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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.S., a Person Coming
Under the Juvenile Court Law.

B269040
(Los Angeles County
Super. Ct. No. TJ22221)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Catherine J. Pratt, Judge. Affirmed with directions.

Mary Bernstein, 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, Assistant

Attorney General, Joseph P. Lee and Kathy S. Pomerantz,
Deputy Attorneys General, for Plaintiff and Respondent.

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J.S. appeals from a dispositional order after the juvenile court sustained a Welfare and Institutions Code section 602 petition. On appeal, he identifies several undisputed discrepancies between the court's oral pronouncement and the court's unsigned minute order imposing probation conditions. We remand the case to the juvenile court for clarification of whether the conditions in the minute order were the result of clerical error or were intentionally added. In all other respects, the dispositional order is affirmed.

BACKGROUND

Although he denied it, there was strong evidence that 15-year-old J.S. committed a second degree robbery. The court sustained a Welfare and Institutions Code section 602 petition and ordered J.S. placed on home probation. The court pronounced several conditions of probation, most of which are not challenged on appeal.

J.S. challenges the following four probation conditions, identifying discrepancies between the court's oral pronouncement and written order. First, the court's oral pronouncement did not include the following two conditions of probation, which were included in the court's minute order: (1) condition No. 6: "You must not unlawfully threaten, hit, fight with, or use physical force on any person," and (2) condition No. 15: "You must not have any contact with or have someone else contact the victims or witnesses of any offense against you." Second, the minute order

augmented two of the conditions orally imposed by the court. The court stated: “You must go to school every day that it is in session. No tardies, no truancies, no getting kicked out.” In contrast, the minute order provided: “You must go to school every day. You must be on time to each class. You must have good behavior at school. You must receive satisfactory grades.” While the court stated orally: “You’re not to hang out with anyone that your mom or the probation officer tell you not to hang out with,” the minute order provided: “You must not associate or communicate with anyone you know your parent, caregiver or probation officer does not approve. You must not have someone else contact them for you.”

At the end of the in-court proceedings, the court asked J.S. if he had any questions about the rules on probation, and J.S. responded negatively. The minute order listing the probation conditions contained spaces for the judicial officer and J.S.’s signature, but neither signed it.

DISCUSSION

The juvenile court has wide discretion to select probation conditions. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) The sole issue on appeal is the consequence of the incongruity between the court’s oral pronouncement of probation conditions and its written minute order. J.S. argues that this court should follow the oral pronouncement and strike the added provisions in the minute order. Respondent argues that the minute order trumps the oral statement. We conclude that the case should be remanded for clarification because the record does not reveal whether the minute order contained clerical error or whether instead the court intended to impose new conditions.

Faced with a difference between the oral pronouncement of probation conditions and a written minute order, courts including our Supreme Court have relied on the oral statement. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Rodriguez* (2013) 222 Cal.App.4th 578, 586-587; *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.) Other courts have relied on a trial court's written minute order. (See, e.g., *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018.) Reliance on either may be correct depending on the surrounding circumstances. (*People v. Harrison* (2005) 35 Cal.4th 208, 237 ["[W]hether one portion of the record should prevail as against contrary statements in another portion of the record will depend on the circumstances of each particular case."].)

In this case, the record does not indicate that the judicial officer intended to modify or augment the conditions orally imposed. Instead, the record suggests the minute order imposing additional probation conditions may have been clerical error because it was not signed by the judicial officer. On that basis, this case is different from *People v. Thrash* (1978) 80 Cal.App.3d 898 (*Thrash*) and *In re Frankie J.* (1988) 198 Cal.App.3d 1149.

In *Thrash*, a probation order was amended to include additional probation conditions, and the court signed it nunc pro tunc. (*Thrash, supra*, 80 Cal.App.3d at p. 900.) The revised order included a travel restriction and the defendant received copy of the revised order. (*Ibid.*) *Thrash* holds that oral pronouncement of a probation condition is not required "as long as the defendant knows what is required." (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373.) In *Thrash*, there was no dispute that the court intended to impose the additional conditions in the revised order. In contrast, here the court did not sign the order

containing the additional probation conditions and the record does not otherwise reflect that the court intended to impose the additional conditions.

In *In re Frankie J.*, *supra*, 198 Cal.App.3d 1149, the court referred to the “ ‘usual terms and conditions’ ” of probation, and the minor signed a form describing the terms and conditions of probation. (*Id.* at pp. 1152, 1154.) Here, in contrast, the trial court made no reference to the conditions J.S. challenges. Therefore, the record here does not show that the court intended to impose the usual terms and conditions of probation.

Respondent correctly points out that a trial court is not required to “ ‘spell[] out’ ” conditions of probation “in great detail in court as long as the defendant knows what they are” (*In re Frankie J.*, *supra*, 198 Cal.App.3d at p. 1155.) But here there is no evidence that J.S. had knowledge of the conditions in the unsigned minute order. The court did not refer to a preprinted form when oral stating the conditions of probation. J.S. did not sign the minute order, and no other evidence supported the inference that J.S. was informed of those conditions. Respondent’s related argument that the court may modify conditions after oral pronouncement so long as the probationer is made aware of them is not persuasive in this case because there was no evidence J.S. was made aware of the conditions as listed in the minute order.

Based on the record, we cannot determine whether the conditions J.S. challenges were intentionally imposed or the result of clerical error. We therefore remand the issue to the court for clarification.

DISPOSITION

The case is remanded to the juvenile court to clarify whether the challenged probation conditions were the result of clerical error or were intentionally included in the minute order. In all other respects, the dispositional order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.