

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re TRENTON M., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
TRENTON M.,
Defendant and Appellant.

A146484
(Contra Costa County
Super. Ct. No. J1201126)

On August 21, 2015, in a Welfare and Institutions Code section 602¹ proceeding, the juvenile court terminated Trenton M.'s probation unsuccessfully. Trenton appeals that order, contending it constituted an abuse of discretion because the court based its decision in part on an incorrect belief that he had incurred new offenses while on probation and it improperly focused on the facts of his underlying offense rather than his performance while on probation. We conclude there was no abuse of discretion. We also deny Trenton's request that we find he satisfactorily completed probation. We therefore affirm.

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

BACKGROUND

Original Petition

Trenton's first involvement with the juvenile court arose out of an incident in July 2012 when police officers, who were responding to a report of a person brandishing a weapon, made contact with Trenton and a companion, each of whom was discovered to be carrying a revolver. Trenton also had cocaine packaged for sale.

On July 30, 2012, the Contra Costa County District Attorney filed a section 602, subdivision (a) wardship petition alleging that 16-year-old Trenton committed three felonies: possession of a controlled substance with a firearm, possession of a firearm by a minor, and possession of cocaine base for sale. An amendment added a fourth felony, possession of cocaine salt for sale, and dismissed count three.

Trenton pleaded no contest to felony possession of a controlled substance with a firearm, and on August 24, 2012, the court adjudged him a ward of the court with no termination date and ordered him committed to the Orin Allen Youth Rehabilitation Facility (OAYRF) for a mandatory six-month program, with "an additional 90 day conditional release/parole." The court also imposed the standard terms and conditions of probation.

At a December 11, 2012 review hearing, the court converted Trenton's OAYRF commitment from a mandatory six-month program to a regular six-month program, making him eligible for early release. He was released from OAYRF on December 21, 2012, on a 90-day parole.

In a report prepared for a March 20, 2013, 90-day parole review hearing, the probation department confirmed that upon Trenton's release from OAYRF, he had been "placed on [a] 90-day parole, a period of intensive supervision," and that he had "abided by the terms of probation during his parole period." He had been complying with his parents' rules and the court-ordered curfew, had not had any behavioral issues, was doing well in school, had consistently tested negative on his random drug tests, and had not committed any new violations. The one area lacking progress was payment of his \$100.00 restitution fine. Based on Trenton's "positive adjustment," the department

recommended that his “parole be terminated successfully and the prior orders remain in effect.”

At the March 20 parole review hearing, the court terminated Trenton’s parole successfully and placed him on general supervision.

First Notice of Probation Violation and Supplemental Petition

On January 23, 2014, police searched the home of Trenton’s mother, with whom Trenton was living. In his bedroom, they found a loaded .40-caliber XD Springfield semi-automatic pistol, a loaded .38-caliber special police revolver, a digital scale, United States currency, and a plastic bag containing Norco pills. In the garage, there was a black gym bag containing plastic baggies, a digital scale, and marijuana. In the hall closet next to Trenton’s bedroom, there was a safe containing United States currency and Trenton’s California identification card. In a shed in the back yard, there was an ice chest containing marijuana. Behind a false ceiling in the hallway that led to Trenton’s bedroom, officers found a stolen, loaded .44 magnum revolver; a 12-gauge shotgun; an AR rifle magazine; a hard gun case containing a Combat exchange 7.62 rifle, a scope, a rifle magazine, and approximately 100 7.72-caliber rounds; a pistol holster containing a 16 round XD pistol magazine; an ammo can containing various caliber rounds of ammunition; and a box containing 50 .44 magnum rounds.

The following day, the probation department filed a notice of probation violation, alleging that Trenton had violated the terms and conditions of his probation, which prohibited him from using or possessing weapons and illegal drugs.

On February 14, 2014, the Contra Costa County District Attorney filed a supplemental section 602 petition, alleging four felonies: unlawful possession of marijuana for sale, possession of a firearm as a minor, possession of a firearm as a felon, and possession of an assault weapon.²

² Trenton’s mother was also arrested on multiple weapons and drug possession charges.

On May 2, 2014, Trenton admitted the possession of marijuana for sale and possession of a firearm by a felon charges, as well as the probation violation.

Prior to the disposition hearing, Trenton told his probation officer that he began collecting guns about seven months after his release from OAYRF, had sold one gun in order to buy another, and had used some guns to trade for others. He knew he was not permitted to possess firearms but said he liked to collect them and “did not think he would get caught.” Text messages on Trenton’s phone, however, suggested he was buying and selling drugs and weapons.

