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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

L.W.,

Defendant and Appellant.

A143458

(Solano County
Super. Ct. No. J41769)

The minor, L.W., a Solano County resident, challenges a probation condition banning him from traveling unsupervised to neighboring Contra Costa County, where he engaged in criminal activity. He contends the condition is unreasonable and overbroad. We conclude the trial court acted within its discretion and affirm the disposition order imposing the condition.

BACKGROUND

In late 2012, the minor, who lives in Solano County and is enrolled in a high school there, engaged in criminal conduct in that county and also in Contra Costa County. In Solano County, he committed petty theft of cell phones at an amusement park. In Contra Costa County, he committed attempted trespass by trying to forcibly enter an apartment at a complex in the City of Pittsburg. The minor was spending the night at the complex, in an apartment belonging to a friend of his brother L.

The probation department, preparing for a consolidated dispositional hearing, learned the minor cuts school in Solano County “most days” to hang out with L. in Pittsburg. In fact, while awaiting disposition, the minor was on bench warrant status for extended periods of time, and during this time, spanning four to five months, he stayed with L. in Pittsburg and made no contact with his mother. The minor’s mother viewed L. as a bad influence and believed L., the minor, and another brother were “all about reputation and being known.” Mother believed the minor’s drug use was greater when he was in Pittsburg. Although the minor and his mother denied he had a gang affiliation, the mother expressed concerns about him hanging out in the “Pittsburg Projects,” and pictures on the minor’s Facebook page, taken in Pittsburg, depict him with guns, drugs, and alcohol.

The juvenile court kept the minor a ward of the court, placed him on probation, and placed him in his mother’s care. While on probation, the minor was required to check in with his probation officer, attend school, respect a curfew, avoid drugs, and stay away from Pittsburg if not accompanied by his mother.

The minor allegedly violated his probation several months later when he failed to report to his probation officer, skipped school, and stayed away from his home without parental permission. When the minor did not appear for his violation hearing, a bench warrant issued. It was cancelled after the minor was arrested in Solano County and charged with new criminal behavior, possessing burglary tools and receiving stolen property. The minor admitted possession of burglary tools; the other charge and the probation violations were dismissed. He had to serve some time at the juvenile detention facility, but then was back in his mother’s care on probation. At this point, the minor was required to make contact with the Vallejo Day Reporting Center and be electronically monitored.

Less than a month after being released from juvenile detention, the minor was caught out of his home and skipping school. The juvenile court continued probation.

About two months later, the minor allegedly violated curfew, failed to contact the Day Reporting Center, and engaged in drug use. While these probation violation charges were pending, the minor left home for three months and subsequently admitted he was living with his brother “in the Pittsburg, CA (Contra Costa County) area.” The minor was picked up by Pittsburg police on a bench warrant and briefly detained at the juvenile detention facility in Contra Costa County before being returned to Solano County. When finally before the juvenile court, the minor conceded the curfew violation. At a contested disposition hearing, the juvenile court placed the minor in a group home and again continued the minor on probation.

The probation department again recommended the condition, previously adopted, that the minor stay away from Pittsburg unless accompanied by his mother. At the disposition hearing, but without input from the parties or explanation on the record, the juvenile court imposed a variant of the condition: “He’s not to go to Contra Costa County unless the Court authorizes or [*sic*] supervising adult.” The court’s written disposition order requires the minor to “[s]tay away from: Contra Costa County unless a court authorizes a supervised [*sic*] adult.” Everyone understands the condition to mean the minor can visit Contra Costa County only if the juvenile court first appoints an adult to supervise him during any visits. The minor did not object to the condition in the juvenile court, but now challenges it on appeal.

DISCUSSION

Welfare and Institutions Code section 730, subdivision (b) authorizes the juvenile court, when granting probation, 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.” (Welf. & Inst. Code, § 730, subd. (b).)

“A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be

unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile.” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) This is because juveniles generally require more guidance and supervision than adults. And the state, when it assumes responsibility for a minor, stands in the shoes of the parents and, like a parent, may restrict a child’s exercise of constitutional rights. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 (*Antonio R.*.)

