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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

E053842

(Super.Ct.No. INJ1100236)

OPINION

APPEAL from the Superior Court of Riverside County. Charles Everett Stafford, Jr., Judge. Affirmed as modified.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

The Riverside County District Attorney filed a Welfare and Institutions Code section 602 petition alleging that defendant and appellant D.T. (minor) committed a robbery (Pen. Code, § 211), and resisted arrest (Pen. Code, § 148, subd. (a)(1)). An amended petition was filed alleging grand theft of a person. (Pen. Code, § 487, subd. (c).) Minor admitted the grand theft, and the juvenile court dismissed the other two allegations. Minor's counsel requested that minor be evaluated to determine if he qualified as both a ward of the court and a dependent under Welfare and Institutions Code section 241.1. The probation department concluded that minor's father was not suitable to take care of minor, and that there were no other relatives available to take care of him. The court subsequently declared minor both a ward and dependent of the court and placed him on probation.

On appeal, minor contends that a probation condition requiring him not to be in the City of Desert Hot Springs, unless accompanied by an adult, is unconstitutional. The People concede and we agree that the condition should be modified to include a knowledge requirement. Otherwise, we affirm.

FACTUAL BACKGROUND¹

On April 8, 2011, in the City of Desert Hot Springs, minor and another male juvenile approached the victim at a bus stop. Minor flashed a "W" and "D" sign, which the victim assumed was the hand symbol for the "West Drive Locos" gang. Minor hit the

¹ These facts are taken from the probation officer's report.

victim in the jaw and head, and then proceeded to take the victim's wallet out of his pocket. Minor and the other male ran. Minor was eventually located and arrested.

ANALYSIS

The Probation Condition Was Constitutional

Minor's probation included a condition which states that he "[n]ot be on the following premises or areas: City of Desert Hot Springs unless accompanied by parents(s)/guardian(s)." Minor argues that this condition is impermissibly overbroad and vague, and that it infringes on his constitutional rights to travel and associate. He further claims that it is not narrowly tailored to address the state's interest in his reformation. We disagree.

The juvenile court "has wide discretion to select appropriate conditions and may impose "any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.'" [Citations.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)) "In an adult probation setting, '[a] condition of probation which (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality does not serve the statutory ends of probation and is invalid.' [Citations.]" (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 940 (*Antonio R.*)) "We review the judgment for a manifest abuse of discretion." (*In re G.V.* (2008) 167 Cal.App.4th 1244, 1250.)

At the outset, we note that minor claims the condition “completely banishes [him] from Desert Hot Springs.” He is wrong. The condition permits him to go to Desert Hot Springs when accompanied by a parent or guardian.

Furthermore, in support of his argument, minor relies on several cases where an *adult* probation condition was considered overbroad or unconstitutional. (*In re White* (1979) 97 Cal.App.3d 141 [a defendant found guilty of soliciting an act of prostitution was granted probation on the condition that she not go into certain high-prostitution areas of the City of Fresno; court held the condition prohibiting mere presence in a geographical area was unreasonable and too broad]; *People v. Beach* (1983) 147 Cal.App.3d 612 [an elderly widow convicted of involuntary manslaughter was placed on probation on the condition that she relocate from the community where she had resided for 24 years; appellate court struck the condition as unreasonably broad, not sufficiently related to future criminality, and violative of constitutional rights]; *People v. Bauer* (1989) 211 Cal.App.3d 937 [a defendant granted probation on the condition his residence be approved by the probation officer, effectively banishing him from living with or near his parents; condition found to be broad and an impingement on rights to travel and freedom of association].)

However, a juvenile court has significantly greater discretion in imposing conditions of probation than that exercised by an adult court when sentencing an adult to probation. (*Sheena K., supra*, 40 Cal.4th at p. 889.) This is because juvenile probation is not an act of leniency, but a disposition made in the minor’s best interest. (*Ibid.*) Accordingly, “a condition of probation that would be unconstitutional or otherwise

improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. [Citations.]” (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.) When the state asserts jurisdiction over a minor, it stands in the shoes of his parents, and a parent may curtail a child’s exercise of his constitutional rights. (*Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.) Accordingly, the court in *Antonio R.* upheld a constitutional challenge against a probation condition restricting a minor residing in Orange County from travelling to Los Angeles County, unless accompanied by a parent or with prior permission from his probation officer. (*Id.* at pp. 940-942.)

In the instant case, because the sustained petition was based on minor’s theft of a victim in Desert Hot Springs, the condition restricting his presence in that city is valid. It serves the dual purposes of rehabilitation and public safety by attempting to prevent a recurrence of minor’s misconduct through restricting his presence in the city where the theft occurred. Moreover, at the time of the offense, minor apparently flashed a gang hand symbol. Thus, requiring adult supervision of minor while in Desert Hot Springs will prevent him from meeting up with a gang member who may be associated with that area. The condition will also enable an adult to monitor him and ensure his behavior does not escalate into criminal conduct.

Minor also contends that the condition is unconstitutionally vague because it fails to include a knowledge requirement; he argues that the condition should be modified to include such a requirement. The People concede. We agree that restricting minor from being in Desert Hot Springs, without specifying that he *knows* he is in that city, could be

considered vague or overbroad (e.g., minor does not know the city limits). Thus, in the interest of clarity, the probation condition should be modified to include a requirement that minor must not “knowingly” be in Desert Hot Springs, unless accompanied by a parent or guardian.

DISPOSITION

The probation condition at issue is modified to read as follows: “Not knowingly be on the following premises or areas: City of Desert Hot Springs unless accompanied by parents(s)/guardian(s).” In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.