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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOHNNY E., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY E.,

Defendants and Appellants.

D060192

(Super. Ct. No. J224014)

APPEAL from a judgment of the Superior Court of San Diego County, Browder A. Willis III, Judge. Affirmed in part, reversed in part and remanded with instructions to modify the probation conditions.

Johnny E., a minor, appeals his adjudication as a ward of the court, arguing several of his probation conditions are constitutionally overbroad because they lack a scienter requirement. He also argues the probation conditions related to "gang" association are

vague and should be modified to refer to "criminal street gangs." The People agree with Johnny's proposed modifications to his probation conditions.

## FACTUAL AND PROCEDURAL BACKGROUND

Johnny admitted he stole a pair of shoes from J.C. Penney in Fashion Valley Mall on May 25, 2011. On July 25, 2011, he was adjudicated a ward of the court, placed in a residential facility, and given probation subject to a number of probation conditions.

## DISCUSSION

### I

Johnny asserts that some of his probation conditions do not contain a knowledge requirement, which could cause him to violate his probation without realizing it. Probation conditions " 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) Specifically, "conditions of probation must include scienter requirements to prevent the conditions from being overbroad." (*People v. Patel* (2011) 196 Cal.App.4th 956, 960.) Without an express knowledge requirement, a probation condition is unconstitutionally vague. (*Sheena K.*, at p. 891.) We agree Johnny's probation conditions specified in the disposition are unconstitutionally vague without a scienter requirement. Instead of reading an implied scienter requirement into all probation conditions, we instruct the trial court to modify the specifically challenged probation conditions presented by Johnny to include the word "knowingly" as set forth in the disposition. (See *People v. Moses* (2011) 199 Cal.App.4th 374, 381.)

## II

Johnny also argues that his gang-related probation conditions are overly broad and impermissibly vague. The term "gang" can be overly broad and vague when used in a probation condition. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 629-631; *People v. Leon* (2010) 181 Cal.App.4th 943, 951.) "Although 'gang' has in the recent past likely acquired generally sinister implications, the word has considerable benign connotations[,] such as " 'a group of persons working under the same direction or at the same task' " or " 'a group of persons drawn together by a community of tastes, interests, or activity.' " (*People v. Lopez, supra*, 66 Cal.App.4th at p. 631, citing Webster's New Internat. Dict. (3d ed. 1986) p. 934.)

Here, the term "gang" in Johnny's probation conditions provides no notice about the particular standard of conduct required of him or what groups of people are acceptable or unacceptable to associate with or emulate. We instruct the trial court to modify Johnny's probation conditions as set forth in the disposition to refer to a "criminal street gang."

## DISPOSITION

We direct the trial court to modify its July 25, 2011, minute order imposing Johnny's probation conditions to include the italicized language in the pertinent probation conditions as follows:

"The minor shall not *knowingly* leave the County of San Diego without permission of the Probation Officer. [¶] . . . [¶]

". . . The minor shall not *knowingly* leave the Court ordered placement without permission of a parent or guardian. [¶] . . . [¶]

"The minor shall not *knowingly* use or possess alcohol, a controlled substance, or any substance the minor knows or reasonably should know is a mind altering substance without a valid prescription and shall submit to testing for the detection of alcohol, controlled substances, or mind altering substances whenever directed by any law enforcement or Probation Officer. [¶] . . . [¶]

"The minor shall not *knowingly* be within 500 FEET of JC PENNY IN FASHION VALLEY MALL.

"The minor shall not *knowingly* use, possess, transport, sell or *knowingly* have in or under his/her control any firearm, replica, ammunition or other weapon, including a knife, any explosive, or any item intended for use as a weapon, including hunting rifles or shotguns.

"The minor shall not *knowingly* wear any item of clothing such as a hat, bandanna, badge, logo, jewelry, or *knowingly* possess any gang paraphernalia including photos or graffiti, or *knowingly* use a hand sign or name that the minor knows or reasonably should know identifies the minor with 'SKYLINE' *criminal street* gang, or any other known *criminal street* gang.

"The minor shall not *knowingly* associate with or be in the company of any person the minor knows or reasonably should know is a member of 'SKYLINE' or any other known *criminal street* gang and further, shall not *knowingly* wear any item of clothing such as a hat, bandanna, logo, jewelry, or *knowingly* possess any gang paraphernalia including photos or graffiti that the minor knows or reasonably should [know] is associated with the above named *criminal street* gang, or any other known *criminal street* gang."

Finally, we reiterate our advice in *People v. Moses*, *supra*, 199 Cal.App.4th at p. 381 that the trial court should revise any standard form probation conditions to avoid these constitutional challenges repeatedly raised on appeal before this court.

All other probation conditions for Johnny should remain unchanged. As modified, the judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.