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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

E060342

(Super.Ct.Nos. J251689/VJ41246)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brian Saunders and Philip K. Mautino, Judges. Affirmed in part; reversed in part and remanded with directions.

Maria Leftwich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant D.G. (minor) admitted that she had committed felony child abuse (Pen. Code, § 237a, subd. (a)) and misdemeanor battery (Pen. Code, § 242). In exchange, the remaining allegation was dismissed.

Subsequently, minor was declared a ward of the court and placed on probation on various terms and conditions in the custody of her parents. On appeal, minor argues (1) the juvenile court abused its discretion in denying her deferred entry of judgment; (2) several of her probation conditions are vague and overbroad and must be modified; and (3) the juvenile court erred in failing to award her credits for the time she spent in custody in Los Angeles County.

We conclude several of minor's probation conditions are unconstitutionally vague and/or overbroad, and order the juvenile court to modify them. We also conclude minor is entitled to additional presentence custody credits, and direct the juvenile court to correct the dispositional minute order and the juvenile detention disposition report to reflect 48 days of presentence credits. Therefore, we reverse the judgment in part and remand for appropriate modifications to the terms of minor's probation. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

On April 6, 2011, minor pushed a girl to the ground and repeatedly hit her face, because minor believed the girl had gossiped about minor's younger sister and deceased father. Officers were called and minor was arrested for battery.

On June 9, 2011, a Welfare and Institutions Code section 602 petition was filed in Los Angeles County Superior Court alleging minor had committed misdemeanor battery (Pen. Code, § 242).

Minor was released from custody but subsequently failed to appear in court. On June 9, 2011, the Los Angeles County Juvenile Court issued a bench warrant for minor's arrest.

On September 19, 2013, minor and her adult boyfriend, Edwin Candela, brought their 18-month-old son to an emergency room claiming the child had ingested rat poison. However, the child's urine sample tested positive for amphetamine/methamphetamine. Police officers were called and arrived at the hospital a short time later. The officers observed the child crying, biting his lower lip, and locking his jaw. Medical staff described the child's behavior as symptomatic of methamphetamine ingestion.

The following morning, on September 20, 2013, officers questioned minor's boyfriend and searched his car. The search revealed live rounds of ammunition and a

¹ The factual background is taken from the probation reports.

large box of methamphetamine. Minor's boyfriend was arrested for possessing a controlled substance.

Officers thereafter questioned minor. She eventually admitted that her son may have ingested methamphetamine but did not know how the child had ingested the drug. She also admitted that she knew her boyfriend used methamphetamine and was selling methamphetamine. She explained that the methamphetamine was processed and packaged for sale in their bedroom but that her son was never around the drugs. Minor was arrested on the outstanding arrest warrant as well as for child abuse and possession of a controlled substance.

On September 23, 2013, the Los Angeles County District Attorney filed a second petition alleging that minor had committed felony child abuse (Pen. Code, § 273a, subd. (a)) and possession of methamphetamine for sale (Health & Saf. Code, § 11378).

On October 8, 2013, pursuant to a plea agreement, minor admitted the felony child abuse allegation (count 1). In return, the drug charge (count 2) was dismissed. On October 17, 2013, minor admitted the misdemeanor battery allegation. Both matters were then transferred to San Bernardino County, minor's county of residence, for disposition. Minor was transported to San Bernardino County Juvenile Hall on October 20, 2013.

The dispositional hearing was held on November 22, 2013. At that time, the court denied minor's request for deferred entry of judgment, declared minor a ward of the court, and placed her on probation in the custody of her parents on various terms and

conditions of probation. The court awarded minor 17 days for the time she spent in custody. This appeal followed.

II

DISCUSSION

A. *Deferred Entry of Judgment*

Minor claims the juvenile court abused its discretion by failing to properly consider minor's education, treatment, and rehabilitation when it denied her request for deferred entry of judgment. The People respond that minor was statutorily ineligible for deferred entry of judgment; and that even if she was eligible, the juvenile court properly denied minor's request for deferred entry of judgment.

