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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B241728

(Los Angeles County  
Super. Ct. No. FJ49957)

THE PEOPLE,

Plaintiff and Respondent,

v.

ERICK M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Totten, Juvenile Court Referee. Affirmed as modified.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

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Erick M. appeals from the juvenile court’s order declaring him a ward of the court after finding he had committed misdemeanor vandalism. Erick contends, and the Attorney General concedes, he was improperly ordered to provide a DNA<sup>1</sup> sample as a condition of probation. We strike that portion of the juvenile court’s order and otherwise affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Police detained Erick and a companion after they used a piece of glass to cut the roof of a convertible car. The People filed a Welfare and Institutions Code section 602 petition alleging Erick had committed second degree burglary (§ 459) and felony vandalism (§ 594, subd. (a)).

Pursuant to a negotiated agreement, Erick admitted the vandalism count; and the court dismissed the burglary charge. The court then granted a defense motion to reduce the felony offense to a misdemeanor under section 17, subdivision (b). The court declared Erick a ward of the juvenile court and ordered him suitably placed. Over a defense objection the court ordered Erick to provide a DNA sample pursuant to section 296.

### **DISCUSSION**

As Erick contends and the People acknowledge, the juvenile court erred in ordering him to submit a DNA sample.

Section 296 is part of DNA and Forensic Identification Database and Data Bank Act of 1998. (§ 295 et seq.; see *People v. Robinson* (2010) 47 Cal.4th 1104, 1113.) The Act became effective January 1, 1999. (Stats. 1998, ch. 696, § 4.) “It created a data bank to assist ‘criminal justice and law enforcement agencies within and outside California in the expeditious detection and prosecution of individuals responsible for sex offenses and other violent crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted

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<sup>1</sup> DNA is an acronym for deoxyribonucleic acid. (Pen. Code, § 295, subd. (b)(1).) All further statutory references are to the Penal Code.

children.’’ (Robinson, at pp. 1116-1117.) After several amendments (see *id.* at p. 1117, fn. 13), the Act currently mandates the collection of DNA samples from all adults and juveniles convicted of any felony offense, required to register as a sex offender because of the commission or the attempt to commit a felony or misdemeanor offense or housed in a mental health facility or sex offender treatment program upon referral by a court after being charged with a felony offense. (§ 296, subd. (a)(1) & (3).)

Because misdemeanor vandalism is not one of the offenses for which a DNA sample may be collected under section 296, we strike that portion of the court’s disposition order requiring Erick to provide a DNA sample. (*People v. Walker* (2000) 85 Cal.App.4th 969, 973-974.) If the sample has already been collected, Erick may seek relief pursuant to the expungement procedure provided by section 299. (*In re Nancy C.* (2005) 133 Cal.App.4th 508, 512.)

#### **DISPOSITION**

The portion of the disposition order requiring submission of a DNA sample is stricken. In all other respects the juvenile court’s order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.