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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

A145615

(Alameda County
Super. Ct. No. SJ15024946-01)

Once again we are asked to determine an issue we have reviewed on a very regular basis in the past few months—a probation condition imposed by the juvenile court of Alameda Superior Court dealing with cell phone review. Among the cases from our division of the First District pending review by the California Supreme Court is *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted March 9, 2016, S232240. In this particular case, the condition is challenged under the third prong of *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and because the condition is overbroad. We affirm the condition based on the *Lent* challenge and modify the condition based on overbreadth.

STATEMENT OF THE CASE

The District Attorney of Alameda County filed a wardship petition (Welf. & Inst. Code, § 602, subd. (a))¹ on May 27, 2015, amended on May 28, 2015. The petition

¹ Unless otherwise stated, all statutory references will refer to the Welfare and Institutions Code.

alleged appellant possessed a folding knife with a locking blade exceeding two and one-half inches, a violation of Penal Code section 21510, subdivision (b). On May 28, appellant admitted the charge in the petition. On June 16, 2015, the juvenile court declared appellant a ward and placed him in the home of his mother under supervision of the juvenile probation department, imposing several terms and conditions, one of which is challenged here. On June 29, 2015, appellant filed his notice of appeal.

STATEMENT OF FACTS

The probation report outlines the facts of the case. Appellant was observed by others at Newark Memorial High School in the center of campus with a knife in his hand, sharpening a stick. The minor had placed the weapon in his pocket when approached by a school monitor. He eventually admitted to possessing the knife and produced it from his pocket. A police officer met with appellant in the assistant principal's office later in the day. Appellant admitted possession of the weapon, claiming he found it on the way to school. The officer also examined the appellant's backpack. In it, the officer found a bottle of Visine and a baggie of marijuana. The marijuana itself had a grey color, and no longer had the odor consistent with green marijuana.

At sentencing, the court advised the appellant:

“You and your parents must participate in a program of counseling and education as directed by the Probation Officer, specifically substance abuse counseling. With regards to substance abuse. I find that it's very important in order to be able to properly supervise you, . . . not just because of your extensive drug use but also because of the possession of the weapon.

“And I do find that commonly, the main form of communication, among the youth particularly, is to publicize their possession of weapons, possession of paraphernalia, possession of drugs to show them using marijuana.

“This is a deep issue. This is not . . . relatively infrequent. [Appellant] admitted to [using marijuana] at least every other day. They found a bottle of Visine. He has been

suspended at school with the odor of alcohol on his person. There's some very, very substantial issues. Without our ability to be able to use the Internet and his access to the Internet, we can't supervise the weapons and marijuana clauses. So clearly without our ability, we'd be severely hamstrung by ignoring the main form of communication of our youth."

The court then imposed a condition that appellant "submit person and any vehicle, room or property, electronics including passwords under your control to search by Probation Officer or peace officer"

DISCUSSION

As a general rule, a trial judge in delinquency court has authority 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*." (§ 730, subd. (b), italics added; see § 202, subd. (b).) "Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation." (§ 729.1, subd. (a)(1).) In deciding what conditions to place on a juvenile probationer, " "the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history." ' ' (*In re Jason J.* (1991) 233 Cal.App.3d 710, 714, overruled on another point in *People v. Welch* (1993) 5 Cal.4th 228, 237.) " '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 J.B.* (2015) 242 Cal.App.4th 749, 753–754.) The conditions of probation fashioned by the juvenile court are distinguishable from the determinations of an adult court. In the juvenile setting, as here, a probation condition " 'is an ingredient of a final order for the minor's reformation and rehabilitation.' " (*In re Ronnie P.* (1992) 10 Cal.App.4th 1079, 1089.) " '[J]uvenile probation is not an act of leniency, but is a final order made in the minor's best interest.' " (*In re Tyrell J.* (1994)

8 Cal.4th 68, 81, overruled on another point in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

We also note it is too late in the game to contend minors do not generally rely substantially on social media. Access to such information where the subject is on probation for wayward behavior can assist those involved in a minor's rehabilitation in objectively assessing the goals of the justice system.

There has been an increased number of cases dealing with probation conditions permitting the review of cell phones and other devices by probation and law enforcement. The fact remains giving probation access to electronic devices allows law enforcement to monitor future conduct. Recently, cases have found no *Lent* violation when this condition was used to regulate an individual's relationships after her assault against a parent was sustained (*In re A.S.* (2016) 245 Cal.App.4th 758 (A.S.)), or the defendant engaged in a consensual encounter with a 16-year-old boy (*People v. Appleton* (2016) 245 Cal.App.4th 717 (*Appleton*)). In each case the appellate court concluded the trial court appropriately imposed the electronic device condition to regulate future behavior.

