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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

L.F.,

Defendant and Appellant.

A144055

(Solano County
Super. Ct. No. J42519)

Minor L.F. appeals after the juvenile court imposed a condition of probation prohibiting her from “maintain[ing]” any social media accounts. She contends the condition was vague and overbroad and that it infringed on her First Amendment rights. We agree that, in this context, the term “maintain” is vague, and therefore remand the matter to the juvenile court to clarify its meaning.

I. BACKGROUND

This is the second time Minor’s case has been before us. As we explained in her earlier appeal, the juvenile court sustained a juvenile wardship petition alleging Minor had committed criminal threats after she posted “tweets” on her Twitter account threatening to shoot people at her school the next day. (*In re L.F.*, A142296 [June 3,

2015, nonpub. opn.] (*L.F. I.*) In *L.F. I.*, we modified one of Minor’s probation conditions to add an express scienter requirement and otherwise affirmed the juvenile court’s order.

In December 2014, the district attorney filed a notice of violation of probation and a juvenile wardship petition (Welf. & Inst. Code,¹ § 602, subd. (a)) alleging Minor had once again posted a death threat on her Twitter account, this time against a specific individual, N.P. The wardship petition alleged this conduct constituted a criminal threat. (Pen. Code, § 422.) The probation officer’s report indicated that Minor had posted a tweet reading, “I’ll kill her and [N.P.] just waiting on the perfect time.” Minor had also posted other tweets stating that she had thrown a soda at N.P.’s car. N.P.’s mother, who reported the matter to police, said that N.P.’s car had been vandalized, but she did not know who had done so. When asked why she had posted the tweets, Minor replied, “cause [N.P.] hit my cousin with a vase on top of the head and put her in the hospital.” Minor’s probation officer reported that Minor had been struggling with school attendance, grades, and behavior, and that she did not abide by the rules and boundaries her mother set.

Minor admitted the probation violation, and the December 2014 wardship petition was dismissed. A supplemental probation report noted that Minor had admitted her wrongdoing and had explained that she threatened to kill N.P. because she was angry. Minor had said she needed to “work on [her] anger,” and she planned to get into an anger management group. Minor also said, “I’ve been thinking about deleting my [T]witter account and I’m ready to move on.” Minor’s mother said she was “working on limiting [Minor’s] internet access. Her phone is going to have no internet, no nothing.” She said she wanted Minor to stay off Twitter and Facebook and that Minor “should have no social media at all.”

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

The juvenile court continued Minor on probation in her mother’s custody. Among the conditions of probation, the court ordered, “Don’t maintain any social media accounts, including Facebook, Twitter, and Instagram, etc.”

II. DISCUSSION

Minor contends the probation condition ordering her not to “maintain” social media accounts was vague. Minor did not object to the condition on this ground below. However, because the claim “ ‘amount[s] to a “facial challenge” ’ that challenges the condition on the ground its ‘phrasing or language . . . is unconstitutionally vague and overbroad’ and the determination whether the condition is constitutionally defective ‘does not require scrutiny of individual facts and circumstances,’ ” she may raise it on appeal. (*People v. Forrest* (2015) 237 Cal.App.4th 1074, 1080 (*Forrest*); *In re Kevin F.* (2015) 239 Cal.App.4th 351, 357.)

“The juvenile court has wide discretion to select appropriate 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.’ ” ’ [Citation.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*); *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1015.) However, the 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.” (*Sheena K.*, 40 Cal.4th at p. 890.) The underpinning of a vagueness challenge is the concept of “fair warning,” which bars punishment for violating a mandate that “ ‘either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.’ ” [Citation.] [Citation.] A vague law ‘not only fails to provide adequate notice to those who must observe its strictures, but also “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc*

and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” [Citation.]’ [Citation.] In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that ‘abstract legal commands must be applied in a specific *context*,’ and that, although not admitting of ‘mathematical certainty,’ the language used must have ‘“*reasonable specificity*.” ’ [Citation.]” (*Ibid.*; see *Forrest, supra*, 237 Cal.App.4th at p. 1080; *In re Kevin F., supra*, 239 Cal.App.4th at p. 357.)

We agree with Minor that the condition that she not “maintain” any social media accounts is impermissibly vague. It is not clear whether she is prohibited simply from carrying out activities on social media sites—such as logging into existing accounts, creating accounts, reading posts, and posting comments—or whether she is also required to take the positive step of deleting her existing accounts. That is, it is not clear whether or not she could violate the condition by *failing* to act to delete her existing accounts. Nor does the condition make clear whether she would violate the order by using someone else’s account to make comments. We shall therefore remand the matter for the juvenile court to clarify the scope of the probation condition.

In the circumstances, it is not necessary for us to decide whether the condition is impermissibly vague for failing to include an explicit requirement that Minor *knowingly* maintain an account. We note, however, that if the extent of the prohibition is that Minor not actively post comments on social media sites, it is difficult to see how she could do so without knowing it, and an explicit scienter requirement seems unnecessary. Moreover, we find unpersuasive Minor’s suggestion that she could be found in violation of probation if someone else were to “tag” or “link” her Twitter name to a comment or photograph without her knowledge or post a photograph or comment on her Facebook page. The condition is directed at Minor’s activities, not those of other people. What is

unclear is precisely what activities are prohibited. The juvenile court will clarify that issue on remand.²

Minor also contends the condition is overbroad and impermissibly impinges on her First Amendment rights. In particular, she argues that a prohibition on maintaining any social media accounts could bar her from sharing photographs on her social media accounts, although she has not used photographs to make any threats, and it could also prevent her from using social media for educational or professional purposes once she finishes her high school education. Although the court will modify the condition in response to our direction, we consider this issue in order to guide the court on remand.

