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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

V.E.,

Defendant and Appellant.

E055527

(Super.Ct.No. INJ021737)

OPINION

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

Jesse W.J. Male, 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, Melissa Mandel and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

On December 19, 2011, a petition under Welfare and Institutions Code section 602 alleged that defendant and appellant, V.E. (minor), willfully and unlawfully resisted a public officer in the course of duty, in violation of Penal Code section 148, subdivision (a)(1).

On January 10, 2012, the juvenile court found the allegation true. Following a disposition hearing on January 25, 2012, the court adjudged minor a ward of the court, released him to the Department of Public Social Services, and placed him on probation.

Minor filed his notice of appeal on January 25, 2012.

II

STATEMENT OF FACTS

On December 18, 2011, around 3:00 p.m., Deputy Sheriff Donald Vincent Brooks responded to a call that there was an “incorrigible minor” at the Guiding Light Group Home. Dispatch informed the deputy that minor was armed with a chain that had a lock attached to it. Upon arrival, Deputy Brooks saw minor on the street and asked minor to come over to the deputy’s car. When minor walked over to the car, the deputy ordered minor to put his hands behind his back. Minor did not comply and kept his hands on his head. Deputy Brooks then put minor’s right hand behind his back, but minor refused to allow the deputy to touch his left hand. Deputy Brooks warned minor “not to get tough”

with him, and again tried to put minor's left hand behind his back; minor jerked away. Deputy Brooks then put minor on the ground and handcuffed him.

III

ANALYSIS

On appeal, minor contends that three of the imposed probation terms are unconstitutionally overbroad and vague because they prohibit him from taking prescription medication, meeting with pharmacists or persons taking prescription medication, and associating with lawful graffiti artists.

A. Background

Two reports by minor's probation officer summarized minor's prior history of substance abuse and gang affiliation. Minor first consumed tobacco, alcohol, and marijuana when he was 11 years old. He smoked approximately a pack of cigarettes a week through June 3, 2011. Defendant also drinks approximately an 18-pack of beer a month, or three liters of whiskey a month. Additionally, minor smokes approximately one marijuana "joint" a week; he last smoked on June 3, 2011.

Despite his substance abuse problems, minor has refused to attend the drug and alcohol program at his group home. He also had multiple incidents involving marijuana and alcohol usage while living in his current group home.

Furthermore, minor was previously associated with a tagging crew gang called the "Desierto Criminal Krew." Minor was identified by law enforcement as a gang member, and he was also identified by gang clothing and graffiti.

As a result of minor's history, the probation officer recommended that minor be placed on an increased level of probation. The officer also recommend that minor be prohibited from consuming or possessing controlled substances, associating with persons possessing controlled substances, and associating with those engaged in gang activities and graffiti-related activities.

At the disposition hearings on July 6, 2011, and January 25, 2012, the juvenile court stated that it had read and considered the probation officer's reports. The court then placed minor on probation on certain terms and conditions. On appeal, minor challenges the following terms:

"k. Not knowingly possess, consume, inhale, or inject any intoxicants, alcohol, narcotics, aerosol products, or other controlled substances, poisons, illegal drugs, including marijuana, nor possess related paraphernalia."

"l. Not associate with anyone known to the minor to be in possession of, sells, or uses any controlled substances or any related paraphernalia."

"p. Not associate with non-relative individuals who he/she knows are members of a 'criminal street gang' as defined in Penal Code section 186.22, subdivision (f), or with persons he/she knows are engaged in graffiti related activities."

B. Probation Terms k and l

Minor contends that the "controlled substances" probation condition, term k, is overbroad because it prohibits use of prescription medications. In a related argument, minor contends that the "controlled substances" references in term l is also overbroad

because it prohibits minor from associating with people legally possessing, selling or using any controlled substance (i.e., pharmacists).

