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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

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

C077586

THE PEOPLE,

(Super. Ct. No. JV134962)

Plaintiff and Respondent,

v.

M.T.,

Defendant and Appellant.

The minor, M.T., appeals the dispositional order finding him in violation of probation, challenging the underlying condition of probation as vague. As we will explain, we lack jurisdiction to address this claim. He also contends the juvenile court failed to specify his maximum term of confinement and to award predisposition custody credit. The People seek remand to specify the maximum term and award the minor any

credit to which he is entitled. We shall remand for credit calculation and direct the juvenile court to amend the dispositional order to include the maximum term of confinement as well as any credit applicable thereto.

BACKGROUND

On March 13, 2013, M.T. offered two boys, ages six and seven, \$20 if they would follow him. He intended to ask them to pull down their pants and expose their genitalia while he watched for his own sexual arousal or gratification.

The minor was charged by petition filed pursuant to Welfare and Institutions Code section 602, subdivision (a)¹ with various sexual offenses and trespass counts. He admitted unlawful contact or communication with the two victims with the intent to commit a lewd and lascivious act with them. (Pen. Code, § 288.3.) The juvenile court dismissed the remaining counts.

At the September 13, 2013, dispositional hearing, the court adjudged the minor a ward of the court, committed him to juvenile hall until he could be placed at a Level A² group home, and awarded him custody credits. The court imposed various terms and conditions of probation, including that the minor “[n]ot be without parental or responsible adult supervision when you know or reasonably should know you are in the presence of children under the age of 14 years.” (The court explained: “You must be with parental or a responsible adult supervision when you are in the presence of children under the age of 14. So you have to have your parents or a responsible adult with you.”)

On March 13, 2014, the probation officer filed a supplemental section 602 petition, alleging a violation of probation (VOP) and seeking modification of previous orders including Level B placement. The minor admitted the VOP. On April 29, 2014,

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Sacramento County Superior Court Local Rules, rule 22.15.5, subd. (A) (Level A); see also rule 22.15.5, subd. (B) (Level B).

the juvenile court committed the minor to juvenile hall to be placed at a Level B facility in Utah. The new dispositional order included the probationary condition at issue, noting that it had been “[i]mposed 9/13/13.”

On June 6, 2014, the juvenile court modified the orders to release the minor to the custody of his father, with an electronic monitor. The minute order from that hearing included an advisement nearly identical to the probation condition at issue.

The record provided to us does not reflect that any of the orders we have detailed *ante* were appealed to this court.

In August 2014, the probation officer learned the minor had been in a bedroom with his four-year-old sister, unsupervised. The probation officer filed a juvenile wardship petition alleging a VOP under section 777, subdivision (a). The petition alleged the minor had been in the presence of a child under the age of 14 years old without parental or responsible adult supervision, contrary to the condition of his probation precluding this interaction. Following a contested hearing, the juvenile court found the minor had violated his probation, and on September 16, 2014, committed him to juvenile hall for time served and to Level B placement in Pennsylvania. On October 1, 2014, the minor timely appealed from “the findings and judgment . . . entered on September 16, 2014.”

DISCUSSION

I

Jurisdiction to Hear the Challenge to the Probation Condition

The minor first contends the dispositional order finding him in violation of probation must be reversed, “because the special condition he was found to have violated . . . was void for vagueness.” We requested supplemental briefing, asking whether we have jurisdiction to hear this claim, noting that the juvenile court had first imposed the probation condition at issue in a dispositional order filed on September 13, 2013. Without citing any authority to support his claim, the minor answers that we have

jurisdiction because he is appealing *from the September 16, 2014, dispositional order* finding him in violation of probation. That argument ignores the point that the minor now attempts to challenge a *probation condition imposed in September 2013*.

“A minor may appeal a judgment in a . . . section 601 or 602 proceeding ‘in the same manner as any final judgment.’ [Citation.] The juvenile court’s jurisdictional findings are not immediately appealable and the appeal is taken from the order made after the disposition hearing. [Citation.] The minor may also appeal any subsequent order in such proceedings ‘as from an order after judgment.’ [Citation.]” (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138 (*Shaun R.*)). However, a minor “who elects not to appeal an order granting . . . probation cannot raise claims of error with respect to the grant . . . of probation in a later appeal from a judgment following revocation of probation.” (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421.) The juvenile court imposed the probation condition at the September 2013 disposition hearing. Although the minor could have challenged the condition within 60 days after it was imposed (Cal. Rules of Court, rule 8.406(a)(1)), he did not do so. Thus the minor’s challenge to the probation condition is not timely.³ (*Shaun R., supra*, 188 Cal.App.4th at p. 1138.)

A timely notice of appeal is “ ‘essential to appellate jurisdiction.’ ” [Citation.]” (*Shaun R., supra*, 188 Cal.App.4th at p. 1138.) Without it, we cannot consider the issue. “If a party fails to appeal an appealable order within the prescribed time, this court is without jurisdiction to review that order on a subsequent appeal. [Citations.]” (*In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 219.) The minor’s failure to challenge the probation condition by appealing from the prior appealable orders to which his challenge

³ We note that even had the minor purported to appeal from the *final* re-imposition of the order at issue, the challenge comes way too late. (See *Shaun R., supra*, 188 Cal.App.4th at p. 1139 [“We do not agree that the routine continuation of a previous order without change revives the right to appeal the merits of a previous order that has become final”].)

pertains prevents us from now considering the issue. (*Shaun R.*, at p. 1139; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1149–1150, 1156.)

II

Maximum Confinement and Credits

The parties agree that the juvenile court did not specify the minor’s period of maximum confinement at the dispositional hearing, nor is it included in the orders. The maximum term of confinement in this case is four years. (Pen. Code, §§ 288, subd. (a), 288.3, 664, subd. (a).) This term should be reflected in the dispositional order.

“If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” (§ 726, subd. (d)(1).)

The parties also agree that the minor may be entitled to custody credit and ask that we remand for a predispositional credit determination. A “minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing. [Citations.] It is the juvenile court’s duty to calculate the number of days earned, and the court may not delegate that duty. [Citations.]” (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.)

At the August 1, 2013, jurisdictional hearing, the juvenile court ordered the minor to serve 184 days in juvenile hall with credit for 184 days served. At the April 29, 2014, settlement conference on the March violation of probation, the juvenile court committed the minor to juvenile hall to serve 208 days with credit for 208 days of time served. The June 18, 2014, probation department memorandum indicates the minor had served 444 days in custody. The August 7, 2014, memorandum reflects the *same dates in custody* as the June memorandum, but then indicates the minor had served 448 days in custody

rather than 444. At the September 16, 2014, VOP hearing, the juvenile court committed the minor to juvenile hall to serve 22 days with credit for 22 days of time served. We agree with the parties the record is unclear and the matter must be remanded for the juvenile court to determine the proper amount of predisposition custody credit.⁴

DISPOSITION

The matter is remanded to the juvenile court with directions to calculate the minor's predisposition custody credit and amend its September 16, 2014, dispositional order to reflect the minor's maximum term of confinement as well as any credit, and to supply the amended order to the appropriate authorities. The dispositional order is affirmed as modified.

DUARTE, J.

We concur:

RAYE, P. J.

ROBIE, J.

⁴ Indeed, the minor's briefing first requests 206 days of credit, then 202, and ultimately agrees with the People that remand is required.