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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.U., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
A.U.,  
Defendant and Appellant.

A144375

(Contra Costa County  
Super. Ct. No. J0800425)

22-year-old A.U. (appellant) appeals from the trial court’s order denying his petition to have his juvenile records sealed. He contends the court: (1) abused its discretion in denying the petition; and (2) erred in denying the petition “with prejudice.” We conclude the court did not abuse its discretion in denying the petition but erred in denying it with prejudice. The order shall be modified to state that the petition is denied without prejudice to appellant seeking the sealing of his juvenile records in the future. In all other respects, the order is affirmed.

## FACTUAL AND PROCEDURAL BACKGROUND

### *The Offense*

On March 14, 2008, an original wardship petition was filed under Welfare and Institutions Code, section 602<sup>1</sup>, alleging that then-14-year-old appellant had committed six counts of felony lewd conduct on a child under the age of 14 (Pen. Code, § 288, subd. (a); counts 1, 2, 3, 4, 5) and one felony count of continuous sexual abuse of a child under the age of 14 (Pen. Code, § 288.5; count 6). The petition was filed after appellant's younger sister, M.U., who was 12 years old at the time, reported that appellant had been molesting her, including forcible intercourse, on a weekly basis over the previous year by use of threats and coercion. A warrant issued for appellant's arrest, and he was taken into custody on or about April 9, 2008.

According to a psychological evaluation report dated February 19, 2008, eight referrals regarding appellant and M.U. had been made to Children and Family Services (CFS) since 2002. M.U. reported that appellant "sexually harass[ed]" her for approximately one year, during the weekends when their parents were not home. It began with unwanted touching and fondling, and thereafter, appellant began repeatedly trying to have intercourse with her. He would lock her into the bedroom and try to pull her pants down. M.U. "said no to his advances," but the two "eventually had sexual intercourse on multiple occasions." When M.U. reported to her parents what was going on, they scolded her.

After the sexual abuse came to light, the parents did not take necessary steps to protect the children and allowed them to have frequent unsupervised access to one another. M.U. was "reportedly taught to take responsibility for helping soothe [appellant] whenever he is upset and to do whatever he wants to make him feel better. There is a history of her giving him backrubs whenever he becomes agitated, and . . . the entire family supports extensive physical contact between the children as a way to take care of

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<sup>1</sup>All further statutory references are to the Penal Code unless otherwise stated.

[appellant].” Appellant expressed dismay that M.U. was not there to give him a back rub after his interview with CFS.

Appellant had no sense that sexual and physical intimacy between him and his sister was problematic. He said he had “no memory of any sexual behavior with his sister and refused to discuss the matter, except to say that if they . . . did anything wrong, it was because they were ‘stressed’ ” because their parents always fought. His treatment team at Youth Homes described him as “manipulative, avoiding responsibility, paranoid (believing that everyone in his life is doing something to make his life miserable), easy to decompensate, and potentially violent.” Following a conflict with his therapist, he “almost threw a brick at the therapist.” He had been diagnosed with pervasive development disorder and was enrolled in his high school’s spectrum program for autistic children. He had made several suicide threats and attempts and had been involuntarily committed under section 5150 twice in two months for risk of danger to himself and others. His hospital treatment team was concerned he may have a thought disorder or psychotic symptoms. The report stated, “Given what appears to be a longstanding pattern of poor boundaries in the home, possible ongoing exposures to pornography, family attitudes which encourage [M.U.] to use physical touch to soothe [appellant] in times of high stress, and [appellant’s] refusal to talk about any aspect of his sexual abuse of his sister, [appellant] has a high likelihood of recidivism.”

On May 1, 2008, the juvenile court granted the prosecutor’s motion to amend the petition to add three felony counts of incest. (Pen. Code, § 285; counts 7, 8, 9). Appellant admitted the three felony incest counts in exchange for dismissal of the original six felony molestation counts. The court ordered appellant to undergo a full psychological evaluation for disposition.

According to a full psychological evaluation report dated June 17, 2008, appellant “meets the criteria for both a generalized anxiety disorder as well as a dysthymic disorder (this being a ‘minor’ but still disabling form of depression).’ ” He also had “dependent personality traits along with schizoid and avoidant features.” An assessment determined he was a heterosexual male but the result was “aberrant in that his interests in young,

young females [ages 3 to 5] far outstripped his assessed interests in both adolescent and adult females. Although he is too young . . . to claim that his interests in minors has crystallized . . . this profile suggests a more worrisome trajectory.” There was also a finding of an elevated level of sexual aggression directed to women. As to the offense, appellant said “his involvement with his one and only victim—his sister—began and ended when he was 14. He believes that there were 20 sexual encounters between them.” He said, “I don’t know why I’m here. I’m just a normal kid that made a mistake but nobody wants to listen to me . . . I’m locked up with people who’ve broken into stores, hurt people, intimidate people, I’m here for a mistake that I didn’t even know was wrong until it blew up in my face.” “I just want to go home . . . I just want everything back to normal. I want acceptance instead of rejection, all I feel here is rejection from society. Society can’t accept one little mistake, they have to punish us.” The report stated, “there is no question but that [appellant] is here found to be a fairly disturbed young man who remains quite in need of consistent and focused psychiatric care.”

