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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

A146796

(San Mateo County
Super. Ct. No. JV83294)

Defendant R.C., a ward of the juvenile court, was committed to the Division of Juvenile Justice (DJJ). The sole issue on appeal is the juvenile court’s disposition order which, in addition to committing defendant to DJJ, imposes various terms and conditions regulating defendant’s conduct that are commonly associated with a grant of probation. Defendant seeks to have these orders stricken on the ground that they are invalid because a juvenile court may not supervise a minor who has been committed to DJJ. The Attorney General agrees. We will strike the conditions and otherwise affirm the judgment.

BACKGROUND

We very briefly summarize the facts of the incident from the report dated December 8, 2015, that was prepared by the San Mateo Probation Department.¹

“According to the San Francisco Police Department report no. 150467160, on May 29, 2015, at approximately 0016 hours, several officers responded to Leavenworth

¹ At defendant’s request, we took judicial notice of this report

Street and Jefferson Street in San Francisco regarding a shooting outside of the In-N-Out Burger Restaurant at 333 Jefferson Street. Once on the scene, the officer met with other officers who had located a possible shooting victim.

“The officers met with two witnesses and the victim. The victim appeared to be bleeding from the face. The witnesses (victim #1 and victim #2) reported the victim (victim #3) had been shot.

“ . . .

“The officer interviewed victim #2 at the scene about the incident. Victim #2 reported to the officer, he and victim #3 just finished working at AT&T Park and had stopped at In-N-Out Burger to get food before they went to their second job. Victim #2 reported to the officer, upon finishing their meal and exiting the restaurant to Anchorage Alley, they encountered a group of four Hispanic male juveniles and two female juveniles. Victim #2, stated an unknown Hispanic male, (suspect #1), began yelling, ‘Hey, where you from? Do you bang?’ Victim #2 said they attempted to walk away from suspect #1 and the group, when suspect #1 grabbed a nearby chair and threw it at them. Victim #2 told suspect #1 he did not want any problems, and stated that they do not ‘bang’ or claim any gang affiliation. Suspect #1 proceeded to lift his sweater and showed a tattoo that was written across his abdomen area. At that time, suspect #2 stated, ‘Do you have a problem?’

“Suspect #2 then removed a small black handgun from his waistband area and stated, ‘I’m gonna fucking blast you in the head if you keep walking down this alley.’ The victims started running in an attempt to flee from the group. Victim #2 stated to the officer, as they ran on Jefferson Street toward Leavenworth, victim #1 was struck in the head with a glass bottle. Victim #2 witnessed one of the suspects hand the small handgun to suspect #2, who then fired one shot striking victim #3 in the lower back. Victim #2 stated while speaking to ‘911,’ suspect #3, later identified as [E.M.] . . . , ran towards them, pulling a large silver folding knife from her waistband area, and yelled, ‘I’ll fucking stab you!’ Reportedly, victim #2 was really scared because he thought suspect [E.M.] was going to stab him.

“Shortly after, several other officers located and detained two suspects, who were identified as [defendant R.M.] and companion [E.M.]. The officer contacted and interviewed victim #1 and victim #2. The officer facilitated a line-up of [defendant] and companion [E.M.] separately. Companion [E.M.] was positively identified as the suspect who threatened victim #1 and victim #2 with a knife. [Defendant] was positively identified by victim #1 as the suspect who had instigated the altercation leading up to the shooting.

“. . . [T]he officer reported, when he detained [defendant] and companion [E.M.], [Defendant] had blood on his hands, and suspect [E.M.] had small red spots and splatter spots on her jacket. Companion [E.M.] was also found to be in possession of a knife.”

Defendant was charged in an eight-count wardship petition in San Francisco County. He admitted count 2, assault with a firearm, and the remaining counts were dismissed. (Count 2 was amended to delete the personal use allegation, and defendant admitted liability as an aider and abettor.) Because defendant lived in San Mateo County, the matter was transferred to San Mateo Superior Court for disposition.

The juvenile court in San Mateo committed defendant to DJJ for a maximum period of four years. This appeal followed.

DISCUSSION

At the conclusion of the lengthy disposition hearing on November 6, 2015, the juvenile court stated, “He’s committed to DJJ. Detained here pending that placement. [¶] I’m going to adopt pages 1 through 4. Maximum confinement four years.” After calculating 186 days credit for time served, and allowing defendant’s father to visit him that day, the court concluded, “Other than that I’m adopting the remainder of the orders.”

Both sides agree that the orders the court was referring to list four pages of probation-type terms regulating defendant’s behavior. Although the parties do not specify precisely which orders on these four pages are at issue, we assume they mean the orders beginning with “Minor is not to use, possess, or be under the influence of any alcoholic beverages . . .” and concluding four pages later with “The Minor shall not remain in any building or vehicle or in the presence of any person where the Minor

knows or should reasonably know that there is present any dangerous or deadly weapons, firearms, or ammunition.”

It is commonplace that once a ward is committed to DJJ, the juvenile court no longer has authority to impose conditions of probation. *In re Edward C.* (2014) 223 Cal.App.4th 813, 829 (*Edward C.*), a juvenile was committed to DJJ and the juvenile court then set forth a list of probation terms. The *Edward C.* court wrote, “[Defendant] argues that to the extent these terms pertained to the [DJJ] commitment, and not simply the time he was to spend in juvenile hall pending his transfer to [DJJ], they are invalid. We agree, because the juvenile court loses the authority to impose conditions of probation once it commits a ward to [DJJ]. (*In re Ronny P.* (2004) 117 Cal.App.4th 1204, 1208; *In re Allen N.* (2000) 84 Cal.App.4th 513, 516.)” (*Edward C.* at p. 829.)

Here, the juvenile court did not denominate these conditions as pertaining to probation, but they indisputably had the effect of regulating defendant’s behavior while he was a ward just as probation conditions would. Although the juvenile court could control defendant’s conduct while he was still awaiting transfer to DJJ, once that transfer occurred, the court had no authority to impose these conditions. Presumably defendant is now confined in DJJ, and the orders have no force or effect.

DISPOSITION

The challenged orders are without force and effect and are now stricken. In all other respects, the judgment is affirmed.

Miller, J.

We concur:

Kline, P.J.

Richman, J.