After the juvenile court makes a jurisdictional finding, the juvenile court has three rehabilitative options: (1) informal probation; (2) deferred entry of judgment; and (3) formal probation. A juvenile court has discretion to grant deferred entry of judgment for a felony offense if a minor is both eligible and suitable. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607 (*Sergio R.*))

“Deferred entry of judgment is an ‘alternative’ to informal supervision. [Citation.] The deferred entry of judgment procedure is laid out in Welfare and Institutions Code section 790^[2] et seq. To be eligible for deferred entry of judgment, the minor must be

² “Welfare and Institutions Code section 790, as relevant here, provides:
‘(a) Notwithstanding Section 654 or 654.2, or any other provision of law, this article shall apply whenever a case is before the juvenile court for a determination of whether a minor is a person described in Section 602 because of the commission of a felony offense, if all of the following circumstances apply:

[footnote continued on next page]

alleged to have committed a felony. (Welf. & Inst. Code, § 790, subd. (a).) The minor also must meet certain additional requirements (*ibid.*); one is that ‘[t]he minor’s record does not indicate that probation has ever been revoked without being completed.’

(Welf. & Inst. Code, § 790, subd. (a)(4).) The minor must ‘admit[] the charges in the petition’ (Welf. & Inst. Code, § 791, subd. (b); see *id.*, subd. (a)(3).) However, the juvenile court does not make a jurisdictional finding. (See Welf. & Inst. Code, § 791, subd. (c).)” (*In re C.Z.* (2013) 221 Cal.App.4th 1497, 1503 [Fourth Dist., Div. Two].)

We review the juvenile court’s decision for abuse of discretion. (*In re Armondo A.* (1992) 3 Cal.App.4th 1185, 1189-1190.)

[footnote continued from previous page]

‘(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense.

‘(2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707.

‘(3) The minor has not previously been committed to the custody of the Youth Authority.

‘(4) The minor’s record does not indicate that probation has ever been revoked without being completed.

‘(5) The minor is at least 14 years of age at the time of the hearing.

‘(6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.

‘(b) . . . If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney. Upon a finding that the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. . . . The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted.’ ”

The juvenile court may “impose any . . . term of probation . . . that the judge believes would assist in the education, treatment, and rehabilitation of the minor and the prevention of criminal activity.” (Welf. & Inst. Code, § 794.)³ The deferral period lasts for 12 to 36 months. (§ 791, subd. (a)(3).) If the minor does not perform successfully during the deferral period, the court may make a jurisdictional finding and schedule a dispositional hearing. (§ 793, subd. (a).) If the minor does successfully complete the deferral period, “the charge or charges in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred and any records in the possession of the juvenile court shall be sealed” (§ 793, subd. (c).) “The [deferred entry of judgment] provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000.” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558 (*Martha C.*))

Here, the People assert that minor was statutorily ineligible for deferred entry of judgment, because the record shows minor was granted probation in Los Angeles in two cases and that probation was terminated when she was convicted of possession of a controlled substance. The People are mistaken. As minor points out, those cases involve minor’s mother, not minor. Minor had no prior criminal history. Accordingly, minor was eligible for deferred entry of judgment.

³ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

Once eligibility is established, the court must make an independent determination of the minor's suitability after consideration of the factors specified in section 791, subdivision (b), "with the exercise of discretion based upon the standard of whether the minor will derive benefit from 'education, treatment, and rehabilitation' rather than a more restrictive commitment." (*Sergio R.*, *supra*, 106 Cal.App.4th at p. 607.) The suitability factors include the minor's age, maturity, educational background, family relationships, motivation, any treatment history, and any other factors relevant to the determination of whether the minor is a person who would be benefited by education, treatment, or rehabilitation. (§ 791, subd. (b); see Cal. Rules of Court, rule 5.800(b); *Sergio R.*, at p. 607.) "The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, and rehabilitation of the minor." (§ 791, subd. (b).) Denial of deferred entry of judgment is proper "only when the trial court finds the minor would not benefit from education, treatment and rehabilitation." (*Martha C.*, *supra*, 108 Cal.App.4th at p. 561.) We review the juvenile court's denial of deferred entry of judgment for abuse of discretion. (*Sergio R.*, at p. 607.)

