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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JOSE N., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE N.,

Defendant and Appellant.

F062244

(Super. Ct. No. JD2167)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Judge.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

* Before Levy, Acting P.J., Gomes, J. and Detjen, J.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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Jose N., a minor, appeals from an order of wardship, contending one of the conditions of his probation is unconstitutionally overbroad. We strike the condition and remand the matter for further proceedings.

FACTS AND PROCEDURAL HISTORY

In 2010 proceedings on a supplemental Welfare and Institutions Code section 602 petition, appellant admitted, as relevant to this appeal, participation in a criminal street gang, a violation of Penal Code section 186.22, subdivision (a). In 2011 proceedings, a subsequent Welfare and Institutions Code section 602 petition alleging (as relevant here¹) first degree burglary (Pen. Code, § 459), was found true after a contested jurisdictional hearing. At that jurisdictional hearing, the burglary victim testified she found appellant in her home when she returned one day. Appellant fled. A few days after the burglary, the victim was moving from her home and she saw appellant watching her from down the street. She called the police, and appellant was arrested for the burglary.

At the dispositional hearing on April 5, 2011, the court continued appellant as a ward of the court. The court committed appellant to local confinement for up to two years and imposed other terms and conditions of probation. The court orally reiterated certain of the conditions of probation to appellant, particularly that he was not to contact any of his victims and was not to come within 100 yards of their residences. Among the written conditions of probation imposed were eight standardized conditions appearing on

¹ The court also found true a violation of probation count and appellant admitted the allegations of another supplemental petition alleging various probation violations.

a document entitled “PROBATION/WARDSHIP CONDITIONS FOR GANG IDENTIFIED MINORS,” included as the sixth page of the order of wardship. Condition number 4 of the gang conditions states: “You are not to appear in or about any court unless you are party to a proceedings [sic] or have been subpoenaed to appear at a hearing.” (We will refer to this as the “courthouse prohibition.”) Appellant did not object to this, or any other, probation condition.

DISCUSSION

Appellant’s sole contention on appeal is that the courthouse prohibition is constitutionally overbroad. He contends the prohibition violates his “right of access to the courts, guaranteed by the First Amendment to the United States Constitution, because it bars him from courthouses and the vicinity of courthouses under all circumstances unless he is a party to a case or under the court’s subpoena power.” He contends, in addition, the condition violates his “right under the California Constitution to attend and participate in court proceedings if he or a family member is a victim of crime.”

Appellant’s position finds support in several recent decisions. (See *In re E.O.* (2010) 188 Cal.App.4th 1149, 1154, 1157; *People v. Leon* (2010) 181 Cal.App.4th 943, 952; *People v. Perez* (2009) 176 Cal.App.4th 380, 383.) Respondent agrees the constitutional right of access to the court is implicated by the courthouse prohibition. Further, respondent does not contend appellant forfeited his constitutional claim by failing to object to the courthouse prohibition in the court below. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 888.) In addition, both parties agree that a more narrowly tailored probation condition might appropriately limit a minor’s right to be in or around the courts, particularly when, as in this case, the minor has been found to have participated in criminal gang activities and there is evidence he has attempted to intimidate a witness.

The primary disagreement between appellant and respondent is whether we should strike the condition and permit the juvenile court to impose a narrower condition if it considers the condition appropriate to appellant’s rehabilitation or, instead, as respondent

suggests, we should modify the condition and affirm the order as modified. Secondly, they disagree about the exact language for a modified condition, in the event we determine remand is not appropriate. Appellant suggests the language set out in *In re E.O.*, *supra*, 188 Cal.App.4th at page 1157, footnote 5. Respondent prefers the language suggested in *People v. Leon*, *supra*, 181 Cal.App.4th at page 954.

We believe it is appropriate in the present case to strike the courthouse prohibition condition and remand the matter for imposition of a narrower probation condition by the juvenile court in the first instance. There are two reasons for this determination. First, the condition in question appears to be a standard condition of probation for juvenile gang members in Merced County. As such, we believe the juvenile court, which has more experience and information concerning local conditions and needs, will be better able to craft a narrow probation condition that protects court participants and staff from intimidation and interference by juvenile gang members. To take one example, while we find the suggested language in *In re E.O.*, *supra*, 188 Cal.App.4th at page 1157, footnote 5 particularly clear and thorough in the context of prohibiting attendance at any gang-related court proceeding, it may be that particular considerations in Merced County require that the prohibition apply to a wider or narrower range of cases. The second consideration in deciding to remand the matter for initial imposition of the probation condition by the juvenile court is the fact that, in this case, there was evidence that appellant sought to intimidate one or more of his victims. Accordingly, the juvenile court may deem it necessary to tailor the probation condition in some manner different from whatever it may develop as its more standardized condition for juvenile gang members. (See *ibid.*) In formulating both a standard probation condition for juvenile gang members and in modifying that condition, if appropriate, in the present case, the juvenile court will seek to establish a probation condition that has the least impact on the right of access to the court for legitimate purposes consistent with the rehabilitation and reformation of the juveniles who are subject to the condition. (See *id.* at pp. 1152-1153.)

DISPOSITION

Paragraph 4 of the sixth page of the order of wardship dated April 5, 2011, is stricken. The matter is remanded for further hearing on imposition of a courthouse-prohibition condition of probation in accordance with the views expressed in this opinion, such hearing to occur within 30 days after this court issues its remittitur, unless the date for hearing is extended by the juvenile court for good cause. In all other respects, the April 5, 2011, order of wardship is affirmed.