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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re M.S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.S., Defendant and Appellant.	A146777 (Contra Costa County Super. Ct. No. J0801774)

Appellant M.S. was doing well on probation but failed to appear for a hearing, and a bench warrant was issued for his arrest. Four years later, he filed an unsuccessful petition for a reduction of his original offense under Proposition 47. After his petition was denied, his attorney requested that M.S.'s probation be terminated as unsuccessful, and the juvenile court granted the request. On appeal, M.S. argues that the juvenile court abused its discretion by granting the relief he sought below, and he asks this court to either remand to the juvenile court to exercise its discretion properly or to order that the word "unsuccessfully" be stricken from the order terminating his probation. Because M.S. forfeited the issue by asking for the very relief he challenges and because his arguments lack merit in any event, we affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

The original wardship petition was filed in December 2008 after then 17-year-old M.S. broke into a Pittsburg elementary school while intoxicated and stole several marking pens. In March 2009, he admitted to a misdemeanor allegation of second-degree burglary. (Pen. Code, §§ 459, 460, subd. (b).)[1] The juvenile court adjudged M.S. a ward of the court, placed him on probation, and calculated his maximum term of confinement to be one year. His probation conditions included requirements that he obey all laws, attend school regularly, complete counseling, submit to drug testing, and avoid illegal drug or alcohol use.

M.S. at first did not do well on probation. In a report dated September 2009, the probation officer stated that M.S. had tested positive for marijuana, cut school, failed to complete counseling, and did not start his community service hours, all of which led the probation officer to conclude that M.S. was "blatantly disregarding the terms and conditions of probation." At a hearing on September 25, the juvenile court sustained an allegation of a probation violation and ordered that M.S. serve time in juvenile hall. At a disposition hearing the following month, the juvenile court ordered that M.S. be placed on 60 days of electronic monitoring.

Another probation violation was alleged after M.S. tested positive for marijuana in March 2010 and admitted he used marijuana three times a week. The following month, the juvenile court sustained the allegation, and M.S. was continued as a ward of the court.

Over the next year, M.S. showed signs of improvement on probation. In a report filed in September 2011, the probation department reported that M.S. had passed the high school exit exam, obtained his GED, and made plans to attend community college. He also completed an adolescent drug-treatment program, finished his community service

[1] All statutory references are to the Penal Code unless otherwise specified.

hours, and paid a court fine. The probation officer commended M.S.'s progress on probation and recommended in her report that M.S.'s probation be terminated successfully. A hearing was scheduled for September 16.

M.S. apparently appeared for the September 16 hearing and took a drug test that same day. He tested positive, then did not appear when the case was recalled later that day. The court issued a bench warrant. The record on appeal reveals no activity in the proceedings for the following four years.

In September 2015, proceeding with a new attorney from the public defender's office, M.S. filed a three-paragraph petition under Proposition 47 to reclassify his offense as a misdemeanor shoplifting offense, defined as entering a "commercial establishment" with intent to commit larceny (§ 459.5, subd. (a)).

For reasons that are not revealed in the record, M.S. was not present at the hearing on his petition held the following month. The court denied M.S.'s petition, concluding that M.S.'s crime could not be considered shoplifting because he had entered a school, which was not a commercial establishment. As soon as the court denied the petition, the following exchange took place:

"[Defense Counsel]: Judge, I wanted to ask on him, this minor is over 21 and his last court date was in 2011, I believe.

"The Court: A warrant was issued when he failed to appear.

"[Defense Counsel]: Correct. But it is almost four years old on a misdemeanor.

"The Court: And your request is?

"[Defense Counsel]: For the Court to terminate unsuccessfully.

"The Court: People's position?

"[Prosecutor]: Submitted.

"The Court: You don't have a position on whether the arrest warrant should stay out?

"[Prosecutor]: Submitted.

"The Court: How old is he?

"[Defense Counsel]: He'll be 24 in December.

"The Court: Technically he's still eligible.

"[Probation Officer]: 21, unless he's gone to DJJ [Department of Juvenile Justice].

"The Court: Well, I believe the law allows the Court to have a jurisdictional hearing to determine whether the allegations are true. Have [sic] we've done that?

"[Defense Counsel]: He missed a review.

"The Court: All right. The warrant is recalled. The minor is deemed to have failed or been unsuccessful at probation. The wardship is terminated, both probation and the wardship unsuccessfully."

M.S. filed a notice of appeal to challenge the "Denial of Petition pursuant to [section] 1170.18," with no mention of the court's termination of his probation.

II.