In this case, the juvenile court was aware minor was eligible for deferred entry of judgment and referred the matter to the probation department to make a recommendation as to suitability. The probation officer recommended that the minor be placed on formal probation and that the minor would benefit from the more significant restraints of probation, which the officer believed would enhance minor's chances of rehabilitation. The probation officer noted minor was not suitable for deferred entry of judgment due to

the seriousness of the offenses and explained: “wardship is appropriate in this case as [minor] will be monitored and directed to go to school to get her education. Routine home visits will ensure she possesses no drugs that can harm herself and her child. She will be required to attend drug counseling classes with monthly drug tests, a victim’s awareness class, and most of all, a parenting class should she wish to regain custody of her child.” In a dispositional report, the probation officer noted that minor was “lacking motivation and proper decision making skills as she ha[d] associated herself with a boyfriend who use[d] drugs, and who [was] possibly involved in its sales” and she had “not attended school for over a year.” The juvenile court here considered the dispositional report, the probation officer’s recommendations, and arguments from the parties. However, the juvenile court impliedly found that the seriousness of the offense and minor’s need for education, treatment, and rehabilitation supported the probation officer’s views that there should be some consequences of minor’s actions, along with supervision in order to benefit minor and deter future criminal conduct.

Given that the court was aware of its discretion, reviewed the recommendation of the probation officer and conducted a hearing on the issue, we cannot say the juvenile court’s decision was arbitrary, unreasonable or unlawful in any way. Nor can we say that minor will not benefit from the structure formal probation provides and the imposition of some consequences for her actions. The record does not show an abuse of discretion.

Minor argues that the juvenile court “disregarded statutory criteria and improperly relied on the probation department’s assessment that the minor was ineligible due to the seriousness of the offense.” Minor also asserts that “neither the court nor the probation

department stated sound reasons why the minor was not suitable for [deferred entry of judgment]” and that the juvenile court abused its discretion in denying deferred entry of judgment because the court did not independently review the factors set forth in section 791, subdivision (b), to determine if minor would benefit from education, treatment, and rehabilitation. We reject these contentions.

First, as to minor’s purported eligibility claim, the juvenile court was aware minor was eligible for deferred entry of judgment and appropriately referred the matter to the probation department to determine suitability. However, the probation officer found minor not suitable for deferred entry of judgment due to the seriousness of the offense and noted the reasons why formal probation was more appropriate under the circumstances of this case.

Second, if a minor’s crime is serious enough to be listed in either section 707, subdivision (b), or Penal Code section 1203.06, subdivision (a)(1), the minor is simply ineligible for deferred entry of judgment. However, the fact that the committed offenses do not preclude *eligibility* does not require the juvenile court to ignore either the seriousness of the offenses or the criminal sophistication of minor in evaluating deferred entry of judgment *suitability*. The appellate court in *In re Damian M.* (2010) 185 Cal.App.4th 1 upheld a deferred entry of judgment denial based partly on the juvenile court’s findings that “Damian had engaged in sophisticated organized criminal activity” and “would more likely benefit from formal probation” (*Id.* at p. 5.) The appellate court in *Sergio R.* found no abuse of discretion in denying deferred entry of judgment to a minor who was “an entrenched Norteno gang member with a history of drug abuse and

admitted addiction to methamphetamine.” (*Sergio R.*, *supra*, 106 Cal.App.4th at p. 608.)

The minor’s charged crimes in *Sergio R.* involved possessing and using methamphetamine and committing a residential burglary with other gang members that involved taking property including a .22-caliber rifle. (*Ibid.*) Citing *Sergio R.*, the appellate court in *Martha C.*, *supra*, 108 Cal.App.4th 556 acknowledged that “a court might find that the circumstances of a crime indicate a minor is not amenable to rehabilitation” (*Id.* at p. 562.)

We reject any suggestion that the seriousness of a minor’s criminal behavior is irrelevant to the minor’s ability to benefit from less formal treatment and rehabilitation efforts. The juvenile court is not required to grant deferred entry of judgment to every eligible minor who would benefit from any education, treatment, and rehabilitation efforts. The real question in many cases is whether the minor would derive greater benefit from more formal and longer-term probation supervision than is available on a deferred entry of judgment program.

Minor also appears to argue that the juvenile court did not independently articulate reasons on the record for denying deferred entry of judgment. Initially, we note minor waived this claim. The sentencing error waiver rule applies to sentencing error claims brought in juvenile cases, such that a juvenile defendant who fails to object to a court’s failure to state reasons for a sentencing choice cannot raise the claim for the first time on appeal. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1685, fn. 8.) Here, the minor does not dispute that neither she nor her counsel objected below to the court’s failure to

expressly state reasons for denying her deferred entry of judgment. Accordingly, minor has waived the right to raise this claim on appeal.

