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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.V.,

Defendant and Appellant.

A145323

(Solano County
Super. Ct. No. J42599)

Appellant D.V. appeals from the juvenile court’s dispositional order, contending the court erred in calculating the maximum confinement time and in imposing an unconstitutionally vague probation condition. We remand for modification of the dispositional order.

BACKGROUND

On July 11, 2014, the Solano County District Attorney filed a Welfare and Institutions Code section 602¹ petition alleging that appellant, born September 2000, committed felony possession of a firearm by a minor (Pen. Code, § 29610), misdemeanor possession of live ammunition by a minor (Pen. Code, § 29650), and misdemeanor petty theft (Pen. Code, § 484, subd. (a)). The charges were based on appellant’s July 10

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

admission to police officers that he had a loaded revolver and an allegation that appellant took another minor's bicycle without permission on May 28. In September, appellant admitted all three allegations; the juvenile court placed appellant on deferred entry of judgment (DEJ) and imposed DEJ conditions.

On April 13, 2015, the Solano County District Attorney filed an amended section 602 petition adding allegations that appellant committed misdemeanor petty theft (Pen. Code, § 490.2), possession of a firearm by a minor (Pen. Code, § 29610), and possession of a controlled substance for sale (Health & Saf. Code, § 11351). The charges were based on an April 12 traffic stop of a vehicle in which appellant was a passenger. Appellant had in his possession a loaded handgun and narcotics. Also, on March 17 appellant allegedly stole designer belts from another individual.

The juvenile court revoked the DEJ. Appellant admitted the new firearm possession charge and the remaining allegations were dismissed. On May 19, 2015, the court adjudged appellant a ward of the court, ordered he be placed in a suitable institution, and imposed conditions of probation. The court stated the maximum confinement time was four years and six months, with total credits of 62 days.²

This appeal followed.

DISCUSSION

I. *The Parties Agree the Juvenile Court Erred in Calculating the Maximum Time of Confinement*

A minor may not be held in physical confinement for a period of time in excess of the maximum term permissible for an adult offender convicted of the same offenses. (§ 726, subd. (d)(1); *In re Julian R.* (2009) 47 Cal.4th 487, 495, 498.) “When aggregating multiple counts and previously sustained petitions, the maximum confinement term is calculated by adding the upper term for the principal offense, plus

² The written order states that appellant has 68 “[t]otal credits for period of wardship/DEJ.” The parties appear to agree the court’s oral pronouncement of 62 days was correct. On remand, the juvenile court should ensure that the dispositional order specifies the proper number of credits.

one-third of the middle term for each of the remaining subordinate felonies or misdemeanors.” (*In re David H.* (2003) 106 Cal.App.4th 1131, 1133–1134.)

At the May 19, 2015, dispositional hearing, the juvenile court stated the maximum confinement time was four years and six months. The parties agree the correct maximum time of confinement is four years, comprised of the three year maximum for possession of a firearm by a minor (Pen. Code, §§ 1170, subd. (h)(1), 29160), two two-month terms for the two misdemeanor offenses adjudicated in the first petition (Pen. Code, §§ 19, 490), and eight months for the firearm offense in the second petition (Pen. Code, § 1170, subd. (h)(1), 29610). We will direct the juvenile to modify its order.

Appellant also requests that the juvenile court calculate custody credits for time he spent in custody after the dispositional hearing and before his placement in an institution. (*In re J.M.* (2009) 170 Cal.App.4th 1253, 1256.) The court should determine those credits on remand. Appellant also appears to request that the court expressly reduce the maximum confinement time by the amount of his custody credits. He does not, however, cite any authority that the juvenile court is required to make such a calculation.

II. *The Challenged Probation Conditions Must Be Modified Due to Vagueness*

The juvenile court imposed as a probation condition that appellant “[a]ttend school regularly and maintain acceptable grades, behavior, and attendance.” Appellant contends the condition is unconstitutionally vague because it is unclear “what grades, behavior or lack of attendance may give rise to probation violation.” He suggests the condition be modified to require that he “attend school regularly, maintain passing grades in accordance with the grading system utilized in the minor’s school, and obey school rules.” We will direct that the juvenile court modify the probation condition.

“Under Welfare and Institutions Code section 730, subdivision (b), a juvenile court may impose ‘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.’ In spite of the juvenile court’s broad discretion, ‘[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. [Citation.] 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 unconstitutionally overbroad.’ [Citation.] A defendant may contend for the first time on appeal that a probation condition is unconstitutionally vague or overbroad on its face when the challenge presents a pure question of law that the appellate court can resolve without reference to the sentencing record.” (*In re Kevin F.* (2015) 239 Cal.App.4th 351, 357 (*Kevin F.*)).³

We agree with appellant that the term “acceptable” is so imprecise and subjective that it fails to inform him what grades, behavior, and attendance are sufficient to comply with the probation condition. (See *In re Angel J.* (1992) 9 Cal.App.4th 1096, 1102 [condition requiring minor to maintain “satisfactory grades” unconstitutionally vague].) On appeal, the People argue the probation condition is clear, but the People’s analysis demonstrates the condition is open to different interpretations. The People suggest “acceptable” attendance means not being truant under section 48260 of the Education Code. However, the juvenile court’s order does not reference that section or its standard of three unexcused absences in a school year, and appellant suggests attending school “regularly” is sufficient to constitute “acceptable” attendance. Further, the People agree with appellant that “acceptable” should be construed to mean “passing grades.” But another reasonable interpretation of the condition is that it requires better than passing grades, because a student receiving only “D” grades is performing very poorly. Finally, the People suggest two definitions for “acceptable” behavior—one, not being suspended, and, two, obeying school rules. We agree with appellant that the requirement he “maintain acceptable grades, behavior, and attendance” is insufficiently precise for him

³ We reject the People’s contention that appellant forfeited his claim because he did not challenge imposition of the same condition in the September 2014 disposition. Among other things, in contrast to the case the People cite, the juvenile court here actually imposed the condition in its May 2015 order. (Cf. *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1139–1140 [appellant cannot challenge condition that was continued from a previous order by language providing that “ ‘all prior orders’ ” remain in effect].)

“ ‘to know what is required of him, and for the court to determine whether the condition has been violated.’ ” (*Kevin F., supra*, 239 Cal.App.4th at p. 357.)

We will direct the juvenile court to modify the condition on remand. We observe that requirements that appellant “maintain passing grades” and “obey school rules” seem sufficiently clear to pass constitutional muster, but a requirement that he “attend school regularly” is no clearer than a requirement of “acceptable” attendance.

DISPOSITION

This matter is remanded with directions that the juvenile court modify the dispositional order in several respects. The order should be modified to reflect a maximum confinement time of four years. The challenged probation condition should be modified consistently with this decision. Finally, appellant should be awarded custody credits for the time he spent in custody after the dispositional hearing and before he was transferred to an institutional placement; the juvenile court is also directed to resolve the discrepancy between the written order and the court’s oral pronouncement with respect to the number of credits due to appellant at the time of the May 2015 hearing. The juvenile court’s orders are otherwise affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.