifying condition prohibiting “ ‘association with gang members’ ” to require that defendant know or be informed of individual’s gang membership].)

III. DISPOSITION

1. The third gang-related probation condition is modified to read, “The Minor shall not be present in any building or vehicle that he knows contains a firearm, ammunition, or other dangerous or deadly weapons. Nor shall the Minor be in the presence of any person or persons whom the Minor knows possesses a firearm, ammunition, or other dangerous or deadly weapons.”

2. The sixth gang-related condition is modified to read, “The Minor shall not wear any clothing or emblems (RED) that he knows are gang-related or that the Probation Officer informs him are gang-related.”

3. The seventh gang-related condition is modified to read, “The Minor shall not possess any paraphernalia that the Minor knows are gang-related or that the Probation Officer informs him are gang-related, including, but not limited to gang graffiti, symbols, photographs, members rosters or other gang writings and publications.”

4. The ninth gang-related condition is modified to read, “The Minor shall not be present at any Court proceeding that the Minor knows is gang-related unless the Minor is a party, defendant, or a subpoenaed witness or is permitted to be present by the Court or the Probation Officer.”

As so modified, the judgment is affirmed.

Humes, P.J.

We concur:

Dondero, J.

Banke, J.