

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

G.P.,

Defendant and Appellant.

G048213

(Super. Ct. No. DL040846)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Kristin A. Erickson, 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, A. Natasha Cortina Deputy Attorney General, for Plaintiff and Respondent.

THE COURT:*

G.P. was continued a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 after a true finding of unauthorized entry on a school campus after suspension. On appeal he contends the evidence is insufficient to support the true finding by the trial court. We agree and reverse the court's true finding.

FACTS

After G.P. allegedly used profanity toward a member of school staff, the vice-principal of G.P.'s high school investigated the matter and determined that a two-day suspension was warranted. According to the vice-principal's testimony at trial, he reviewed the suspension notice with G.P.; G.P. said he understood and signed the notice form acknowledging the suspension. Afterward, the vice-principal placed a call to G.P.'s mother to advise her of the suspension, but he was only able to leave a voicemail message and never personally spoke to G.P.'s mother. When the vice-principal saw G.P. on campus the following day, he asked G.P. what he was doing at school and G.P. replied that he thought he was supposed to be back at school.

G.P. was charged in subsequent juvenile petition 009 with unauthorized entry on a school campus after suspension in violation of Penal Code section 626.2¹. At the close of the prosecution's case, G.P. made a motion to dismiss the petition pursuant to Welfare and Institutions Code section 701.1. Citing *In re Leon S.* (2005) 133 Cal.App.4th 1556 (*Leon S.*), G.P. argued the plain language of section 626.2 requires

* Before Rylaarsdam, Acting P. J., Aronson, J., Fybel, J.

¹ All further references are to the Penal Code.

evidence that G.P. was served with written notice of the suspension by registered or certified mail, and because there was no evidence of service by mail, the petition had to be dismissed. Although the trial court said it “did not hear any evidence with regard to that particular element, the element with regard to the certified or registered mail,” it nonetheless denied G.P.’s motion to dismiss.

After the defense rested, G.P. renewed his motion to dismiss on the same ground, that he had not been served with written notice of the suspension by registered or certified mail as required by the statute. The court once again denied the motion and said, “Going back to criminal law 101, a crime consists of elements which are an act or mental state of the criminal actor. [¶] The portion of the Penal Code here, 626.2, describing service by registered or certified mail made by a third party on the alleged criminal actor is neither an act, nor a mental state of the actor. So it would appear that service by a third party is not an element. [¶] Next, service by registered or certified mail is not required by the plain language of the statute. The statute does not use the mandatory word ‘shall,’ in quotes. The statute says with service by certified or registered mail.”

After the trial court denied G.P.’s renewed motion to dismiss, it found true that G.P. had entered his school campus without authorization after his suspension and ordered that G.P. would continue as a ward of the juvenile court under the same terms and conditions of probation imposed in a previous petition.

On appeal, G.P. contends the court’s true finding must be reversed because the record contains no evidence that he was served with written notice of the suspension by registered or certified mail and therefore the evidence is insufficient to support the trial court’s true finding that G.P. violated section 626.2.

DISCUSSION

In determining the sufficiency of the evidence, “the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid

value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “[O]ur task . . . is twofold. First, we must resolve the issue in the light of the whole record Second, we must judge whether the evidence of each of the essential elements . . . is substantial’ [Citation.]” (*Id.*, 577; emphasis omitted.) The same standard of review applies when assessing the sufficiency of the evidence in a juvenile proceeding. (*In re Roderick P.* (1972) 7 Cal.3d 801, 808-809.)

Section 626.2 prohibits a student, under a current suspension order, from entering a school campus and states in relevant part that “[e]very student or employee who, after a hearing, has been suspended or dismissed from . . . a public or private school for disrupting the orderly operation of the campus or facility of the institution, and as a condition of the suspension or dismissal has been denied access to the campus or facility, or both, of the institution for the period of the suspension or in the case of dismissal for a period not to exceed one year; who has been served by registered or certified mail, at the last address given by that person, with a written notice of the suspension or dismissal and condition; and who willfully and knowingly enters upon the campus or facility of the institution to which he or she has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor”

In *Leon S.*, a case directly on point, the trial court made a true finding that the minor trespassed on school property the day after he had been suspended in violation of section 626.2. On appeal the minor argued the evidence presented at trial was insufficient to support the true finding because even though he had received personal notice of the suspension, he had not received notice of his suspension by certified or registered mail as required by the statute. *Leon S.* states, “Our role in construing any statute is simply to ascertain the Legislature’s intent and effectuate the purpose of the law. Generally, we accomplish this task by giving the statutory words their usual, ordinary meanings. [Citation.] “If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on [its] face . . . or from

its legislative history.” [Citation.] Under Penal Code section 626.2, the People were required to present evidence that the notice of suspension was served by mailing to appellant’s last known address, by certified or registered mail.” (*Leon S., supra*, 133 Cal.App.4th at pp. 1561-1562.)

As the trial court acknowledged in this case, there is no evidence in the record that G.P. was ever served with written notice of the suspension by registered or certified mail as required by statute. Accordingly, the Attorney General “respectfully submits that the judgment [should] be reversed in its entirety” and we agree. Because there is no evidence of service of the written notice of suspension by certified or registered mail as required by statute, we reverse the trial court’s order finding petition 009 to be true.

DISPOSITION

The order of the juvenile court is reversed as to petition 009 filed on February 8, 2013, in case number DL040846.