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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.K.,

Defendant and Appellant.

E057973

(Super.Ct.No. J241198)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen,  
Judge. Affirmed as modified.

Sheila O'Connor, 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, Eric A. Swenson and Warren  
Williams, Deputy Attorneys General, for Plaintiff and Respondent.

On July 5, 2012, the San Bernardino County District Attorney filed a juvenile wardship petition alleging that defendant and appellant D.K. (minor) committed vandalism under \$400. (Pen. Code, § 594, subd. (b)(2)(A), count 1.)<sup>1</sup> At a jurisdictional hearing, a juvenile court found the allegation true and continued the case for a dispositional hearing. On November 8, 2012, a first amended juvenile petition was filed on an unrelated case. That petition alleged that minor had committed misdemeanor battery on school, park, or hospital property (§ 243.2, subd. (a)(1), count 1), misdemeanor battery (§ 242, count 2), and assault with a deadly weapon (§ 245, subd. (a)(1), count 3). The court dismissed counts 1 and 3, and minor admitted the allegation in count 2. On December 27, 2012, the court held a dispositional hearing on both cases. The court declared minor a ward and placed her on probation under the terms recommended by the probation department.

On appeal, minor contends that two of her probation conditions should be modified since they are unconstitutionally overbroad. We agree. In all other respects, we affirm the judgment.

## ANALYSIS

### The Probation Conditions Should Be Modified

Minor challenges two of her drug-related probation conditions as being overbroad. These conditions require her to: (1) “Not associate with any personally known user or

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

seller of controlled substances or be in a location known by the probationer to be a place where controlled substances are used or sold” (condition No. 10); and (2) “Neither use nor possess any drug paraphernalia as described in Health and Safety Code Section 11014.5 or Health and Safety Code Section 11364.5(d)” (condition No. 12). We agree that these probation conditions should be modified.

At the outset, we note that 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.) A “condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*Id.* at p. 890.)

Minor specifically argues that condition No. 10 is overbroad because it would prohibit her from associating with pharmacists or persons using medically necessary prescriptions. She requests this court to modify condition No. 10 to include the concept of the illegality of controlled substances. The People claim that “the concept of illegality is implied” in condition No. 10. The People further assert that the “only reasonable construction of ‘controlled substances’ is illegal substances,” and that it is unlikely that the term would be commonly misunderstood.

Condition No. 10 has the apparent purpose of protecting minor from drug abuse and the influence of drug dealers and abusers. However, it includes the term “controlled

substances,” which is very broad. Controlled substances are defined and listed in Health and Safety Code sections 11054-11058. The lists include not only illegal substances like heroin and marijuana (Health & Saf. Code, § 11054, subds. (c)(11), (d)(13)), but many commonly prescribed medications. Thus, condition No. 10, as written, may prohibit minor from associating with persons using or selling prescription medication. We ascertain no rehabilitative purpose in such restriction. “‘California Courts have traditionally been wary of using the probation system for any nonrehabilitative purpose, no matter how superficially rational.’ [Citation.]” (*People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1444, superseded by statute on other grounds, as stated in *People v. Moret* (2009) 180 Cal.App.4th 839, 853.) We conclude that condition No. 10 should be modified to read as follows: Not associate with any known user or seller of illegal controlled substances or be in a location known by the probationer to be a place where illegal controlled substances are used or sold.

Minor also contends that condition No. 12 is overbroad because it would prohibit her from the use of paraphernalia that may be used to take prescription medication. She requests that condition No. 12 be modified to exclude paraphernalia that is used to administer prescribed medications. The People argue that minor already must follow condition No. 11, which permits her to use or possess controlled substances with a medical prescription if the probation officer is notified, and that this term “would presumably include any prescribed means of taking such medication.” However, condition No. 11 does not mention the use of drug paraphernalia, while condition No. 12

specifically does. Moreover, we agree with minor in that we find no rehabilitative interest in preventing her from using instruments that may be necessary for taking prescription medication. Therefore, condition No. 12 should be modified to read as follows: Neither use nor possess any drug paraphernalia as described in Health & Safety Code section 11014.5 or Health and Safety Code section 11364.5, subdivision (d), except for any item used to administer a medication minor was prescribed.

#### DISPOSITION

Minor's probation conditions are modified as followed:

Probation condition No. 10 is modified to read: Not associate with any known user or seller of illegal controlled substances or be in a location known by the probationer to be a place where illegal controlled substances are used or sold.

Probation condition No. 12 is modified to read: Neither use nor possess any drug paraphernalia as described in Health and Safety Code Section 11014.5 or Health and Safety Code Section 11364.5, subdivision (d), except for any item used to administer a medication minor was prescribed.

As modified, the judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

MILLER  
J.