In any event, minor has failed to demonstrate that the juvenile court did not understand that it had discretion to independently review the factors set forth in section 791, subdivision (b), to determine if minor would benefit from education, treatment, and rehabilitation rather than a more restrictive treatment for denying deferred entry of judgment. A trial court is presumed to be aware of and have followed the applicable law in imposing sentence. (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) In order to overcome this presumption, minor must affirmatively demonstrate error. (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) Moreover, section 791, subdivision (b), does not obligate the court to state on the record its reasons for denying deferred entry of judgment; it merely provides that the court shall independently review the factors to determine a minor's suitability for deferred entry of judgment and that the court "shall make the final determination regarding education, treatment, and rehabilitation of the minor."⁴ (§ 791, subd. (b).) This is what occurred in this case. The juvenile court considered the probation report, the probation officer's recommendation, and determined deferred entry of judgment would not best achieve minor's education, treatment, and rehabilitation.

⁴ Section 790, subdivision (b), however, expressly requires the juvenile court to "make findings on the record . . . where deferred entry of judgment is granted[,] but imposes no such requirement when deferred entry of judgment is denied. (§ 790, subd. (b).)

Based on the foregoing, we find the juvenile court appropriately exercised its discretion to deny minor deferred entry of judgment.

B. *Probation Conditions*

At the November 22, 2013 hearing, the juvenile court imposed, among others, the following probation conditions: “Not knowingly associate with any personally known user or seller of controlled substances nor be in a location known by the probationer to be a place where controlled substances are used or sold” (condition No. 7); “Not knowingly possess, use, or consume any alcoholic beverage, controlled substance or toluene-based substance without a medical prescription and shall notify the probation officer of any prescription medication that is amphetamine or opiate based” (condition No. 8); “Not knowingly possess any dangerous or deadly weapons, including but not limited to any knife, gun, or any part thereof, ammunition, blackjack, bicycle chain, dagger or any weapon or explosive substance or device as defined in Penal Code Section[s] 16100-17360 and/or Penal Code Section 626.10” (condition No. 11); and “Have no negative contact with the Edwin Candela, while on probation and notify the probation officer of all contacts” (condition No. 21).

Minor argues that the above-noted probation conditions are vague and overbroad in violation of her constitutional rights and proposes modification of these challenged conditions. The People do not oppose modification of condition Nos. 7, 8, and 21, but disagree condition No. 11 should be modified.

A 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.*), citing *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1015; § 730, subd. (b).) Any objection to the reasonableness of a probation condition is forfeited if not raised at the time of imposition. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 814; see also *Sheena K.*, at p. 883, fn. 4; *People v. Welch* (1993) 5 Cal.4th 228, 237.) Constitutional challenges to probation conditions on their face, however, may be raised on appeal without objection in the court below. (*Sheena K.*, at pp. 887-889.)

“The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents” (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941), thereby occupying a “unique role . . . in caring for the minor’s well-being.” (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500.) “ ‘[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.’ ” (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Minors are deemed to be “more in need of guidance and supervision than adults,” and “a minor’s constitutional rights are more circumscribed.” (*In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.) Nevertheless, “A probation 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.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Consequently, conditions infringing on constitutional rights must be “tailored to fit the individual probationer.” (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373; see *Sheena K.*, at p. 886.) The state interest for which the conditions must be

narrowly tailored is minor's rehabilitation. (*People v. Hackler* (1993) 13 Cal.App.4th 1049, 1058.)

“A probation condition may be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct.” (*People v. Freitas* (2009) 179 Cal.App.4th 747, 750.) The essential question in an overbreadth challenge “is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

A probation condition may also be unconstitutionally vague. A vagueness challenge is based on the “due process concept of ‘fair warning.’ ” (*Sheena K., supra*, 40 Cal.4th at p. 890.) Therefore, a probation condition “ ‘must be sufficiently precise for the probationer to know what is required of him [or her], 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.]” (*Ibid.*)

In *Sheena K.*, the minor was placed on probation subject to the condition that she not “associate with anyone ‘disapproved of by probation.’ ” (*Sheena K., supra*, 40 Cal.4th at p. 890.) On appeal, the minor asserted that the condition was unconstitutionally vague and overbroad. (*Ibid.*) The Supreme Court held that absent a knowledge requirement, the condition was unconstitutionally vague. The court explained, “ ‘[B]ecause of the breadth of the probation officer’s power to virtually preclude the minor’s association with anyone,’ defendant must be advised in advance

whom she must avoid.” (*Ibid.*) The Supreme Court revised the condition to specify that the probationer need avoid only those individuals “ ‘known to be disapproved of’ by [the] probation officer.” (*Id.* at p. 892.)

