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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO G.,

Defendant and Appellant.

F066787

(Super. Ct. No. JJD066705)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Jennifer Conn Shirk, Judge.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J., and Peña, J.

INTRODUCTION

On January 14, 2013, a petition was filed pursuant to Welfare and Institutions Code section 602, alleging that 15-year-old appellant, Pedro G., continually abused a child in violation of Penal Code section 288.5. The People also filed a declaration that appellant was eligible for Deferred Entry of Judgment (DEJ). On January 22, 2013, appellant waived his constitutional rights and admitted the allegation in the petition contingent on being granted DEJ. The parties agreed there was a factual basis for the plea.¹

At the disposition hearing on February 11, 2013, the juvenile court indicated it was not going to follow the probation department's recommendation that appellant be placed on DEJ. The court indicated it would, instead, place appellant into a short-term treatment program for sexual abusers and on probation. This was acceptable to appellant, who reaffirmed his admission of the allegation in the petition.

The juvenile court found that appellant's maximum term of confinement was 16 years and he had 32 days of custody credits. The juvenile court proceeded to place appellant into the youth treatment center unit for 90 to 180 days and placed him on probation. Appellant was ordered to attend a short-term sexual abuse program and not to leave his home unless he was with a parent, in a school activity supervised by an adult, or at work supervised by an adult. Appellant was not to have contact with anyone under the age of 18 or have any unsupervised contact with minors, except in school settings. Of appellant's many conditions of probation, the court ordered that he not possess

¹ The parties agreed appellant's continuing sexual conduct occurred on five occasions and involved appellant's five-year-old relative while the two were playing "fort." Appellant took the victim into a closet, pulled the victim's pants down, and placed his penis in the victim's buttocks. Appellant followed this behavior on three of these occasions by placing his penis in the victim's mouth. On one occasion prior to these incidents, appellant went to a pornographic website and was caught by a parent.

pornographic material or view pornographic sites on the internet. The court also imposed the following probation condition: “[M]inor [shall not] possess any coloring books, comic books, or other material or games targeted for younger minors’ interests.” Appellant contends that this condition of probation is too overbroad and vague to be enforceable. Respondent has not briefed the issue.² We do not find that the juvenile court’s condition of probation is improper as applied to appellant.

DISCUSSION

Appellant initially argued that his challenge to the condition of probation is not forfeited even though he failed to object to it at the disposition hearing. In *In re Sheena K.* (2007) 40 Cal.4th 875 (*Sheena K.*), the California Supreme Court held that a probationer does not forfeit her claim that a term of her probation is unconstitutionally vague or overbroad even though she failed to object in the juvenile court. (*Id.* at p. 878.) Thus, a challenge to a “facial constitutional defect in the relevant probation condition” that is “capable of correction without reference to the particular sentencing record developed in the trial court” can be heard by an appellate court. (*Id.* at p. 887.) Thus, we can review appellant’s constitutional challenge to the facial validity of the probation condition.³

² The minor’s appellate counsel originally filed a brief challenging the trial court’s denial of DEJ. Appellate counsel later sought to withdraw that issue and to file a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We deemed appellant’s original brief to be filed pursuant to *Wende*. On September 27, 2013, appellate counsel filed a supplemental brief challenging a single condition of probation. Respondent sent a letter on October 9, 2013, declining to file further briefing. Because appellant has filed a brief raising a substantive issue, we will not perform independent *Wende* review. (*People v. Woodard* (1986) 184 Cal.App.3d 944, 945-947; *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-113.)

³ We cannot, however, review challenges to conditions of probation that were not raised to the juvenile court based on allegations they were not supported by the evidence

Juvenile courts have broader discretion in fashioning conditions of probation than do courts setting such conditions for adult offenders. (*In re Luis F.* (2009) 177 Cal.App.4th 176, 188.) The juvenile court may impose any reasonable condition that is necessary to the end that justice is done and the reformation and rehabilitation of the ward enhanced. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889.) Conditions of probation that would be impermissible for an adult probationer are not necessarily unreasonable for a minor. Juveniles are deemed more in need of supervision and guidance than adults; their constitutional rights are more circumscribed; and the state, in exercising jurisdiction over a minor, stands in the shoes of the parents, who may curtail a child's exercise of constitutional rights because of the parents' own constitutionally protected interests. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033-1034.) "Thus, the juvenile court may impose probation conditions that infringe on constitutional rights if the conditions are tailored to meet the needs of the minor." (*Id.* at p. 1034.)

We do not agree with appellant that the challenged condition of probation suffers from vagueness because it fails to define who is a younger minor and that it is overbroad because it prevents appellant, for instance, from reading a comic book by himself. Appellant concedes in his supplemental brief that the condition would be valid if narrowly drawn to meet the state's interest "in limiting appellant's potential interaction with children similar in age to appellant." We note that appellant has not objected to other conditions of probation, including that he not have unsupervised contact with any minors under age 18, except under adult supervision or in a school setting.

Although there is no evidence in the record that appellant used comic books, games, or other like materials to commit his offense, *Sheena K.* held that he has waived

or are improper under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.)

any factual objection to the condition based on insufficient evidence to support the condition. We note that although appellant did not use coloring or comic books in conjunction with his offense, this condition prevents appellant from using such materials to engage another potential young victim and, in this manner, the condition is reasonably related to preventing future criminality. (*Lent, supra*, 15 Cal.3d at p. 486.)

Appellant's constitutional challenges to the condition as being too vague and overbroad focus on his arguments that the condition is not drawn narrowly enough, the phrase "younger minors' interests" is not clearly defined, and the prohibited materials (coloring books, comic books, and other similar material or games), include items protected under the First Amendment of the Constitution. As we noted above, the constitutional rights of a minor can be infringed to meet the needs of the minor. We do not find the phrase "younger minors' interests" to be difficult to understand or unconstitutionally vague. Appellant is already limited in his ability to associate with all minors under the age of 18, except under adult supervision or in a school environment or activity. Appellant does not challenge those conditions of his probation.

Appellant is not prohibited by this condition from having access to coloring or artistic supplies, comic books, or other materials and games appropriate for a minor his own age. To the extent that there is a limitation on appellant's exercise of his First Amendment rights, it is narrowly tailored and circumscribed to materials meant for use by young children. We do not find this condition to be too vague or difficult to enforce. Appellant asserts that there may be educational materials he needs in school that he would be restricted from using. We reject this interpretation of the condition. The condition does not restrict appellant or his teachers in a school setting from using educational textbooks, workbooks, or artistic supplies.

We find the challenged condition of probation to have a valid rehabilitative purpose and as being tailored to prevent future criminality. We do not find this condition unconstitutionally vague or overbroad.

DISPOSITION

The orders and findings of the juvenile court are affirmed.