

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

THE PEOPLE,

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

D068545

(Super. Ct. No. J229106)

APPEAL from a judgment of the Superior Court of San Diego County, Roderick W. Shelton, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

From 2011 to 2013, the district attorney filed four petitions against K.M. (Minor) for unrelated incidents. For each petition, the juvenile court declared Minor's wardship under Welfare and Institutions Code section 602¹ and placed or continued her on probation. In 2015, the court found that Minor satisfactorily completed her terms of probation for the offense alleged in the last petition and sealed the records relating to that petition. The court did not seal the records relating to her prior petitions. Minor contends the court erred by not sealing the records pertaining to her prior petitions under section 786² because the court's findings regarding probation necessarily also applied to her prior petitions. We conclude the court did not err and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Petition No. 1: F8603*

In May 2011, the district attorney filed petition F8603 against Minor, who was 13 years old at the time. The juvenile court declared her wardship after she admitted to violating Vehicle Code section 10851, subdivision (a), as alleged in the petition. The court placed Minor on probation and committed her to the Breaking Cycles program for a maximum term of 240 days.

¹ Subsequent unspecified statutory references are to the Welfare and Institutions Code.

² Subsequent unspecified references to section 786 are to the version effective January 1, 2015, to December 31, 2015. (Stats. 2014, ch. 249, § 2, p. 2506.)

2. *Petition No. 2: F9505*

In August 2011, while Minor was on probation, the district attorney filed a second petition (F9505) against her, alleging she had been under the influence of alcohol at school. She admitted the offense (Pen. Code, § 647, subd. (f)), which established a violation of her existing terms of probation. The court continued Minor's wardship and probation and extended her commitment to Breaking Cycles by 90 days. Between September 2011 and mid-2012, Minor admittedly violated the terms of her probation several more times.

3. *Petition No. 3: G2273*

In August 2012, again while still on probation for her prior offenses, the district attorney filed a third petition (G2273) against Minor, relating to an incident where she punched and kicked a girl in juvenile hall. She admitted the offense of misdemeanor battery (Pen. Code, § 242) alleged in the new petition and violating her probation terms for the F9505 offense. The court continued Minor's wardship and probation. In March 2013, following the recommendation of Minor's probation officer, the court found that Minor had successfully complied with her terms of probation for the battery offense and terminated its jurisdiction.

4. *Petition No. 4: G5291*

In October 2013, the district attorney filed a new petition (G5291) against Minor, relating to an incident where she physically fought and kicked another student at school. She admitted the offense of battery on school grounds (Pen. Code, § 243.2, subd. (a)(1)) alleged in the new petition. The juvenile court declared Minor a ward, placed her on

probation, and ultimately, committed her to Breaking Cycles for a period not to exceed 150 days.

In June 2015, Minor's probation officer reported on Minor's activities in 2014 and 2015, noted her satisfactory compliance with probation terms for her current offense, and requested the records for G5291 be sealed. Minor did not request sealing for any of her prior petitions, and the court did not address or consider her performance on probation relating to her past offenses. Following a hearing, the juvenile court found that Minor had performed satisfactorily on probation, dismissed petition G5291, ordered that the "arrest upon which G5291 is based is deemed never to have occurred[.]" sealed all records relating to her current petition, and terminated jurisdiction.

Minor timely appealed the court's June 2015 order on the ground that records pertaining to her first three petitions (F8603, F9505, G2273) were not sealed.

DISCUSSION

Minor contends the juvenile court erred by not sealing the records relating to her first three petitions under section 786.³ According to Minor, she satisfactorily completed probation on the offenses alleged in those petitions and the trial court's finding of her satisfactorily completing probation on the offense alleged in the fourth petition (G5291, battery on school grounds) also encompassed her prior offenses back to 2011. She argues section 786 contemplates the sealing of "all eligible juvenile records and not simply the

³ The People argue that Minor forfeited her claim since she never presented the issue of sealing her prior petitions to the juvenile court. Although this argument is well taken, we will exercise our discretion to consider the legal question presented. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887.)

last petition" and *In re Y.A.* (2016) 246 Cal.App.4th 523 (*Y.A.*), was incorrectly decided.

The 2015 version of section 786 provides in pertinent part: "*If the minor satisfactorily completes . . . a term of probation for any offense not listed in subdivision (b) of Section 707, the court shall order the petition dismissed, and the arrest upon which the judgment was deferred shall be deemed not to have occurred. The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court. . . .*" (Italics added.)

When the sealing order was issued, the unambiguous language of section 786 required the court to seal records pertaining to a petition based upon first finding that the minor satisfactorily completed probation for an offense alleged in the petition. (§ 786; *Y.A., supra*, 246 Cal.App.4th at pp. 526-527.) Section 786 does not authorize a juvenile court to seal the records of a prior petition based merely on a minor's satisfactorily completing probation for an offense alleged in a later-filed petition. (*Y.A., supra*, at p. 527 ["Nowhere in the statute is there any reference to a *prior* petition."].) The fact that a minor's probation terms for offenses alleged in different petitions are combined or jointly supervised is not relevant to the sealing inquiry under section 786. (See *Y.A., supra*, at p. 527.)

Based on our review of the record, only Minor's last petition qualified for automatic sealing under section 786. As to her first and second petitions, there is nothing in the record to suggest she satisfactorily completed the terms of probation for those offenses. Contrary to her argument, in June 2015, the court made no explicit or implicit findings that Minor satisfactorily completed probation for any of her prior offenses.

Minor's probation officer recommended dismissal and sealing for only her last petition, Minor did not request her prior petitions be sealed, and the court did not address her performance on probation for the prior offenses.

Furthermore, although Minor was found in 2013 to have satisfactorily completed probation for her third offense (misdemeanor battery), there is no mechanism in the 2015 version of section 786 that permitted the court to seal her prior petition under the circumstances. (See *People v. Ledesma* (2006) 39 Cal.4th 641, 664 ["A new or amended statute applies prospectively only, unless the Legislature clearly expresses an intent that it operate retroactively."].) As the People point out, however, Minor possesses the ability to request sealing for her unsealed records through a different statute. (See § 781; Cal. Rules of Court, rule 5.830.)

We also reject Minor's arguments that the result reached in *Y.A.*, *supra*, 246 Cal.App.4th 523, undermines legislative intent, fosters judicial inefficiency, and does not account for a juvenile's probationary status over multiple petitions. Noting that the plain language of the statute is the most reliable indicator of legislative intent, the court in *Y.A.* expressly discussed that the minor was on probation for offenses alleged in multiple petitions and that section 786 only provided for automatic sealing of a "petition" under limited circumstances and did not supplant existing procedures for sealing records. (*Y.A.*, *supra*, 246 Cal.App.4th at pp. 526-527.) Minor fails to identify any ambiguity or uncertainty in the language of section 786.

In summary, the court's 2015 finding regarding satisfactorily completed probation related only to her last offense, and under section 786, the court properly limited its sealing order to the records of Minor's last petition, G5291.⁴

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.

⁴ We need not address Minor's arguments regarding the amended version of section 786, which did not go into effect until after her case terminated.