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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re KEVIN H., a Person Coming Under  
the Juvenile Court Law.

B265818

(Los Angeles County  
Super. Ct. No. NJ27985)

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
John H. Ing, Judge. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey and  
Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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Kevin H. appeals from the juvenile court's order denying his request to seal his juvenile record following the dismissal of a delinquency petition (Welf. & Inst. Code, § 602)<sup>1</sup> alleging he had committed two misdemeanor offenses. He contends the juvenile court erred because he had satisfactorily completed informal supervision within the meaning of section 786 to mandate the sealing of his record. We affirm the order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On May 12, 2014, Kevin cut the security chain and stole a fellow student's bicycle from their high school campus. On June 24, 2014, the People filed a delinquency petition alleging then 15-year-old Kevin had committed petty theft and misdemeanor vandalism. After Kevin denied the allegations, the juvenile court referred him to the probation department for a pre-plea report and possible informal supervision (§ 654.2).

At a pretrial conference in July 2014, the juvenile court received the pre-plea report in which the probation officer recommended that Kevin be made a ward of the court and ordered home on probation rather than placed on informal supervision under section 654.2. According to the report, Kevin had completed a program of informal supervision under section 654 in December 2013 after committing petty theft in May 2013. The probation officer opined Kevin would now benefit more from the enhanced structure and close monitoring of probation in view of his recent offenses. Both the pre-plea report and the court's minute order<sup>2</sup> noted Kevin's parents were planning to enroll him in a Texas military academy in the fall of 2014. The minute order also indicated Kevin had been "referred back" as a candidate for the Juvenile Offender Intervention Network (J.O.I.N.) program.

In November 2014, the juvenile court was advised by counsel that Kevin was currently attending the Marine Military Academy in Texas and participating in the J.O.I.N. program.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> There is no reporter's transcript of the proceedings.

At a pretrial conference in June 17, 2015, the juvenile court granted the prosecutor's motion to dismiss the delinquency petition, because Kevin had successfully completed the J.O.I.N. program. Without objection from the prosecutor, defense counsel asked to have Kevin's juvenile record sealed pursuant to section 786. The court denied the request, finding Kevin ineligible under the statute, because section 786 requires the sealing of a juvenile record only if the dismissal of the delinquency petition was based upon the minor having satisfactorily completed either a court-ordered program of informal supervision (§ 654.2) or probation (§§ 725, 727), neither of which occurred in this case. Instead, Kevin had participated in the J.O.I.N. program, an informal diversion program under the auspices of the district attorney to which section 786 did not apply. The court concluded it therefore had no authority to grant Kevin's request to seal his juvenile record. Kevin appealed.

## **DISCUSSION**

### *1. The J.O.I.N. Program*

The J.O.I.N. program is a voluntary diversion program offered by the Office of the Los Angeles County District Attorney.<sup>3</sup> The program is an alternative to juvenile court proceedings for certain first-time nonviolent offenders, between the ages of 10 and 17 years. In lieu of filing a delinquency petition, the district attorney's office invites eligible minors to sign a contract requiring them to perform community service, pay restitution, attend school and participate in counseling sessions for one year. Those minors who successfully complete the J.O.I.N. program, as determined by hearing officers apparently affiliated with the district attorney's office, will not have an offense on their record. (Office of the Los Angeles County District Attorney <http://da/lacounty.gov/operations/join.html> [as of Sept. 30, 2016].)

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<sup>3</sup> We granted Kevin's request, filed under separate cover, for judicial notice of the J.O.I.N. program as described in the official Web site of the Office of the Los Angeles County District Attorney (<http://da/lacounty.gov/operations/join.html>) [as of Sept. 30, 2016]). (Evid. Code, §§ 452, subd. (h), 459.)

Although a delinquency petition had already been filed against Kevin, he was “referred back” to the J.O.I.N. program. Kevin was apparently accepted into the J.O.I.N. program as if no petition had been filed, with the understanding the petition that had been filed would be dismissed if Kevin successfully completed the program.

## 2. *Section 786 and Related Statutes*

Effective January 2015, section 786 provided a new procedure for sealing juvenile records. It requires the juvenile court to dismiss a delinquency petition and seal the records pertaining to that petition for any minor who satisfactorily completes an informal supervision program under section 654.2, probation under section 725, or a term of probation for any other offense not listed in section 707, subdivision (b) as a serious or violent felony. (§ 786, subd. (a).)

The first condition triggering section 786’s mandatory sealing is the satisfactory completion of an informal supervision program under section 654.2 after the delinquency petition has been filed. (§ 654.2, subd. (a).) Rather than proceed on the petition, the court may place an eligible minor on a six to 12-month program that is supervised by the probation department and may include substance abuse treatment, counseling, education and community service. (§§ 654, 654.4, 654.6.) If the probation department reports the minor has satisfactorily completed the program, the delinquency petition is dismissed. (§ 654.2, subd. (a).)

