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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.A., Defendant and Appellant.	E054507 (Super.Ct.No. J235419) OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Kevin Vienna and Garrett Beaumont, Deputy Attorneys General, for Plaintiff and Respondent.

The San Bernardino County District Attorney filed a Welfare and Institutions Code[1] section 602 petition alleging that defendant and appellant J.A. (minor) committed battery. (Pen. Code, § 243, subd. (e)(1).) Minor denied the allegation. The juvenile court held a jurisdictional hearing and found the allegation true. Minor had previously been declared a ward of the court and was on probation at the time. The court continued him as a ward and on probation, under specified conditions.

On appeal, minor contends that a probation condition requiring him to stay out of the city of Ontario is unconstitutional and should be stricken. In the alternative, he argues that the condition should be modified to include a knowledge requirement. We affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND

An original section 602 petition was filed on October 14, 2010, alleging one count of the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a), count 1), and possession of marijuana upon the grounds of a K-12 school (Health & Saf. Code, § 11357, subd. (e), count 2). Minor was 13 years old at the time. The petition was amended to add one count of possession of concentrated cannibis (Health & Saf. Code, § 11357, subd. (a), count 3). Minor admitted count 3, and the court dismissed counts 1 and 2. The court found the allegation in count 3 true, declared minor a ward of the court, and placed him on probation under certain terms.

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[1] All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

On March 22, 2011, another section 602 petition was filed, alleging one count of vandalism (Pen. Code, § 594, subd. (b)(2)(A)), a misdemeanor. Minor admitted the allegation.

Before disposition on the vandalism petition, another section 602 petition was filed on May 9, 2011. This petition alleged that minor violated probation by smoking marijuana and getting drunk (count 1), failing to report to probation (count 2), and having unexcused absences from school (count 3). Minor was living with his mother in Ontario at the time. During a probation office visit, minor admitted that, on various dates, he smoked marijuana with his friends, and he came home drunk once from a party with friends.

The court dismissed the allegations in counts 1 and 2 on motion of the prosecutor. Minor admitted the allegation in count 3. At the disposition hearing on both the vandalism and probation violation petitions, minor was continued a ward and placed in the custody of his sister and her husband. He was continued on his original terms of probations, with two other conditions added. He was also accepted into drug court.

At a drug court review hearing on June 14, 2011, the court told minor that he was not allowed to go to Ontario. He was living with his sister in Rialto. The court said that if he needed to see his mother, who lived in Ontario, she would have to come over to his sister's house. The court stated, "You are going to have to work it out because you cannot go to Ontario and hang out with your old friends. It will ruin your sobriety and your efforts and your decision to become a different person." Minor agreed.

At the next drug court review hearing on June 21, 2011, the court asked minor why he went to Ontario when it told him not to. Minor's sister said she went to Las Vegas and left minor with her mother. Minor's mother told the court she did not understand why minor was not supposed to go to her house. The court explained that minor's sister felt that when minor went to Ontario, he "was associating with the . . . friends [who] got him into trouble in the first place." The court further stated, "[F]or now, he's not going only because he hangs out with bad kids. And it's important for him to be sober right now." The court said that minor was not allowed to go to Ontario, except with the permission of his sister. The court noted that minor was doing a good job staying sober.

On August 9, 2011, the current section 602 petition was filed, alleging one count of battery against a person minor was dating. (Pen. Code, § 24, subd. (e)(1).) Minor denied the allegation. The court detained him in juvenile hall. Minor said he still wanted to be in drug court, but the court was not sure what his status in drug court was at the time. The court then asked minor why he went to Ontario again, when it had instructed him to stay away. Minor's sister admitted that she sent minor back to his mother's house because she was "really mad at him," and did not want to talk to him anymore. The court said, "I am not saying him being in Ontario is a violation at this point. I am just saying that he seems to get into trouble when he goes [into] Ontario." Minor's sister said she told minor that as long as he helped her and respected her family members, he was allowed to go back there.

A jurisdictional hearing was held on August 29, 2011, and the victim, Jane Doe, testified that minor was her boyfriend. She said that on August 6, 2011, she and minor started arguing. She tried to walk away, but he grabbed her arm and pulled her back. He then pushed her against a wall, choked her, and punched her in the lower lip. The victim's mother testified that she was driving around looking for her daughter, when she saw minor punch her daughter. The incident occurred in Ontario. Minor testified and denied choking the victim, throwing her against a wall, or hitting her.

