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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

A146033

(Sonoma County
Super. Ct. No. 38329J, 513910)

D.G. (Minor) appeals an order of the juvenile court modifying the terms of his probation. He contends the addition of gang terms was improper because there were no changed circumstances. We shall affirm the order.

I. BACKGROUND

The Stanislaus County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code,¹ § 602) on June 2, 2015, alleging Minor had committed felony “auto theft” (Veh. Code, § 10851, subd. (a), count I) and misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1), count II). Count I was amended to be a misdemeanor, and Minor admitted the allegations. The case was transferred for disposition to Sonoma County, where Minor’s mother (Mother) lived.

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

According to the detention report, Minor and a friend, R.P., stole a car, and drove it, after making a key from a piece of metal. A deputy sheriff saw the car speed out of a parking lot and activated his emergency lights and siren. R.P., who was driving, sped away and crashed the car into a parked car. R.P. and Minor, who was a passenger in the car, were detained. The report noted that Minor had been sent to live with an uncle (Uncle) because he was out of control at home, that he had recently been expelled from high school for marijuana possession, that he had poor grades and attendance at school, that he got into trouble at school for violating the dress code by wearing red, and that he was an admitted member of the “Eastside Patterson Norteños.”

The probation officer’s report for the July 7, 2015 dispositional hearing noted that Minor denied being a gang member but admitted he associated with members of the Norteños street gang, whom he described as his friends. He said he would not have trouble keeping away from gang members in Sonoma County because he did not know anyone there. Minor admitted having stolen the car after attending a party where he smoked marijuana and drank alcohol. R.P. admitted to being a member of the Norteños street gang. He was described as having two gang-related tattoos.

According to the report, Mother said she did not believe Minor was a gang member, but she thought he “like[d] to act like one sometimes.” Her older son was involved with a gang. Mother reported that police officers had twice asked her to pick Minor up, once for having a knife in his backpack at school and once for being intoxicated in public. Uncle reported that Minor had been associating with Minor’s older brother, whom Uncle believed was a negative influence.

The “Case Assessment and Service Plan” section of the probation officer’s report summarized the information regarding the offenses and Minor’s background, recommended that he be declared a ward of the court, and stated, “Standard terms and conditions should apply, in addition to gang terms and participation in substance abuse treatment.” The “Recommendation” section included a list of “Standard Conditions” the probation officer recommended; those conditions did not include any gang-related terms.

At the dispositional hearing, the juvenile court declared Minor a ward of the court and placed him in Mother's home on probation, under conditions that did not include gang terms.

On July 24, 2015, the probation department filed a "Memorandum to the Court" informing the juvenile court that upon reviewing the circumstances of the offense, the probation officer had noted that R.P. was an admitted gang member with gang-related tattoos. Based upon Minor's gang associations and the fact that he committed an offense with a gang member, the officer recommended that gang-related conditions be imposed. Those conditions included the requirements that Minor not knowingly: be present at any court proceeding concerning a member of a criminal street gang; wear or possess any gang clothing, insignia, or other indicia; obtain any new tattoos; associate with gang members; or be present in an area of gang-related activity. According to the memorandum, Minor had told the probation officer he understood why gang conditions would be requested, and Mother agreed with the request. The probation department filed a petition for modification of the probation conditions, alleging as a change in circumstance that after the dispositional hearing, Minor's probation officer noted that the co-offender, R.P., was a Norteño gang member with gang-related tattoos. (§ 778.)

At the hearing on the petition, Minor's counsel stated that he would not object to some of the proposed gang terms—that he not knowingly associate with gang members, not wear red, and not obtain any new tattoos—but did not agree to "the full gang terms," because they would "tattoo[] [Minor] in the eyes of law enforcement." The deputy district attorney argued that the gang terms would assist Minor in being successful on probation. The court probation officer took the position that the conditions seemed "prudent" after Minor met with his deputy probation officer, Laura Consiglio, and he explained that it was an oversight that the conditions were not included in the original report's recommendations. Consiglio told the court that she thought the conditions were appropriate to "hold[] [Minor] accountable, keep[] him distant from Norteños in this area or any gang association." She acknowledged that the probation department had known about Minor's gang associations before the dispositional hearing.