“A probation condition is constitutionally overbroad when it substantially limits a person’s rights and those limitations are not closely tailored to the purpose of the condition.” (*People v. Harrison* (2005) 134 Cal.App.4th 637, 641, citing *In re White* (1979) 97 Cal.App.3d 141, 146 [“. . . The Constitution, the statute, all case law, demand and authorize only “reasonable” conditions, not just conditions “reasonably related” to the crime committed.’ [Citation.] [¶] Careful scrutiny of an unusual and severe probation condition is appropriate [citation].”].) “[C]onditions of probation that impinge on constitutional rights must be tailored carefully and ‘reasonably related to the compelling state interest in reformation and rehabilitation’ [Citation.]” (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.) Similarly, “[a] probation condition ‘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,’ if it is to withstand a challenge on the ground of vagueness. [Citation.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

Here, minor maintains that: (1) term k fails to distinguish between illegal controlled substances and legal prescription drugs; and (2) term l fails to distinguish between associating with known users/sellers of illegal controlled substances and those who are using/selling legally prescribed controlled substances. While we do not believe that these terms would be commonly misunderstood, or even would be misunderstood by minor, we find the language, in fact, very broad. “Controlled substances” are defined and

listed in Health and Safety Code sections 11054 and 11055. They include not only schedule I substances, which generally have no recognized medical use, like heroin (Health & Saf. Code, § 11054, subds. (c)(11) & (d)(13)), but many other commonly prescribed medications. Many of these substances are stored, dispensed, and used in hospitals and pharmacies.

In view of the great likelihood that minor will at some time either need a legal and legitimately prescribed controlled substance, or find himself in the company of someone who is taking a legal and legitimately prescribed controlled substance, or in a hospital or pharmacy, we agree that probation terms k and l should be modified to include the concept of illegality.

Therefore we order minor's terms of probation revised to read as follows:

“k. Not knowingly possess, consume, inhale, or inject any intoxicants, alcohol, narcotics, aerosol products, or other controlled, poisons, illegal drugs, including marijuana, nor possess related paraphernalia, without a medical prescription and even then, only after a written notice is given the probation officer by a physician.

“l. Not associate with anyone known to the minor to be in possession of, sells, or uses any illegal or illegally-obtained controlled substances or related paraphernalia.”

C. Probation Term p

Minor also contends that term p is overbroad because it infringes on his right of association, and it is not narrowly tailored because it prevents him from associating with those engaged in lawful works of graffiti. The People agree.

In *People v. Lopez* (1998) 66 Cal.App.4th 615, a similar issue was presented. There, the court modified a probation condition that barred the defendant from any gang association, involvement in gang activities, display of any gang markings, or wearing of gang clothing. (*Id.* at p. 622.) That court found the term constitutionally vague and overbroad in that it failed to put defendant on proper notice with whom he was prohibited from associating, what he could wear, and what activities he might lawfully engage in. (*Id.* at pp. 628-631.) Noting that the term “gang” has both sinister and benign connotations, the court incorporated into the probation condition the definition of a criminal street gang, as set forth in Penal Code section 186.22. (*Id.* at p. 634.) The court stated that the modification would eliminate any due process concerns, and the defendant will be unambiguously notified of the standard of conduct required of him. (*Ibid.*)

In this case, modifying term p to prohibit minor’s association with anyone engaged in unauthorized graffiti-related activities will eliminate concerns about vagueness or overbreadth.

Therefore we order minor’s terms of probation revised to read as follows:

“p. Not associate with non-relative individuals who he/she knows are members of a ‘criminal street gang’ as defined in Penal Code section 186.22, subdivision (f), or with persons he/she knows are engaged in unauthorized graffiti related activities.”

IV

DISPOSITION

We hereby modify minor’s conditions of probation to read as follows:

(1) Term k: “Not knowingly possess, consume, inhale, or inject any intoxicants, alcohol, narcotics, aerosol products, or other controlled, poisons, illegal drugs, including marijuana, nor possess related paraphernalia, without a medical prescription and even then, only after a written notice is given the probation officer by a physician.”

(2) Term l: “Not associate with anyone known to the minor to be in possession of, sells, or uses any illegal or illegally-obtained controlled substances or related paraphernalia.”

(3) Term p: “Not associate with non-relative individuals who he/she knows are members of a ‘criminal street gang’ as defined in Penal Code section 186.22, subdivision (f), or with persons he/she knows are engaged in unauthorized graffiti related activities.”

In all other respects, the judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.