The report also stated: “While [appellant] presents with a slew of significant psychiatric/psychological issues, there was nothing of substance in the material that was reviewed to recommend either an oppositional defiant disorder or conduct disorder.” Despite his involuntary commitments, he was “not seen as being a viable candidate for placement (in the more recently renamed) Youth Authority.” “This is not to say that [he] can be returned to the care of either parent—at least at this time.” The report recommended that appellant be placed in an out of home adolescent sex offender treatment program in a well controlled and closely monitored setting.

At the dispositional hearing on June 26, 2008, the juvenile court adjudged appellant a ward of the court with no termination date, found that his maximum custody time was five years four months, with credit for 78 days, and placed him in the care and custody of the probation department. On August 6, 2008, appellant was placed at Martin’s Achievement Place (Martin’s), a juvenile sex offender treatment program (JSOTP).

According to a May 28, 2009 report, appellant had been at Martin's for a little over nine months and was making progress. He "failed the Disclosure Group (where he disclosed that he had fondled his elder sister, C.U., while she was asleep) due to 'poor management of his emotions' " but was learning more about himself and was taking his treatment process seriously. He had been experiencing a lot of shame and guilt over what he had done and sometimes fell into a depressive state. One problematic incident was documented in which appellant's mother, who was visiting appellant at Martin's, told him in reference to appellant fondling C.U., " '[that's] totally normal for a boy your age.'" On another occasion, the mother brought C.U. to a visit even though she was not an approved visitor, then told appellant to call C.U. by another name so that she would be allowed to see him; appellant refused to do so. According to a May 26, 2010 report, appellant had passed all but two sex offender groups—Advanced Relapse Prevention and Empathy—and had a tentative graduation date of August 2010. His parents were supportive and had been regularly participating in treatment. Appellant had always done well in school and had a 4.0 GPA.

A September 1, 2010 report stated that appellant had successfully completed juvenile sex offender treatment at Martin's. He had several successful face to face conferences with M.U. and had "consistently been behaviorally sound throughout his two years at [Martin's]." He was proud of his achievements and was dedicated to maintaining his non-offending behaviors. The report recommended that appellant continue participating in an outpatient program upon his release from Martin's. On September 1, 2010, the juvenile court set aside the original placement order and released appellant on home probation, with various terms and conditions.

On September 21, 2012, a notice of probation violation (§ 777) alleged that appellant violated the terms of his probation by failing to attend group and individual JSOTP. Appellant denied the allegations. An October 3, 2012 probation report set forth a summary of incidents that had occurred since the juvenile court released appellant on home probation on September 1, 2010. According to the report, "soon after being placed on this deputy's caseload, significant, but seemingly manageable issues began to arise."

As appellant and his mother were in the probation department lobby waiting to meet with the probation officer, appellant's and his mother's arms were intertwined and appellant appeared to be chewing on his mother's fingernails. The observation was consistent with boundary issues that had been documented in other reports. On December 17, 2010, appellant voluntarily disclosed he had been having dreams of violating his sister again. Various referrals were made for appellant to receive consistent outpatient treatment. However, one of the therapists was unacceptable to the mother, and even after a therapist was found, "there always seemed to be some reason, usually financial, why [appellant] could not attend her treatment program." The probation violation notice was based on appellant's failure to attend two individual sessions and a group session—"examples of the minor's failure to follow through."

Thereafter, appellant made significant steps to address and remedy the probation violation by reestablishing participation in an outpatient program and engaging in therapy. During the course of treatment with appellant, his therapist completed a risk assessment of his potential to reoffend and found he was in the "low risk" range. Probation opined that appellant had "taken his treatment to heart" and was not likely to reoffend. Probation recommended that the probation violation petition filed in September 2012 be dismissed and that his juvenile wardship be terminated successfully. On March 18, 2013, the juvenile court granted the probation officer's motion to dismiss appellant's probation violation petition and to terminate his probation as successfully completed.

#### ***Petition to Seal Juvenile Records***

On or about April 1, 2014, then-21-year-old appellant petitioned to have his juvenile records sealed. In support, he stated that after graduating from high school, he attended Diablo Valley College for some time before he realized, through volunteering as a Nurse's Aide at the Veteran's Association's Urgent Care, that he wanted to help others by working in the medical field. He stated that as Nurse's Aide, he sanitized and dressed beds, transported patients, spoke with and entertained visiting veterans, and stocked supplies, among other things. He stated, "If the court rules for [his] records not to be

sealed, such an open criminal record automatically denies [him] in becoming a productive member of society when he applies for his EKG license . . . , his EMT license . . . , and his phlebotomy certification.”

