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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.P.,

Defendant and Appellant.

E054890

(Super.Ct.No. J240068)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell, IV, Judge. Affirmed as modified.

Meldie M. Moore, 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's Office filed an amended Welfare and Institutions Code section 602 petition alleging that defendant and appellant D.P. (minor) committed second degree commercial burglary (Pen. Code, § 459, count 1), petty theft (Pen. Code, § 484, subd. (a), count 2), and three counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1), counts 3-5). The juvenile court dismissed counts 1 and 2 outright, minor admitted the allegation in count 4, and the court dismissed the remaining counts pursuant to the parties' agreement. The court subsequently declared minor a ward and placed him on probation, under specified conditions, in the custody of his parents.

On appeal, minor contends that a few of the probation conditions requiring him to stay away from the victims are unconstitutionally vague and overbroad and should be modified to include a knowledge requirement. He further claims that one of the conditions is "confusing, vague and conflicting." We agree that the terms at issue should be modified to include a knowledge requirement. Otherwise, we affirm the judgment.

FACTUAL BACKGROUND

On July 30, 2011, ABC Channel 7 News reporter Leanne S. and her photographer, Richard K., were doing a "live feed" for the news program, when Leanne S. heard a "plinking" sound. Minor and his friends were shooting BB guns across the street. They saw the news van and started shooting at it. Minor admitted that he shot at the news van once. The van was reportedly hit four or five times, and one of the pellets hit Leanne S.'s thumb, causing a small puncture wound. She and the photographer jumped inside the van

to take cover. Minor also shot at one of his friends who was with him and decided to leave the scene. As he started walking away, minor shot at him and missed.

The Probation Conditions Should Be Modified to Include a Knowledge Requirement

Upon the recommendation of the probation officer, the court placed minor on probation in the custody of his parents. Minor now contends that condition Nos. 20-23 are overbroad and vague, and should be modified to include a “knowledge” requirement. He also argues that condition No. 22 should be rewritten to make it clearer. The People merely respond that the court’s statements and the record support the dispositional order, but fail to address minor’s specific arguments. We agree that condition Nos. 20-23 should include a knowledge requirement, but conclude that the court adequately clarified condition No. 22 below.

At the outset, we note that minor objected to condition No. 22 below, but did not object to condition Nos. 20, 21, and 23. Although he did not object to these conditions when they were 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 (*Sheena K.*))

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.]” (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) “The juvenile court’s broad discretion to fashion appropriate conditions of probation is distinguishable from that exercised by an

adult court when sentencing an adult offender to probation. Although the goal of both types of probation is the rehabilitation of the offender, ‘[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor’s reformation and rehabilitation.’ [Citation] ‘[J]uvenile probation is not an act of leniency, but is a final order made in the minor’s best interest.’ [Citation] [¶] In light of this difference, 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, 81-82, disapproved on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

Furthermore, “[t]rial courts have broad discretion to set conditions of probation in order to ‘foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.’ [Citations.] . . . [¶] However, the trial court’s discretion in setting the conditions of probation is not unbounded.” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624.) A term of probation is 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.”” (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), italics added.)

A. Probation Condition Nos. 20-23 Should Be Modified to Include a “Knowledge” Requirement

Minor first argues that the following four conditions are vague and overbroad and must be rewritten to only prohibit a *knowing* violation:

“20. Not associate or communicate with the victim, Richard [] K., or be within one hundred (100) feet of his property”;

“21. Not associate or communicate with the victim, Leanne [] S., or be within one hundred (100) feet of her property”;

“22. Not associate or communicate with the victim, ABC Channel 7 News, or be within one hundred (100) feet of the property”;¹

“23. Not associate or communicate with the victim, Ryan D., or be within one hundred (100) feet of his property.”

Minor specifically asserts that these conditions should be modified to require that he must either know or reasonably should know that he is within 100 feet of any of the victims’ property. We agree. A person may reasonably not know whether he is within 100 feet of a person’s property, if he does not know where the person’s property is located. (See *People v. Turner* (2007) 155 Cal.App.4th 1432, 1436.) The appropriate remedy is to modify these conditions to add a knowledge requirement, that minor not *knowingly* be within 100 feet of the victims’ property.

B. Condition No. 22 is Not Confusing or Conflicting

Minor argues that condition No. 22 is confusing since the minute order conflicts with the court’s verbal order regarding the words of the term. He contends that the term should be rewritten for clarification. We disagree.

¹ The court orally modified condition No. 22. See *post*, § B.

Condition No. 22 states that minor shall “[n]ot associate or communicate with the victim, ABC Channel 7 News, or be within one hundred (100) feet of the property.” Defense counsel objected below to the condition as unconstitutional, claiming that it was saying that “he [could] not communicate with the news.” The court overruled the objection, stating that “[t]here [were] hundreds of different news sources originating in Southern California . . . that term number 22 would not unconstitutionally limit his speech but merely limit his conduct with the employer and one of the named victims.” The court noted that the van that was shot was owned by ABC Channel 7 (ABC) and ABC was, therefore, a named victim. Defense counsel asked the court to strike “or be within 100 feet of the property,” and then stated that the condition needed to define what ABC’s property was. The court acknowledged that the news van traveled around, and noted that the only property it knew of that belonged to ABC was in the Burbank area. The prosecutor interjected that the term would not pose any problems, since it was obvious that if minor saw a Channel 7 news van, he would know to stay away from it, and he would also just need to avoid ABC’s actual headquarters. The court concluded the discussion as follows: “Why don’t we do this. Let me define it as stay 100 feet away from any ABC Channel 7 news van and corporate headquarters in Burbank, California.”

As minor now points out, the minute order states that term No. 22 was modified “to specify the property as news van and property location in Buena Park.” He claims that, as such, it is unclear whether he is ordered to stay away from the news van that was the subject of the assault, or from any ABC Channel 7 news van, and whether he is ordered to stay away from the ABC Channel 7 News property in Buena Park or the

corporate headquarters in Burbank. However, it appears that a clerical error was made in the minute order. The court clearly ordered that minor was to stay away “from any ABC Channel 7 news van and [the] corporate headquarters in Burbank, California.” In other words, contrary to minor’s claim, there is no need for the term to be rewritten since the minute order was simply erroneous. Ordinarily, we would correct the clerical error to make the record reflect the court’s actual order. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) However, such correction is not essential here, since we are ordering the condition to be modified to add a knowledge requirement, as discussed *ante*. The court’s true order will be reflected in the modification.

DISPOSITION

Minor’s probation terms are modified as followed:

Probation condition No. 20 is modified to read: “Not associate or communicate with the victim, Richard [] K., or knowingly be within one hundred (100) feet of his property.”

Probation condition No. 21 is modified to read: “Not associate or communicate with the victim, Leanne [] S., or knowingly be within one hundred (100) feet of her property.”

Probation condition No. 22. is modified to read: “Not knowingly be within one hundred (100) feet from any ABC Channel 7 News van or ABC Channel 7’s corporate headquarters in Burbank, California.”

Probation condition No. 23 is modified to read: “Not associate or communicate with the victim, Ryan D., or knowingly be within one hundred (100) feet of his property.”

In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.