“[A] probation condition is unconstitutionally overbroad if it imposes limitations on the probationer’s constitutional rights and it is not closely or narrowly tailored 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.’ [Citation.]” (*Forrest, supra*, 237 Cal.App.4th at p. 1080.)

We also bear in mind that “ ‘[t]he state, when it asserts jurisdiction over a minor, stands in the shoes of the parents’ [citation], thereby occupying a ‘unique role . . . in caring for the minor’s well-being.’ [Citation.] In keeping with this role, section 730, subdivision (b), provides that the court may impose ‘any and all reasonable [probation] 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 permissible scope

² The parties debate the effect of *People v. Hall* (2015) 236 Cal.App.4th 1124, which considers the necessity of an explicit knowledge requirement in certain probation conditions. Our Supreme Court has granted review of *People v. Hall*. (S227193, rev. granted Sept. 9, 2015.)

of discretion in formulating terms of juvenile probation is even greater than that allowed for adults. ‘[E]ven where there is an invasion of protected freedoms “the power of the state to control the conduct of children reaches beyond the scope of its authority over adults’ [Citation.] 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.’ [Citation.] Thus, ‘ “ ‘a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” ’ [Citations.]’” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 909–910 (*Victor L.*).

In *Victor L.*, the appellate court upheld restrictions similar to that at issue here. The ward was a gang member who was found to have possessed an illegal weapon. (*Victor L., supra*, 182 Cal.App.4th at p. 908.) He challenged certain conditions of his probation, including that he not be in possession of any paging device or other portable communication equipment without his probation officer’s permission. (*Id.* at p. 909.) The court concluded that, in the context of juvenile probation, the prohibition was narrowly tailored to prevent future crimes the ward might commit as part of criminal gang culture. As the court noted, the ward was not prohibited from using all communication devices or telephonic equipment, but only portable devices, through which he might be tempted to communicate with gang members or engage in criminal activity. “A restriction on the *mode* of communication is viewed more tolerantly than a restriction on *content*. [Citation.]” (*Victor L., supra*, 182 Cal.App.4th at p. 921, italics added.) Nor were the ward’s First Amendment rights violated: he remained free to exercise his right to expression, “but must simply employ less sophisticated means, such as a landline phone, the mail, or in-person contact.” (*Ibid.*) And, the court noted, if the ward had a legitimate need for a cell phone in connection with work or school and the

probation officer unreasonably withheld permission, the ward could apply to the court for a modification of the condition. (*Id.* at p. 922.)

The probation conditions in *Victor L.* also provided that the ward (1) “ ‘shall not access or participate in any Social Networking Site, including but not limited to Myspace.com,’ ” (2) “ ‘not use, possess or have access to a computer which is attached to a modem or telephonic device,’ ” and (3) “ ‘shall not be on the Internet without school or parental supervision.’ ” (*Victor L., supra*, 182 Cal.App.4th at p. 909, fn. omitted.) The ward challenged the restrictions on the ground they were overbroad and internally inconsistent. (*Id.* at p. 923.) After reviewing the case law regarding bans on Internet access, the court declared itself “troubled” by the complete ban on access to computers attached to the Internet, and also by certain internal inconsistencies among the three conditions. (*Id.* at p. 925.) The court noted that the first condition “is the least restrictive in that it does not ban computer or Internet access, but prohibits only the use of ‘social networking sites.’ ” (*Id.* at pp. 925–926.) The court upheld the first and third conditions (barring access to social networking sites and preventing the ward from being on the Internet without supervision), and modified the second condition to prohibit only *possession* of an Internet-enabled computer. (*Id.* at pp. 926–927.)

In the circumstances before us, we reject Minor’s contention that a condition barring her from making posts on social media accounts is unconstitutionally overbroad. Minor has twice used her social media account to engage in criminal activity. Not only does her use of social media increase the risk that she might engage in improper activity, as in *Victor L.*, but her accounts were the very medium of her unlawful activity. Thus, the condition was directed squarely at reducing the opportunity and temptation for Minor to engage in similar unlawful conduct again. Moreover, Minor is prohibited from using only one *mode* of communication. (*Victor L., supra*, 182 Cal.App.4th at p. 921.) There is no restriction on content, and she is not prevented from using any of the many other

available forms of communication to share photographs or express her views. Thus, to the extent Minor’s constitutional rights are burdened, that burden is narrowly tailored to address the legitimate purpose of the restriction. (*Forrest, supra*, 237 Cal.App.4th at p. 1080.) Standing in the shoes of her parent (*In re. Antonio R.* (2000) 78 Cal.App.4th 937, 941), the juvenile court could properly prohibit her use of social media accounts in order to assist in her reformation and rehabilitation. (*Sheena K., supra*, 40 Cal.4th at p. 889.)³

III. DISPOSITION

The matter is remanded for the juvenile court to clarify the meaning of its order that Minor not “maintain” any social media accounts. In all other respects, the order is affirmed.

³ If at some future point Minor has a legitimate need to use social media sites for professional or educational purposes, she may apply to the court for a modification of the condition. (*Victor L., supra*, 182 Cal.App.4th at p. 922; § 778.)

Rivera, J.

We concur:

Reardon, Acting P.J.

Streeter, J.

A144055