The probation department filed a report recommending that the trial court deny appellant’s petition to seal. The probation officer stated that he interviewed appellant on November 19, 2014, regarding his petition. Appellant was not working at the time and lived with his mother but hoped to become an emergency medical technician (EMT). He was no longer in outpatient therapy and said he was “on ‘solid ground’ psychologically and felt he was able to utilize treatment techniques earned at [Martin’s].” He stated he could “effectively curb his sexual urges by utilizing pornography and masturbation.” When asked what type of pornography interested him, he responded that he preferred Japanese anime—“a type of fantasy based cartoon style with doe eyed, porcelain skinned characters.” He described anime as an “ ‘idealized form of humanity’ ” but acknowledged it was not real. He did not have an intimate adult relationship with anyone. He said he wanted his juvenile records sealed “as this was a chapter of his life that seemed to follow him around like a shadow.” He often received solicitations from sex offender treatment programs offering their services, which was an “unpleasant reminder of that period of his life that he would like to put behind him.” He stated he is a good person and wants to help society. When asked how he spends his free time, he said he reads a lot. He “could otherwise identify no other interests that would take him outside his home.”

The probation department recommended that appellant’s petition be denied due to “the gravity of the sexual abuse of his sister, and the relatively short time since his juvenile wardship was vacated.” Probation believed that “more time should elapse to view [appellant’s] transition into adulthood. It is this transition that concerns probation the most.” Probation was also concerned that appellant was still living with his mother, who “seemed to be at the core of her family’s dysfunction from the very beginning of [appellant] and his sister’s childhood.” The report stated, “[O]ne can only guess at how much further [appellant’s] transition into adulthood continues to be delayed as a result”

of his living with his mother. Probation also felt appellant had not accomplished anything significant in the 20 months since his wardship had been vacated. “While [appellant] has always struck the undersigned as being of above average intelligence and quite logical, there has not been any track record of accomplishment since graduating from high school nor any indication that he is taking steps to leave his mother’s home. To the contrary, it appears that the current life is one of continued introversion and opting for fantasy rather than any viable foray outside the safety of his mother’s home, and all that comes with this arrangement.”

At a December 17, 2014 hearing on the petition to seal, the probation officer recommended that the petition be denied. The officer said that, although appellant was “eligible,” he was not suitable “because of the gravity of the offense and the short time he [had] been terminated from juvenile probation—which is just less than two years.” The trial court noted that appellant did not complete the outpatient JSOTP that was one of his probation conditions. The prosecutor opposed appellant’s petition on the grounds that his offenses were serious and the victim was his sister, who was “horrendously victimized and terrorized.” The prosecutor said that the victim was made to feel guilty and to feel she had “destroyed” her family by exposing appellant. The prosecutor also noted that appellant had acknowledged in 2010 that he was dreaming of violating his sister again, and that his training as an EMT would include access to children and adults in vulnerable states or in states of undress.

Appellant provided the trial court with two letters in support of his petition and regarding his career choice of being an EMT. Appellant addressed the court: “. . . I am a firm believer in the justice system. I have been raised to respect the institution and the . . . verdicts that it passes down. [¶] I believe that I have made a mistake in the past. This is true. And I have paid for it, . . . according to the rulings that were made before. I was a child. I did some foolish things and I learned from it. [¶] And it seems to me that if this keeps hanging over my head, it kind of defeats the purpose of rehabilitation—if society, in and of itself, doesn’t really give second chances to people who have made mistakes. [¶] . . . I doubt that my sister has been spoken to at all about this.

[¶] . . . [¶] . . . I daresay the person that wrote the report did not exactly have a clear picture on my current state of life . . . .”

The trial court noted that appellant’s sister would not be consulted about any petition to seal. The court denied the petition as follows: “Well, this [probation report] was written by Mr. Keene, one of our finest probation officers and probably one of our more sympathetic probation officers. [¶] I’m sorry. All your actions here—of looking downtrodden and victimized—your behavior is kind of infantile, . . . in court today, [appellant], but I do not feel you’re rehabilitated.” “. . . and I’m not going to seal your records.” “[A]nd that’s final. I do not think it’s suitable.” The court added, “There are lots of other jobs that you can get that don’t require being in the presence of vulnerable people.” “With prejudice.”

## DISCUSSION

### *Abuse of Discretion*

Appellant contends the trial court abused its discretion in denying his petition to seal his juvenile records because there was insufficient evidence to support the ruling. We disagree.