Second condition in section 786 also applies if the minor has satisfactorily completed probation pursuant to section 725, a dispositional option for the juvenile court after it has proceeded on the petition and made a jurisdictional finding. The third condition in section 786 for mandatory dismissal and sealing is the minor’s satisfactory completion of a term of probation with wardship for any offense that is not one of the serious or violent felonies listed in section 707, subdivision (b). (§ 786, subd. (a); see § 727.)

### 3. *Standard of Review*

Interpretation of section 786 presents a question of law subject to independent review on appeal. (See *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125.) ““As in any case involving statutory interpretation, our fundamental task is to determine the Legislature’s intent so as to effectuate the law’s purpose.”” (*People v. Moreno* (2014) 231 Cal.App.4th 934, 939; *People v. Cole* (2006) 38 Cal.4th 964, 974.) “We examine the statutory language, and give it a plain and commonsense meaning. . . . If the statutory language is unambiguous, then the plain meaning controls.” (*People v. Moreno, supra*, 231 Cal.App.4th at p. 939, citation omitted; see *People v. Cole, supra*, 38 Cal.4th at p. 975.) In other words, if there is “no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said,” and it is not necessary to “resort to legislative history to determine the statute’s true meaning.” (*People v. Cochran* (2002) 28 Cal.4th 396, 400-401; accord, *People v. Toney* (2004) 32 Cal.4th 228, 232.)

### 4. *The Juvenile Court Properly Declined To Seal the Record Under Section 786*

Acknowledging he was not placed on a program of informal supervision or probation pursuant to sections 654.2, 725 or 727, Kevin maintains he is entitled, nonetheless, to have his juvenile record sealed under section 786. Kevin argues he is a nonviolent juvenile offender for whom the mandatory sealing requirement is intended; the J.O.I.N. program in which he participated is virtually identical to section 654.2’s program of informal supervision; and his successful completion of the J.O.I.N. program after, rather than before, the filing of the delinquency petition amounted to a de facto completion of the section 654.2 program.

We find no error. Section 786 states in plain and unambiguous language that its application is limited to the successful completion of one of three specific rehabilitative programs: informal supervision under section 654.2; probation without wardship under section 725 and probation with wardship. What these programs have in common is they are all to be ordered, and ultimately overseen, by the juvenile court after the petition has

been filed. (See e.g., *In re Armando A.* (1992) 3 Cal.App.4th 1185, 1189 [section 654.2 “creates a new power in the court to grant informal probation supervision in a postpetition setting independently of the probation officer’s prepetition discretion [under section 654.”].) It is the juvenile court, not the probation department or the district attorney’s office, which determines whether the minor has satisfactorily completed the pertinent rehabilitative program to trigger the mandatory dismissal and sealing requirements of section 786.

Section 654.2, the most closely relevant of the three statutory alternatives, cannot be satisfied by the program in which Kevin participated. That section requires supervision and certification of satisfactory completion by the probation department. Here, however, Kevin was supervised by the district attorney’s office, and completion of the program was certified by that office.<sup>4</sup>

While the circumstances here are unusual, we are not persuaded by Kevin’s argument that section 786 should be interpreted to permit a district attorney diversion program completed after the petition has been filed to be deemed a program of informal supervision under section 654.2. Doing so is contrary to the language of the statute; and it would require us to effectively amend section 786 to include additional and non-court-ordered programs in violation of “the cardinal rule that courts may not add provisions to a statute or rewrite it to conform to an assumed intent that does not appear from its plain language.” (*People v. Connor* (2004) 115 Cal.App.4th 669, 692.) If the Legislature believes the interpretation urged by Kevin should be enacted, it is the Legislature that has the authority to do so.

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<sup>4</sup> Moreover, Kevin did not qualify for informal supervision under section 654.2, because he previously completed informal supervision under section 654. “No minor shall be eligible for the program of supervision set forth in Section . . . 654.2 . . . except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision: [¶] . . . [¶] (e) the minor has previously participated in a program of supervision pursuant to Section 654.” (§ 654.3.) Other than the pre-plea report, nothing in the record suggests the juvenile court or the parties addressed the issue of Kevin’s eligibility under section 654.2; the juvenile court made no findings in that regard.

It appears the district attorney's office had a laudable intent in inviting Kevin to take part in the J.O.I.N. program so that his delinquency petition could be subsequently dismissed on the prosecutor's motion. The effect, however, was to short-circuit Kevin's opportunity to have his record sealed under section 786.

Although we affirm the order denying Kevin's request to seal his juvenile record under section 786, he is not without a remedy. After Kevin turns 18 years old in May 2017, he may petition the juvenile court for sealing of his juvenile records. (§ 781, subd. (a)(1)(A); Cal. Rules of Court, rule 5.830.)

### **DISPOSITION**

The order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.