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

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

THE PEOPLE,

A146517

Plaintiff and Respondent,

**(Contra Costa County
Super. Ct. No.**

v.

J1500608)

B.G.,

Defendant and Appellant.

_____/

Responding to a report of vandalism, Brentwood police officers saw a group of teenage girls—including B.G. (the minor)—damaging a pickup truck. The minor admitted committing misdemeanor vandalism (Pen. Code, § 594, subd. (a)) and the juvenile court declared her a ward of the court (Welf. & Inst. Code, § 602).¹ The court placed B.G. on probation and imposed various conditions, including that she have “no contact whatsoever” with the victim and the five other girls present during the incident. The court specified “no contact” prohibited contact on certain social media websites and applications.

¹ Unless noted, all further statutory references are to the Welfare and Institutions Code.

The minor appeals, contending the no contact probation condition is unconstitutionally vague because it lacks a knowledge requirement and because it “fails to specify what would constitute prohibited contact on . . . social media.” We remand with directions that the juvenile court add a knowledge requirement to the no contact provision and include a clear description of prohibited social media contact. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from the probation report.

In April 2015, Brentwood police officers responded to a “report of vandalism.” The officers saw six teenage girls “damaging several vehicles” and detained them. A witness heard one girl say, ““You won’t do it”” and saw two girls bang on a pickup truck belonging to M.P. (victim). Another witness also heard a girl say, ““You won’t do it”” and saw another girl — later identified as the minor — “jump on the hood” of the truck. The hood of M.P.’s truck had a “softball-size dent[.]” The minor denied jumping on the truck and blamed another girl for the vandalism.

The prosecution filed a section 602 petition alleging the minor committed felony vandalism (Pen. Code, § 594, subd. (b)(1)). The minor admitted misdemeanor vandalism (Pen. Code, § 594, subd. (a)). In October 2015, the court adjudged the minor a ward of the court (§ 602) for one year and placed her on home supervision for 30 days with various terms and conditions. At the dispositional hearing, the court ordered: “You are to have no contact whatsoever with” F.J., A.F., S.S., J.M., and M.P. (collectively, girls). The court told the minor: “[t]hat means no Instagraming [*sic*], Facebooking, texting[,] Snap chatting [*sic*]. . . . [¶] You are to have no contact whatsoever with . . . the victim[.]”²

² According to the Oxford English Dictionary, “social media” constitutes “websites and applications which enable users to create and share content or to participate in social networking.” (Oxford English Dict. Online (2016) < <http://www.oed.com> > [as of May 24, 2016].) “Social networking” is defined as “the use or establishment of social networks or connections; (now *esp.*) the use of websites which enable users to interact with one another, find and contact people with common interests, etc.” (Oxford English Dict. Online (2016) < <http://www.oed.com> > [as of May 24, 2016].)

The minor's counsel did not object to the probation condition. The court's written dispositional order provides in relevant part: "No association or contact" with the victim and F.J., A.F., S.S., J.M., and M.P.

DISCUSSION

The minor contends the probation condition prohibiting her from contacting the victim and the girls is unconstitutionally vague and overbroad because: (1) it lacks a knowledge requirement; and (2) does not define "what would constitute prohibited" social media contact.

I.

General Principles

A juvenile court placing a ward on probation "may 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); *In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)) The scope of the juvenile court's discretion in formulating terms of a minor's probation is greater than that allowed for adult probationers "[b]ecause wards are thought to be more in need of guidance and supervision than adults and have more circumscribed constitutional rights, and because the juvenile court stands in the shoes of a parent when it asserts jurisdiction over a minor[.]" (*In re D.G.* (2010) 187 Cal.App.4th 47, 52 (*D.G.*)) The juvenile court's discretion, however, is not absolute. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*))

A probation condition will be stricken as unreasonable if it: "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. . . ." (*People v. Lent* (1975) 15 Cal.3d 481, 486; *D.G.*, *supra*, 187 Cal.App.4th at pp. 52-53.) In addition, a juvenile court must not impose constitutionally vague conditions. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 889-891.) To withstand a vagueness challenge, "[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[.]” (*Id.* at p. 890.)

We review the minor’s constitutional challenge to the probation condition de novo notwithstanding her failure to object in the juvenile court. (*Sheena K.*, *supra*, 40 Cal.4th at p. 888; *Victor L.*, *supra*, 182 Cal.App.4th at p. 907.)

II.

The No Contact Probation Condition Must be Modified

The minor contends the probation condition prohibiting her from contacting the victim and the girls is unconstitutionally vague because it lacks a knowledge requirement. She also claims the condition prohibiting her from contacting the girls on social media is flawed for the same reason. Our high court is considering whether a no contact order must include an explicit knowledge requirement. (*In re A.S.*, review granted Sept. 24, 2014, S220280.) While awaiting guidance from our Supreme Court on this issue, we will continue to act on the side of caution and remand the matter for the juvenile court to include the explicit — if perhaps unnecessary — requirement that minor not *knowingly* contact the victim and the girls, including no *knowing* contact on specified social media websites and applications. (See, e.g., *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1349 [modifying probation condition regarding Internet use to include a knowledge requirement].)³

The minor also contends the probation condition prohibiting her from contacting the girls via Instagram, Facebook, or Snapchat is unconstitutionally vague because it does not define “prohibited contact on these forms of social media.” According to the minor, it is “unclear” if she would violate the condition if: (1) the girls “posted a comment” on her Facebook wall or commented on her Instagram pictures; or (2) the girls “messag[ed] her” on these social media websites and applications “without her responding.” We are

³ The minor also claims there is insufficient evidence in the record that she knew or would recognize the girls. The minor has forfeited this claim by failing to object in the juvenile court. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889 [failure to object to probation condition results in forfeiture unless the objection raises a pure question of law].)

not persuaded. The condition is directed at the minor's activities, not those of other people. As modified to include a knowledge requirement — and interpreted in a reasonable, common sense manner — the condition prohibits the minor from knowingly contacting the girls on specified social media, i.e., by sending them messages, or commenting or posting on their Instagram, Facebook, or Snapchat accounts.

The minor also queries whether the probation condition requires her to “de-friend” the girls on social media “if she had already been a social media friend of theirs.” We share her concern. It is not clear whether the probation condition requires the minor to take the positive step of “de-friending” the girls on the specified social media websites and applications. In other words, it is not clear whether the minor would violate the probation condition by *failing* to “de-friend” the girls. Because we remand for the juvenile court to modify the no contact condition to add a knowledge requirement, we direct that the court also clarify the phrase “no Instagraming [*sic*], Facebooking, . . . Snap chatting [*sic*].”

DISPOSITION

The matter is remanded with instructions that the juvenile court add a knowledge requirement to the no contact probation condition and to clarify the phrase “no Instagraming [*sic*], Facebooking, . . . Snap chatting [*sic*]” used in that provision. In all other respects, the judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.

A146517