Welfare and Institutional Code section 781, which grants the trial court discretion to seal a minor’s delinquency records unless the minor has committed an offense specified under Welfare and Institutional Code section 707, subdivision (b),<sup>2</sup> provides in relevant part: “In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court . . . the person or the county probation officer may . . . at any time after the person has reached the age of 18 years, petition the court for sealing of the records. . . . The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after

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<sup>2</sup>Specified offenses under Welfare and Institutional Code section 707, subdivision (b), include murder, arson, rape with force, violence, or threat of great bodily harm, and kidnapping for ransom.

hearing, the court finds that since the termination of jurisdiction . . . he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed . . . .” (Welf. & Inst. Code, § 781, subd. (a).) We review the court's denial of a petition to seal for abuse of discretion. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667–668.)

Here, appellant's offenses were serious. He was charged with seven counts relating to allegations that he molested his then-12-year-old sister, including forcible intercourse, on a weekly basis over the course of a year. He pleaded guilty to three counts of felony incest, and his sister was sent to foster care because their mother sided with appellant. Although appellant participated in treatment at Martin's, he continued to dream about “violating his sister again.” According to the disposition report, appellant never completed his post-release probation condition to continue attending out-patient group and individual JSOTP after his release from Martin's. At the time of the motion to seal, he did not have many outside interests and was still living with his mother who, in probation's view, “seemed to be at the core of her family's dysfunction from the very beginning of [appellant] and his sister's childhood.” Moreover, less than two years had passed since he had been terminated from probation. At the hearing on the motion to seal, he painted himself as a victim of the justice system, and the trial court commented on his “infantile” behavior “of looking downtrodden and victimized.”

“ [T]he purpose of the juvenile justice system is “(1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and community,’ and (2) to ‘provide for the protection and safety of the public . . . .’ ” ” (*In re Greg F.* (2012) 55 Cal.4th 393, 417; Welf. & Inst. Code, § 202, subd. (b) [public safety is a consideration coequal to rehabilitation].) In light of the seriousness of appellant's offenses, the short period of time that had elapsed since he was terminated from probation, and the lack of significant accomplishments he had made during that time period, there was sufficient evidence to support the court's determination that

appellant was not sufficiently rehabilitated, and that it would not serve his best interests or the interests of the public to seal his records.

***With Prejudice***

Appellant contends, “even assuming . . . that the lower court’s ruling was not an abuse of discretion, no fathomable reason exists in the record to deny the motion to seal ‘with prejudice,’ forever precluding the sealing of [his] juvenile records and excluding him from a broad spectrum of employment opportunities—completely thwarting and frustrating the rehabilitation goals of the Welfare and Institutions Code and perpetuating for life the prejudice flowing from [his] juvenile records. At the very least, the lower court’s ruling should be reversed to permit [him] to file a petition to seal in the future.” He asserts that while the court may believe he is not sufficiently rehabilitated at this time, it “cannot divine that . . . [he] never will be” rehabilitated. The Attorney General (respondent) does not address the propriety of denying a petition to seal records with prejudice, but states: “although the juvenile court’s ruling ‘with prejudice’ precludes appellant from filing another petition to seal, he has other potential remedies regarding his juvenile priors. For example, he may petition for a certificate of rehabilitation and pardon.”

Assuming the trial court intended to disallow appellant from ever filing a petition to seal again, we conclude the court erred. The purpose of sealing is to protect minors from future prejudice resulting from their juvenile records. (*In re Jeffrey T.* (2006) 140 Cal.App.4th 1015, 1020.) Further, the juvenile delinquency system is not concerned merely with punishing juvenile offenders; rather, it is concerned with rehabilitating them. (*In re J.W.*, *supra*, 236 Cal.App.4th at p. 667.) In *In re J.W.*, the Court of Appeal upheld the trial court’s denial of a petition to seal juvenile records, noting that the petitioner’s most recent crimes—attempted robbery and battery—were serious offenses and that insufficient time had elapsed since he had committed those offenses. (*Id.* at pp. 667–668.) The court determined the petitioner was not yet rehabilitated, but left open the possibility of sealing the records after more time had passed, acknowledging that “the

passage of time works in his favor, and if appellant furthers his rehabilitation, he will in the future have the opportunity to ask the trial court to seal his records.” (*Id.* at p. 671.)

Similarly, here, although the trial court properly denied appellant’s petition on various grounds, including the fact that less than two years had passed since he had been terminated from probation, there is nothing in the record indicating—nor does respondent argue—that appellant will *never* be rehabilitated. If appellant furthers his rehabilitation, he should be given another opportunity to persuade the court of his rehabilitation in the future.

**DISPOSITION**

The order denying appellant’s petition to seal his records is modified to state that the petition is denied without prejudice to appellant seeking the sealing of his juvenile records in the future. In all other respects, the order is affirmed.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.