We acknowledge in each of these cases the facts evidenced use of an electronic device in the *history* of the individual's case. Yet the minor in *A.S.* was not using a cell phone during her assault on her mother (*A.S.*, *supra*, 245 Cal.App.4th at p. 762). *Appleton* had not used the cell phone when he reached out to the teenager on the date of the sexual misconduct (*Appleton*, *supra*, 245 Cal.App.4th at pp. 719–720). Still, in today's world, the potential use of electronic devices, even if not evidenced in the facts of a particular case, is highly likely, especially in the social media-savvy teenage world.

Much of the *recent* complaint on this probation condition of electronic device review is the result of language in *Riley v. California* (2014) ___U.S.___[134 S.Ct. 2473, 2488–2489] (*Riley*). However, *Riley* dealt with a search incident to an arrest of a person who had no probation condition. It was not a case dealing with a minor who had already admitted wrongdoing and has a condition like cell phone review to ensure his success on

probation. *Riley* was an instance when the police had time to obtain a search warrant to inspect the cell phone while the accused was in custody based on the arrest. *Appleton* specifically addressed the probation condition at issue in light of *Riley*. (*Appleton, supra*, 245 Cal.App.4th at pp. 724–725.) As the Supreme Court in *Samson v. California* (2006) 547 U.S. 843, 853, recognized, “[T]his Court has repeatedly acknowledged that a State’s interests in reducing recidivism and thereby promoting reintegration and positive citizenship among probationers and parolees warrant privacy intrusions that would not otherwise be tolerated under the Fourth Amendment.” (See *United States v. Bare* (9th Cir. 2015) 806 F.3d 1011, 1018 [search of electronic devices probation condition is not an abuse of discretion for a defendant convicted of weapons possession].)

Additionally, the Supreme Court, before *Riley, supra*, 134 S.Ct. 2473, determined probationers have a diminished expectation of privacy while the state has an interest in the rehabilitation of its probationers and may *properly* assume a probationer “ ‘is more likely than the ordinary citizen to violate the law.’ ” (*United States v. Knights* (2001) 534 U.S. 112, 120.) There is no reason why “the well-established exception outlined in *Knights* would not . . . survive under *Riley*.” (*United States v. Dahl* (E.D.Pa. 2014) 64 F.Supp.3d 659, 664.) Recently, another court found *Riley* inapplicable to a parole search situation. “Defendant asks the Court to apply *Riley* . . . to the present case. . . . Defendant’s request is misguided. . . . Nothing in *Riley* provides any indication that it applies to parole searches. Indeed, every federal court that has addressed the application of the parole search exception in the wake of *Riley* has found that the exception remains valid. [Citations.] Additionally, the Ninth Circuit continues to approve warrantless searches of parolees’ cell phones even after *Riley*.” (*United States v. Johnson* (N.D.Cal. Aug. 13, 2015, 14-cr-00412-TEH) 2015 WL 4776096, *3 (Henderson, J.).)

As an appellate court, we recognize deference must be ascribed to probation conditions imposed by the trial courts as part of juvenile dispositions. The court below did explain its reasons for the electronic device condition, based on the social history of

the minor contained in the probation report, and the conduct at issue. Under the facts and circumstances of this case, we cannot conclude his imposition of the condition to control future concerns regarding appellant was an improper call by this judge. Therefore, *Lent*'s third prong aiming to prevent future criminality is satisfied. (*Lent, supra*, 15 Cal.3d at pp. 486–487; see *People v. Olguin* (2008) 45 Cal.4th 375, 386.) We therefore find no abuse of discretion by the trial court in this instance. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

On the issue of overbreadth, the concern 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.) In this case, the aim of the condition regarding electronic devices is to assess any evidence of wayward behavior by appellant. Once we acknowledge the legal validity of a condition permitting inspection of social media, the issue becomes drafting a condition that makes the inspection constitutionally proper. In other words, we do not want an overbroad and constitutionally infirm condition here.

In this case, the trial court required appellant to submit a search of “any and all electronics including passwords.” We shall correct this language to avoid its overbreadth relative to the phrase “electronics including passwords.” The new condition on electronic devices should now read: “Submit all electronic devices under your control to a search of any medium of communication reasonably likely to reveal whether you are boasting about your drug use or otherwise involved with drugs or weapons, with or without a search warrant, at any time of the day or night, and provide the probation or peace officer with any passwords necessary to access the information specified. Such media of communication include text messages, voicemail messages, photographs, e-mail accounts, and social media accounts.” We believe this language provides the minor and

law enforcement with a proper understanding of this particular condition and its enforcement.

DISPOSITION

As modified, the judgment is affirmed.

DONDERO, J.

We concur:

HUMES, P.J.

MARGULIES, J.