At a May 30, 2014 disposition hearing, the court continued Trenton as a ward of the court and ordered him committed to the Youthful Offender Treatment Program (YOTP) for a period not to exceed the maximum custody time of five years, four months, or until age 21, which ever occurred first. Trenton entered YOTP on August 13.

Second Notice of Probation Violation

On September 11, 2014, the probation department filed a second notice of probation violation alleging that Trenton violated the rules of YOTP by fighting with another minor. He was removed from YOTP pending adjudication of the alleged violation.

On November 18, 2014, Trenton admitted the probation violation. He was ordered to complete the DEUCE program at the West County Detention Facility.

At a March 17, 2015 disposition hearing on the probation violation, the court found that Trenton had completed the DEUCE and Restorative Justice Circles programs while in custody. It ordered him released “to self forthwith.” Because it was “not inclined” to terminate probation that day and thought it “important that he remain under supervision for a period of time in his transition back in the community,” the court continued him as a ward of the juvenile court.

Termination of Probation

A review hearing was scheduled for August 21, 2015. Prior to the hearing, the probation department updated the court on Trenton’s progress since his March release, as follows:

“Since his release Trent has been supervised by Probation, he works full time with his father in the family Pest Control business. He has graduated high school. Has paid all of his restitution fines and has been drug tested regularly with all negative results with the last test being August 11, 2015.

“Probation contacted Trent’s father by telephone on August 6, 2015, the father who is also his employer, says that Trent is a good worker, works everyday and he has remained clean and sober. Trent also lives in one of the family rental properties and maintains that as well. The father says that Trent is doing very well.

“Based on Trent’s compliance with Probation for the last six months in the community, his successful completion of the DEUCE program, it is respectfully recommended that Trent’s Probation be terminated successfully and the matter be vacated.”

At the review hearing, Trenton’s counsel urged the court to follow the probation department’s recommendation, adding, “He’s done well. And he’s fully employed. He’s been testing clean. He’s working. He’s living basically on his own and his father who is also his employer speaks very highly of him. I think that he has shown that he’s turned around and I would ask the court to follow the recommendations.”

The prosecutor submitted, following which the court ruled:

“THE COURT: Quite interesting that probation recommends a successful termination in this case, and Trenton picked up a very serious new offense while on probation which was not all that long ago, and the facts surrounding that offense were very egregious. In addition, he then picked up a violation of probation when he was engaged in a physical altercation at a treatment program.

“So although I am inclined to find that the juvenile court has exhausted its resources with Trenton, and I commend Trenton because he’s working full time with dad and seems to be very productive and leading a law abiding life, I’m not inclined to terminate successfully given his performance on probation.

“PROBATION OFFICER: Probation definitely understands the court’s concern, your Honor.

“THE COURT: So I will terminate probation and vacate this matter; however, I’m going to terminate it unsuccessfully.

“That being said, Trenton I do truly hope that you can continue on the trajectory that you’re on. It’s a good trajectory. I have never doubted your intelligence and your ability to do well and to succeed. However, I think there’s another side of you at least before that wanted the easy way out, kind of the sexy, glamorous way out, which is what led you partially to engage in the conduct you did.

“I also think that quite frankly you weren’t getting the support[ive] supervision while in your mom’s care and also you were under her rather negative influence. Father on the other hand I think has been setting a very good example for you, and I think he’s added some structure and value in your life. So I hope that you continue on this path. You’re . . . worth it.

“I hope you have proven that . . . you’re worth it and capable. I know you’re working in your dad’s business. I hope that some time you find the time to continue with your education and go back to college so that you can . . . kind of broaden your horizons. But I do want to commend you for at least how you have picked things up and shown that you are doing well.”

With that, the juvenile court entered an order terminating Trenton’s probation unsuccessfully and vacating his wardship status.

Trenton filed this timely appeal.

DISCUSSION

The Juvenile Court Did Not Abuse Its Discretion When It Terminated Trenton’s Probation Unsuccessfully

In the first of two arguments, Trenton contends the juvenile court abused its discretion when it terminated his probation unsuccessfully, a contention based on two alleged errors by the court. First, according to Trenton, the court mistakenly believed he was on probation when he committed the offenses charged in the second petition. Second, he claims the court gave undue attention to his second set of offenses, when it should have been focusing on his performance while on probation and giving proper

consideration to the many ways in which he had successfully complied with the conditions of his probation. There was no abuse of discretion, as Trenton's arguments are grounded in a misconstruction of the record.