Appellate courts have consistently upheld probation conditions when there is a personal knowledge element. (See, e.g., *In re Victor L.* (2010) 182 Cal.App.4th 902, 911-912 [probation condition modified to include a personal knowledge requirement]; *In re Justin S.*, *supra*, 93 Cal.App.4th at p. 816 [court modified a condition prohibiting a minor’s association with “gang members” to prohibit only association with “persons known to the probationer to be associated with a gang”].)

1. Condition No. 7

Minor argues that condition No. 7 is unconstitutional because she could violate it by lawful conduct and request the condition be modified to include the word “unlawfully” prior to the words “used or sold.” Based on *Sheena K.*, we agree with minor that condition No. 7 as currently stated is unconstitutionally overbroad and/or vague. As such, we will modify condition No. 7 as follows: “Not knowingly associate with any personally known user or seller of controlled substances nor be in a location known by the probationer to be a place where controlled substances are *unlawfully* used or sold.”

2. Condition No. 8

Minor also asserts that condition No. 8 is unconstitutionally overbroad, because she could violate it by lawfully possessing toluene-based products, such as glue, nail

polish, paints, and household items. Minor requests the condition be modified to include “in violation of Penal Code section 381.”

Penal Code section 381 prohibits both possessing substances containing toluene-based products and its analogs, including glue and paint, “with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes” and being under their influence “knowingly and with the intent to do so.” The statute contains an express mental element. Possessing toluene includes a specific intent, namely the intent to become intoxicated or otherwise mentally altered. “The United States Supreme Court has emphasized the value of a specific intent requirement in mitigating potential vagueness of a statute. [Citations.]” (*In re M.S.* (1995) 10 Cal.4th 698, 718.)

We agree with minor that condition No. 8 should be modified as follows: “Not knowingly possess, use, or consume any alcoholic beverage, controlled substance or toluene-based substance *in violation of Penal Code section 381* and shall notify the probation officer of any prescription medication that is amphetamine or opiate based.”

3. Condition No. 11

Minor also claims that condition No. 11 is overbroad because as currently phrased it prevents minor from riding a bicycle, spreading butter with a plastic knife, or using common utensils for their intended purposes. Minor requests the condition be modified to include the phrase “with the intent to use it as a dangerous or deadly weapon.” The People respond the condition is not overbroad because no reasonable person “would

believe the condition prohibits innocent use of a bicycle or ordinary food utensils” as minor claims.

A reviewing court must use common sense when interpreting terms and conditions of probation. (*In re Ramon M.* (2009) 178 Cal.App.4th 665, 677.) “A probation condition should be given ‘the meaning that would appear to a reasonable, objective reader.’ ” (*People v. Olguin* (2008) 45 Cal.4th 375, 382.) The ultimate question is whether an ordinary person would understand what behavior is prohibited by the condition. (*In re Byron B., supra*, 119 Cal.App.4th at p. 1018.)

According to minor, the challenged condition is unconstitutional because its restrictions are not explicitly limited to the possession and use of “dangerous or deadly weapons.” The terms “deadly or dangerous weapon,” “deadly weapon,” “dangerous weapon,” and the concept of using an object in a “dangerous or deadly” manner, have consistently been interpreted as referring to “the harmful capability of the item and the intent of its user to inflict, or threaten to inflict, great bodily injury.” (*In re R.P.* (2009) 176 Cal.App.4th 562, 568.) To argue that the challenged probation condition must be modified to include this qualifying language is to assert that an objectively reasonable person might actually believe the condition prohibits innocent possession of ordinary food utensils and/or the use of such utensils or bicycle chains for their intended purposes. The proposition is irrational and unconvincing.

