Filed 2/22/12 In re Jesus S. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JESUS S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JESUS S., Defendant and Appellant.	F062730 (Super. Ct. No. 11JQ0075) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. George L. Orndoff, Judge.

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

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* Before Cornell, Acting P.J., Poochigian, J. and Detjen, J.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

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This is an appeal from a dispositional order in a case arising under section 602 of the Welfare and Institutions Code (section 602). Defendant and appellant Jesus S., a minor when the section 602 petition was filed, contends one probation condition imposed by the trial court is unconstitutionally broad. This contention has no merit. We affirm the order in question.

FACTS AND PROCEDURAL HISTORY

On May 9, 2011, appellant, then 17 years old, threatened to kill his mother and his sister and struck both of them.[1] In a contested jurisdictional hearing on May 31, 2011, the court found true one count of making criminal threats (Pen. Code, § 422) and two counts of battery (Pen. Code, § 242).

Appellant has developmental, mental health, and substance abuse issues. At the dispositional hearing on June 14, 2011, the court determined that the Penal Code section 422 violation was a felony and the other counts were misdemeanors. The court declared appellant a ward of the court. The court determined it was necessary to remove appellant from his parent and to place custody under the supervision of the probation officer, with the understanding that appellant would be placed in a specialized group home, as approved by the district attorney, by the Central Valley Regional Center, and by appellant's counsel. The court also ordered, among many other conditions, that appellant shall not "change his/her address or phone without the permission of the probation officer." The court scheduled a review hearing for November 10, 2011.

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[1] Appellant turned 18 in January 2012.

DISCUSSION

Appellant contends the court's order that he not change his address without the probation officer's permission is constitutionally overbroad and a violation of appellant's constitutional right to travel. He relies primarily on *People v. Bauer* (1989) 211 Cal.App.3d 937, 944, a case involving adult probation.

Appellant recognizes that his attorney did not object to this condition of probation in the lower court and that, as a general matter, such a failure to object results in forfeiture of any claim that the condition of probation is unreasonable or invalid. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 885, 889.) He contends, however, that the present appeal fits within the narrow category of constitutional challenges that may be raised for the first time on appeal because they raise pure questions of law involving "review of abstract and generalized legal concepts." (*Id*. at p. 885.) We disagree with appellant's characterization of the issue on this appeal as being purely a question of law.

Whatever may be the considerations when an appellate court is presented with a generalized requirement that an adult probationer live only where the probation officer says the probationer may live, as was the case in *People v. Bauer, supra,* 211 Cal.App.3d at page 943, different considerations apply when a minor has been adjudicated a ward of the court and his legal custody has been placed with the probation officer. In such circumstances it is entirely appropriate—indeed, necessary—that the minor live where the probation officer has placed him (subject, of course, to judicial review). (See *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033-1034; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242-1243.)

If there were specific factors that made the probation officer's control over appellant's place of residency inappropriate in this case, despite the custody order, those factors could and should have been raised in the lower court, to permit the court to modify the condition or to develop a further record to address appellant's objection. Because the issue presented is not merely an issue concerning the general applicability of

a condition of probation but is, instead, an issue inexorably bound up in the facts of this particular case, we conclude appellant forfeited the issue by not raising it in the lower court. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889.)

DISPOSITION

The dispositional order of June 14, 2011, is affirmed.