The court found the battery allegation to be true. The court addressed minor and said, "This is . . . the reason I didn't want you stepping foot in Ontario. We talked about it. What did I say? Don't go to Ontario. And you kept pushing the limit. And your mom allows it, for whatever reason. And now you're back in custody." The court continued to have minor detained.

At a hearing on August 30, 2011, the court addressed minor and asked him why he wanted to stay in drug court. Minor said, "Because that will be my future." The court said, "Of all the cities [in] the world, what city are you not allowed to go to?" Minor answered, "Ontario." The court said, "Of all [the] cities in the world, what city do you get in trouble in?" Minor said, "Ontario." The court asked him, "So why do you go there?" He replied, "I take the wrong path." After some discussion, the court continued him as a ward of the juvenile court, on terms and conditions previously given on November 29, 2010 and May 17, 2011. The court orally added probation terms, including No. 29: "Stay out of Ontario." Minor agreed. The court released him to the custody of his sister.

ANALYSIS

The Probation Condition Was Constitutional

Minor argues that the condition that he "[s]tay out of Ontario" 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.

At the outset, we note that, although minor did not object to this condition when it was imposed, we do not deem the issue forfeited on appeal, since the failure to object on the ground that a probation condition is unconstitutionally vague or overbroad is not forfeited on appeal. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143; *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

"The juvenile court has broad discretion in formulating conditions of probation. [Citation.] 'The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' [Citation.] In planning such conditions, ' "the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history. [Citations.]" [Citation.]' [Citation.] 'A condition of probation will be considered invalid if it (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. [Citation.]' [Citation.]" (*In re Jason J.* (1991) 233 Cal.App.3d 710, 714, [Fourth Dist., Div. Two], overruled on other grounds in *People v. Welch* (1993) 5 Cal.4th 228, 237.) "A condition of probation

which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court." (*In re Todd L.* (1980) 113 Cal.App.3d 14, 19.) "This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed. The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents. And a parent may 'curtail a child's exercise of the constitutional rights . . . [because a] parent's own constitutionally protected "liberty" includes the right to "bring up children" [citation,] and to "direct the upbringing and education of children." [Citation.]' [Citations.]" (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 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 battery of a victim in Ontario, the condition restricting his presence in that city is valid. Moreover, when minor was living with his mother in Ontario, he violated his probation by admittedly smoking marijuana with his friends after school and at a party. He also drank alcohol with them. We note that the drug court judge specifically and repeatedly instructed minor not to go to Ontario, since he seemed to get into trouble whenever he went there. Recognizing that minor was negatively influenced by his friends in Ontario, the court explicitly told him to stay out of Ontario so that he could get sober. Thus, the condition at issue 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 his offenses occurred, and where his friends who would inhibit his rehabilitation were located.

Minor further contends that the condition is unconstitutionally vague because it fails to include a knowledge requirement. He argues that the condition should be modified to "state clearly whether or not [he] is allowed to go to Ontario and under what circumstances." Minor notes that the court initially stated that he could go to Ontario with his sister's permission, but "apparently retracted that exception." The probation condition at issue expressly states that he is to stay out of Ontario. We note that, when the court previously allowed minor to go with his sister's permission, his sister sent him to Ontario simply because she was mad at him, despite knowing he tended to get in trouble in Ontario. In fact, during that time in Ontario, minor drank alcohol and committed the battery against his girlfriend.

We note the court's questioning of minor, asking him, "Of all the cities [in] the world, what city are you not allowed to go to?" The court also asked him, "Of all [the] cities in the world, what city do you get in trouble in?" Minor's correct response to both questions was, "Ontario." The court then asked minor why he kept going there. After more discussion, the court declared, "I am going to reiterate this Term[] and Condition[] No. 29: You'll stay away. Stay out of Ontario. [¶] . . . [¶] Can't go to your mom's house. She has to come see you." In light of the court's discussion and statement, we see no need to modify the condition, as minor requests, "to state clearly whether or not [he] is

allowed to go to Ontario and under what circumstances." The condition clearly states that he is not allowed to go there.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

KING
J.