In addition to using common sense, we interpret a probation condition in context. (*In re Ramon M., supra*, 178 Cal.App.4th at p. 678; see *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1374.) As with the interpretation of a statute, a probation condition

will not be held void for vagueness if a “ ‘ “reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.” ’ ’ ” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) A contextual reading of the challenged condition would lead a reasonable person to believe and understand that it prohibits possession, ownership, or handing of bicycle chains or knives only to the extent that such items are dangerous or deadly weapons by design (e.g., a dirk or dagger; see Pen. Code, § 16470) or by virtue of the probationer’s wrongful intent. Bicycles and eating utensils possessed and used for their intended purposes fall outside the scope of these restrictions. As so interpreted, the probation condition is not unconstitutionally vague or overbroad.

4. Condition No. 21

Finally, minor argues condition No. 21 that minor have “no negative contact” with Edwin Canela is unconstitutionally vague, because “it is unclear what is meant by ‘negative.’ ” As such, minor requests the condition be modified to include certain types of behaviors. The People respond the condition is “problematic,” but requests the matter be remanded to the juvenile court to delineate the prohibited contact.

The term “negative contact” is indefinite and does not provide minor with notice of what types of contact with Edwin Canela are permissible and what are impermissible. Moreover, “negative contact” is open to broad interpretation and provides no guidance to law enforcement, the probation department, or the juvenile court, and is therefore susceptible to arbitrary enforcement. Because probation conditions must be tailored to the specific needs for the rehabilitation of a juvenile offender (see § 730, subd. (b)), we

therefore remand to the juvenile court to more narrowly define what types of contact with Edwin Canela are likely to contribute to minor's delinquency and should be prohibited.

C. *Custody Credits*

Minor also argues, and the People correctly concede, that the juvenile court erred in calculating her custody credits. We agree with the parties that the juvenile court failed to award minor credit for time spent in custody prior to her transfer to San Bernardino County.

“When a juvenile court sustains criminal violations resulting in an order of wardship ([§ 602]), and removes a youth from the physical custody of his parent or custodian, it must specify the maximum confinement term, i.e., the maximum term of imprisonment an adult would receive for the same offense. [Citation.]” (*In re David H.* (2003) 106 Cal.App.4th 1131, 1133; Cal. Rules of Court, rule 5.795(b).) Furthermore, “a minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing. [Citations.]” (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067 (*Emilio C.*); see *In re Eric J.* (1979) 25 Cal.3d 522, 526, 536.) “It is the juvenile court’s duty to calculate the number of days earned, and the court may not delegate that duty. [Citations.]” (*Emilio C.*, at p. 1067.)

Here, minor was arrested on April 6, 2011, in Los Angeles County for battery. She was released but rearrested again for child abuse on September 20, 2013, in Los Angeles County and spent 31 days, from September 20 to October 21, 2013, in juvenile hall in Los Angeles County. Minor was received at the San Bernardino juvenile hall on October 21, 2013, and as of the November 5, 2013 hearing, minor had spent 16 days in

the San Bernardino juvenile hall. At the November 5, 2013 hearing, the court ordered minor detained “pending [a] further hearing” and continued the matter to November 6, 2013. At the November 6, 2013 hearing, the juvenile court released minor from custody and placed her on house arrest pending the recommendation from the probation department as to minor’s suitability for deferred entry of judgment. As such, minor had spent a total of 48 days in custody. Nonetheless, at the November 22, 2013 further dispositional hearing, the juvenile court awarded minor credit of 17 days for time spent in custody.

Therefore, we shall direct the juvenile court to correct the dispositional minute order and the juvenile detention disposition report to reflect 48 days of presentence credits.

III

DISPOSITION

The judgment is reversed in part and the cause is remanded to the juvenile court to modify probation condition No. 21 to more specifically define what types of contact between minor and Edwin Canela are prohibited.

The juvenile court is also directed to modify probation condition Nos. 7 and 8. Probation condition No. 7 is modified to read as follows: “Not knowingly associate with any personally known user or seller of controlled substances nor be in a location known by the probationer to be a place where controlled substances are *unlawfully* used or sold.”

Probation condition No. 8 is modified to read as follows: “Not knowingly possess, use, or consume any alcoholic beverage, controlled substance or toluene-based

substance *in violation of Penal Code section 381* and shall notify the probation officer of any prescription medication that is amphetamine or opiate based.”

The juvenile court is also directed to correct the dispositional minute order dated November 22, 2013, and the juvenile detention disposition report to reflect the presentence credits in the amount of 48 days and forward a corrected copy to the appropriate authorities.

In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

CODRINGTON
J.