While a juvenile court has broader discretion in formulating probation conditions than adult criminal courts, that discretion “is not boundless.” (*In re Luis F.* (2009) 177 Cal.App.4th 176, 189 (*Luis F.*.) For instance, a juvenile probation condition, like their adult counterparts, may be challenged as unconstitutionally overbroad. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887.) “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.) “ ‘If available alternative means exist which are less violative of the constitutional right and are narrowly drawn so as to correlate more closely with the purposes contemplated, those alternatives should be used’ ” (*Luis F., supra*, 177 Cal.App.4th at p. 189.)

Also, it is consistently held that juvenile probation conditions must meet the three-part *Lent* test of reasonableness applied to adult probationers. (*In re D.G.* (2010) 187 Cal.App.4th 47, 52–53; see *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*.) Under *Lent*, “[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’ [Citation.] 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.” (*Lent, supra*,

15 Cal.3d at p. 486.) The *Lent* factors are “conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379–380.)

When a travel ban does not banish a minor from his home, but rather prevents the minor from entering a locale where he might do or suffer harm, or where he cannot be adequately supervised, the ban is permitted. (See *In re Victor L.* (2010) 182 Cal.App.4th 902, 916–917, fn. 11; *Antonio R.*, *supra*, 78 Cal.App.4th at pp. 941–942; *People v. Thrash* (1978) 80 Cal.App.3d 898, 902 [“[a]s for the restriction on travel, it validly applies to everyone because of the continuing supervision by the probation department”].)

The minor does not dispute that a travel ban might sometimes be appropriate. Instead, he contends his county-wide travel ban is overbroad and unreasonable because the evidence only showed criminal conduct and potentially harmful influences in Pittsburg, not anywhere else in Contra Costa County or beyond.

In *Antonio R.*, the Court of Appeal affirmed a county-wide travel ban in addition to a ban on traveling to known gang territory within that county. (*Antonio R.*, *supra*, 78 Cal.App.4th at pp. 939–942 & fn. 3.) Antonio lived in Orange County but engaged in criminal conduct in Los Angeles County. His gang claimed “at least a portion of that county.” (*Id.* at pp. 941–942.) The court “acknowledge[d] that Los Angeles County is a large place” and that “Antonio may be prevented from doing” many things unrelated “to potential criminality.” (*Id.* at p. 942.) Yet the court had “confidence that any reasonable request to travel within Los Angeles County [would] be honored by his parents or the probation officer, and this safety valve saves the condition” which only “reaffirm[s] the traditional parental prerogative. The condition is thus consistent with the rehabilitative

purpose of probation and constitutional parental authority. Antonio’s constitutional rights have not been impermissibly burdened.” (*Ibid.*)

In *In re Daniel R.* (2006) 144 Cal.App.4th 1, 7–9 (*Daniel R.*), the Court of Appeal allowed a probation condition prohibiting travel to an entire country, Mexico, if modified to allow such travel if the probation department consented and the parents provided supervision. “As so modified, the condition will reasonably accommodate Daniel’s appropriate requests to travel to Mexico with appropriate restrictions and also serve the important interests of public safety and his rehabilitation without excessively infringing upon his constitutional rights.” The court concluded this even though the minor had no criminal ties to Mexico and had never fled there before. (*Ibid.*)

We acknowledge evidence of the minor’s contacts beyond Pittsburg are lacking, and certainly a juvenile court should always endeavor to impose the least restrictive condition that furthers the rehabilitation of the minor. But the tailoring need not be “perfect,” especially in the case of a juvenile, and especially in the case of a supervised travel restriction that easily conforms to the usual expectations of what a parent might require of their own child. (See *In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153; *Antonio R.*, *supra*, 78 Cal.App.4th at pp. 941–942; *People v. Thrash*, *supra*, 80 Cal.App.3d at p. 902.) Both *Antonio R.* and *Daniel R.* countenanced travel bans for regions beyond the precise city or area of concern: a county in *Antonio R.* and a country in *Daniel R.*

Also, the condition here has a safety value similar in effect to those found important in *Antonio R.* and *Daniel R.* The minor can ask the court to appoint an appropriate person to accompany him into Contra Costa County.

We therefore conclude the juvenile court did not abuse its discretion in imposing the travel restriction. This conclusion resolves the minor’s claim that his counsel was ineffective for not objecting to the travel restriction. Since the condition was permissible, the failure to object was not ineffective assistance. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140.)

DISPOSITION

The disposition order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.

A143458, *In re L.W.*