DISCUSSION

For the first time on appeal, M.S. argues that the juvenile court wrongfully granted him the very relief he sought below—termination of his probation as unsuccessful. He claims that the juvenile court did not properly exercise its discretion because it relied on "a mistaken representation from trial counsel and without sufficient evidence." (E.g., *People v. Tenorio* (1970) 3 Cal.3d 89, 95 [exercise of judicial discretion "must be based upon an examination of the circumstances of the particular case before [the court]"].) Although neither party raises the issue, we first conclude that M.S. forfeited this issue. (E.g., *Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 166 [party may waive right to attack alleged error by agreeing at trial to ruling objected to on appeal]; *Abbott v. Cavalli* (1931) 114 Cal.App. 379, 383-384 [party must abide by the consequences of own acts and cannot seek a reversal for errors which party committed or invited].)

It is not surprising that M.S.'s counsel requested to have M.S.'s probation terminated as unsuccessful because it was in M.S.'s interest to obtain a termination of his probation. As respondent asserts on appeal, "From th[e] record, it is evident that defense counsel did not make a mistaken representation; she was simply making a request for the court to terminate probation unsuccessfully based on appellant's poor performance and his four year evasion of the court. Additionally, respondent asserts that counsel's goal appeared to be to remove appellant from probation supervision as expediently as possible without an additional hearing on whether probation should be terminated successfully or unsuccessfully." (Italics added.) We agree that this appears to be defense counsel's goal, which benefited M.S. because there is no longer a bench warrant for his arrest in these proceedings. M.S. does not respond to this point in his reply brief or explain what possible negative effects that having probation terminated as unsuccessful might have on him.

In any event, M.S.'s argument that the juvenile court abused its discretion when it terminated his probation as unsuccessful lacks merit. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909 [denial or grant of probation rests within broad discretion of trial court]; see also *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330 [abuse-of-discretion standard requires appellate court to indulge all reasonable inferences in support of the juvenile court's decision].) True, it is somewhat unclear what information the juvenile court had when it considered the issue, raised for the first time at the hearing on M.S.'s Proposition 47 petition. The court *was* aware that a warrant was issued when M.S. failed to appear for a hearing in 2011. During the discussion of whether to terminate M.S.'s probation, the court stated that "I believe the law allows the Court to have a jurisdictional hearing to determine whether the allegations are true," an apparent reference to allegations that M.S. *failed to appear for the 2011 hearing*. M.S. distorts the context of the court's comments by arguing that they show that the court was not aware of whether the *original jurisdictional hearing* had been held. The court clearly knew the

facts of the underlying case, because it knew that the crime involved the burglary of a school, a fact that was not included in M.S.'s short Proposition 47 petition.

M.S. contends that the juvenile court abused its discretion by not reviewing the 2011 probation report before terminating his probation. He points to the requirement that the court consider the probation report *at the disposition hearing*. (Welf. & Inst. Code, § 706 [in determining the proper disposition of the minor, the court shall receive in evidence the social study made by the probation officer]; *In re Eddie M.* (2003) 31 Cal.4th 480, 487 [same].) The underlying assumption of this argument is that if this court were to reverse the juvenile court's order terminating probation, the remedy would be to remand to the juvenile court to consider the probation department's positive *2011 report* in making its decision. Again, the juvenile court suggested that any decision on whether to terminate M.S.'s probation as unsuccessful would require a new evidentiary hearing, for which a new probation report would be prepared to explain what happened in the four years after M.S. failed to appear for a hearing.

M.S. ignores those four intervening years and instead points to all the positive facts highlighted in the probation department's 2011 report, claiming that this evidence "supports *only* a successful termination of probation" in 2015 (italics added), but we disagree. M.S. never defines a standard for determining whether a probationer has "successfully completed probation," a phrase that one court has concluded "appears to have no standard meaning and is ambiguous." (*In re Timothy N.* (2013) 216 Cal.App.4th 725, 735 [minor successfully completed probation as a matter of law where he complied with all conditions but was unable to pay victim restitution in full].) One reasonable interpretation of "successful completion" is that a probationer had "completed the probationary term without engaging in any conduct that provided a basis for revoking his

probation."[2] (*Id.* at p. 738.) It is apparently undisputed that M.S. failed to appear for a hearing and that a bench warrant was issued for his arrest, and the juvenile court was aware of these facts when it terminated M.S.'s probation as unsuccessful four years later. M.S.'s failure to appear and four-year absence from these proceedings, standing alone, were sufficient grounds for the juvenile court to terminate his probation as unsuccessful. The juvenile court's order was not irrational or arbitrary. (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.)

III.

DISPOSITION

The order terminating M.S.'s probation as unsuccessful is affirmed.

[2] Welfare and Institutions Code section 781, regarding the sealing of juvenile-court records, was recently amended to define the "satisfactory completion of . . . [a] term of probation" for purposes of that statute as a situation where "the person 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." (*Id.*, subd. (c)(1).)

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Humes, P.J.

We concur:

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Margulies, J.

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Dondero, J.

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