As Trenton would have it, his probation stemming from the original petition terminated on March 20, 2013. The District Attorney later filed a second petition on February 14, 2014, alleging the weapons and drugs charges arising out of the search of his residence. He was then placed on a second grant of probation on May 30, 2014, after which he did not commit any new criminal offenses and had only the one probation violation for fighting with another minor at YOTP. According to this narrative, he was not on probation when he incurred the second set of offenses, contrary to the court's understanding, and the court should not have considered the nature of the second offenses when evaluating his conduct on probation stemming from those offenses. The record shows, however, that when Trenton committed the second set of offenses, he was in fact on probation.

As noted, on July 30, 2012, the District Attorney filed an original section 602 petition. After Trenton pleaded no contest to possession of a controlled substance with a firearm, he was placed on probation and committed to OAYRF. He was released from OAYRF on December 21, 2012 and placed on 90 days parole. On March 20, 2013—90 days later—the court terminated his parole, but did not terminate his probation status. Trenton was thus still on probation on January 23, 2014, when the search of his residence uncovered a cache of weapons along with drugs and paraphernalia, leading to the first probation violation and supplemental charges. And he was still on probation when he incurred the second probation violation for fighting at YOTP.

In an attempt to persuade us that this reading of the record is incorrect, Trenton submits that when the court ordered his *parole* terminated on March 20, 2013, it actually terminated his *probation*. This is so, he reasons, because he was never on parole, and any time the court or probation department said “parole,” it actually meant “probation.” Thus, he argues: “Trenton was on probation, not parole, for the first offense. [Citation.] The probation officer wrote in a March 20, 2013 report and recommendation to the

juvenile court that Trenton had ‘abided by the terms of his probation,’ and then mistakenly wrote that this occurred ‘during his parole period.’ [Citation.] During the review hearing on March 20, 2013, the juvenile court simply checked the wrong box on the form when it terminated Trenton’s parole as successful, and certainly meant to check the box above, which provided for a successful termination of probation. [Citation.] Trenton was never on parole; he was on probation.” His position is demonstrably wrong.

In the August 24, 2012 disposition order on the original petition, the court ordered Trenton committed to OAYRF for a mandatory six-month program “*plus an additional 90 day conditional release/parole period.*” (Italics added.) In December, the OAYRF program was converted to a regular six-month program, and Trenton was released from OAYRF on December 21, 2012. Upon his release, and consistent with the court’s original disposition order, he was then placed on a 90-day parole period. At a “parole review” hearing on March 20, 2013, his parole was terminated successfully, but he still remained on probation. Trenton himself confirmed he was still on probation by admitting a probation violation based on his possession of weapons and drugs.

The significance of all this is that from the August 24, 2012 disposition on the original petition to the August 21, 2015 termination of probation unsuccessfully, Trenton was on probation. Thus, the court was correct when it stated that Trenton was on probation when he incurred the second set of charges, and it properly considered the egregiousness of those offenses. In light of those facts, and the fact that Trenton incurred two probation violations during his probationary period, we cannot agree the juvenile court’s termination of probation unsuccessfully was arbitrary, capricious, or outside the bounds of reason.

The fact that the probation officer recommended that the court terminate his probation successfully and that the prosecutor did not object to the recommendation does not persuade us otherwise. The juvenile court was not bound by the recommendation of the probation department. As stated in *People v. Delson* (1984) 161 Cal.App.3d 56, 63, the court “was not required to adopt the report’s favorable recommendation. [Citation.]

Such a recommendation is advisory only, provided in order to aid the sentencing court in determining an appropriate disposition, and may be rejected in its entirety. [Citations.]”

Trenton’s Request that We Remand the Matter for the Sealing of His Juvenile Records Is Not Properly Before Us

In his second argument, Trenton requests that we remand the matter to the juvenile court so that it can seal his record in accordance with section 786. This request is not properly before us.

Section 786, subdivision (a) provides, with certain exceptions, for the mandatory dismissal of a petition and sealing of the minor’s records pertaining to the petition where the minor has, among other things, satisfactorily completed a period of probation. Subdivision (c)(1) states that satisfactory completion of probation occurs where the minor “has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.”

Trenton asks that we find that he satisfactorily completed his probation within the meaning of section 786 and remand the matter to the juvenile court for the sealing of his record. Putting aside the glaring fact that Trenton incurred a new felony offense while on probation, there is no indication that he presented this fact-based request below, and we will not consider it for the first time on appeal. (*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 685 [“Contentions or theories raised for the first time on appeal are not entitled to consideration.”]; *Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794 [“It must appear from the record that the issue argued on appeal was raised in the trial court. If not, the issue is waived.”])

DISPOSITION

The order is affirmed.

Richman, J.

We concur:

Kline, P.J.

Miller, J.

A146484; *In re Trenton M.*