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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re BRYAN M., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYAN M.,

Defendant and Appellant.

G048440

(Super. Ct. No. DL040286)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Robert L.S. Angres, 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, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

Bryan M. (minor) is a juvenile offender. After he admitted unlawfully defacing property and possessing graffiti tools — actions associated with members of a “tagging crew” — the juvenile court declared him a ward of the court and placed him on probation. Minor subsequently violated probation and was required to spend 20 days in juvenile hall followed by 88 days in a rehabilitation program. At that time, the court also ordered minor to remain on probation subject to various terms and conditions, including the following:

Minor is “not to associate with any member of any tagging crew or any negative subculture as directed by your probation officer.”

Minor is “not to be present in any known gathering area for any tagging crew or any negative subculture, as directed by the probation officer.”

Minor is “not to wear, display, use or possess any insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing which is evidence of affiliation with, or membership in, any tagging crew or any negative subculture.”

Minor contends these restrictions are overly broad and unduly vague. Indeed, the Attorney General concedes the restrictions are constitutionally flawed in two respects. First, they do not require the minor to actually know the subject group, area, or article of clothing is associated with a tagging crew. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 891-892; *People v. Turner* (2007) 155 Cal.App.4th 1432, 1436; *In re Justin S.* (2001) 93 Cal.App.4th 811, 816.) Second, the term “negative subculture” is so amorphous that a person of common intelligence would be left guessing as to its meaning. (See *United States v. Sales* (9th Cir. 2007) 476 F.3d 732, 737; *In re Sheena K., supra*, 40 Cal.4th at p. 890.) Therefore, as the Attorney General admits, the restrictions must be modified to correct these problems. (*In re Sheena K., supra*, 40 Cal.4th at p. 892 [appellate court may modify a condition of a juvenile’s probation to render the condition constitutional].)

There is no dispute as to the proper modification. As agreed to by the parties, the three terms set forth above are modified to read as follows:

“The minor is not to associate with any person known to him to be a member of any tagging crew. The minor is not to associate with anyone known to him to be disapproved by the court, his parent/guardian, or probation officer, or anyone he has met while in any of the county institutions.

“The minor shall not be present in any area known to him to be, or that the probation officer informs him to be, a gathering area for any tagging crew.

“The minor shall not knowingly wear, display, use or possess any insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing that he knows to be, or the probation officer informs him to be, evidence of affiliation with, or membership in, any tagging crew.”

As so modified, the judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.