The juvenile court modified the terms of probation to include the gang terms, concluding their omission had been an oversight and that the terms would be in Minor's best interest.

II. DISCUSSION

Minor contends the juvenile court abused its discretion in granting the petition to modify the terms of probation because there were no new facts or circumstances to support the modification.

Section 775 provides: "Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article." Section 776 requires notice before an order is modified. Section 778, under which the probation officer proceeded, provides in part: "Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made" (§ 778, subd. (a)(1).) If it appears that modification would promote the child's best interests, the court must order a hearing and ensure the parties receive notice. (§ 778, subd. (a)(2).)

A petition for modification will be "liberally construed in favor of its sufficiency." (Cal. Rules of Court,² rule 5.570(a).) If a petition under section 778, subdivision (a) "states a change of circumstance or new evidence and it appears that the best interest of the child . . . may be promoted by the proposed change of order . . . , the court may grant the petition after following the procedures in (f), (g), and (h) or (i) [relating to notice and hearing]." (Rule 5.570(e)(1).) The decision to modify a petition "rests in the sound discretion of the trial court and, in the absence of a clear showing of abuse of discretion, an appellate court is not free to interfere with the trial court's order." (*In re Corey* (1964)

² All rule references are to the California Rules of Court.

230 Cal.App.2d 813, 831–832.) The test for abuse of discretion is whether the lower court exceeded the bounds of reason. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) When two or more inferences can be reasonably deduced from the facts, the reviewing court has no authority to substitute its decision for that of the juvenile court. (*Ibid.*)

Minor contends the juvenile court abused its discretion in modifying the terms of his probation because section 778 required a showing of changed circumstances or new evidence and there was no such showing. We find no abuse of discretion. *In re Corey* teaches that “section 778 must be read in conjunction with section 775.” (*In re Corey, supra*, 230 Cal.App.2d at p. 832.) As we have explained, section 775 gives the juvenile court authority to modify an order at any time as it deems “meet and proper,” subject to certain procedural requirements. The article of which section 775 is a part requires notice and an opportunity for a hearing before the court modifies an order, and there is no contention that the court failed to comply with those procedural requirements here. (See §§ 776 & 778; and see rule 5.570.) Nor does Minor contend the court could not reasonably conclude probation conditions prohibiting gang-related activity are in his best interest, and given the history of the offense, such a contention would necessarily fail. Indeed, at the hearing, Minor’s counsel indicated his willingness to accept a modification that included a limited number of gang terms in order to further the goal of rehabilitating Minor.

The record shows that Minor’s probation officer realized after speaking with him that the list of recommended probation conditions had omitted gang terms. While this realization may approach the limits of a “change of circumstance or new evidence” (§ 778, subd. (a)), in light of all the facts before us we cannot say it clearly crossed that border or that the juvenile court’s ruling clearly exceeded the bounds of reason. (See *In re Corey, supra*, 230 Cal.App.2d at p. 832 [“[T]he procedure providing for an application for a modification or setting aside of the orders of the juvenile court gave such court, *if it made an error* in its estimate of the testimony upon which it acted *in making the previous order, the opportunity to correct it at any time . . .*” italics added].)

We are not persuaded otherwise by Minor’s contention that section 775 operates to grant the juvenile court authority to do particular things where there is no specific statutory authorization and that the court’s general authority under section 775 is subject to the specific requirements of section 778. Section 775 is clear and unambiguous in authorizing the juvenile court to modify “[a]ny order . . . at any time . . . as the judge deems meet and proper,” subject to procedural requirements. Bearing in mind that broad authority, we reject the contention that the court abused its discretion in making the order at issue here.

III. DISPOSITION

The August 7, 2015 order is affirmed.

Rivera, J.

We concur:

Ruvolo, P.J.

Streeter, J.