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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re GILBERTO H., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERTO H.,

Defendant and Appellant.

G049232

(Super. Ct. No. DL044150)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Richard Y. Lee, Judge. Affirmed as modified.

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

Kamala D. Harris, Attorney General, Julie L. Garland, Chief Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Gilberto H. appeals from the order declaring him a ward of the juvenile court (Welf. & Inst. Code, § 602)¹ and placing him on probation after he admitted the allegations of the petitions. One of the probation conditions was that Gilberto may not associate with anyone he knows is disapproved of by the court, his parent, or his probation officer. While agreeing the condition was constitutionally valid when imposed, Gilberto contends the condition now violates his rights of association because while this appeal has been pending he turned 18 years old. We reject his contention and affirm the order as modified to conform another probation condition to the juvenile court's oral pronouncement of that condition.

FACTS & PROCEDURE

This appeal arises from the fourth and fifth petitions filed against Gilberto. The first petition, filed February 11, 2013, alleged three counts of vandalism (graffiti) and two counts of possession of graffiti tools. A second petition, filed February 22, 2013, alleged one count of possession of graffiti tools, and one count of falsely identifying himself to a peace officer. On March 21, 2013, Gilberto admitted to one count of vandalism from the first petition and both counts from the second petition. He was placed on probation without being declared a ward of the juvenile court pursuant to section 725.

On April 10, 2013, a third petition was filed alleging one felony count of first degree residential burglary. On June 5, 2013, a fourth petition was filed alleging one count of possession of burglary tools. On June 10, 2013, a fifth petition was filed alleging one count of vandalism (graffiti).

On September 27, 2013, the juvenile court found the allegations of the third petition (first degree residential burglary) to be true. On October 28, 2013, at the combined dispositional hearing on the third petition and pretrial hearing on the fourth and

¹ All further statutory references are to the Welfare and Institutions Code.

fifth petitions, Gilberto admitted the allegations of the fourth and fifth petitions. The court found the allegations of the fourth and fifth petitions to be true, terminated Gilberto's section 725 non-ward status on the first and second petitions, and declared him a ward of the court. Gilberto was ordered to serve 60 days in custody and comply with conditions of probation. On November 4, 2013, Gilberto filed a notice of appeal.

DISCUSSION

I. Association Probation Condition

The conditions of Gilberto's probation included the following: "You are not to associate with anyone who you know is disapproved by the [c]ourt, your parent or guardian or probation officer[,] or anyone who you know is on probation or parole or a member of a criminal street gang or a member of a tagging crew or anyone who you know is using, selling, possessing or under the influence of alcohol or illegal controlled substances." Gilberto raised no objection to the probation condition below.

On appeal, Gilberto challenges only the first part of the association condition, i.e., that he is "not to associate with anyone who [he] know[s] is disapproved by the [c]ourt, [his] parent or guardian or [his] probation officer." He contends that part of the probation condition unconstitutionally infringes on his rights of association.

Gilberto acknowledges such a condition imposed on a minor is constitutionally valid. Indeed, this court upheld a similar condition in *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237 (*Frank V.*) [minor not to "associate with anyone disapproved of by his probation officer"].) We rejected the minor's contention the condition was overbroad and violated his right of association, noting that, "Although minors possess constitutional rights [citation], '[i]t is equally well established . . . that the liberty interest of a minor is not coextensive with that of an adult. "[E]ven where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.'" [Citations.] Parents, of course, have powers greater than that of the state to curtail a child's exercise of the

constitutional rights the child may otherwise enjoy, for a parent's own constitutionally protected "liberty" includes the right to "bring up children" [citation,] and to "direct the upbringing and education of children." [Citation.] [Citation.] [¶] [Minor] was declared a ward of the court, which acts in *parens patriae*." (*Id.* at pp. 1242-1243.) "The probation condition is consistent with the rehabilitative purpose of probation and constitutional parental authority. [Minor's] constitutional right of association has not been impermissibly burdened." (*Id.* at p. 1243; see also *In re Ramon M.* (2009) 178 Cal.App.4th 665, 676 (*Ramon M.*) [upholding probation condition that ward "'not associate with anyone named by the court, your parent/guardian, probation officer'"]; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1015, 1018 (*Byron B.*) [upholding probation condition ward "'[n]ot have direct or indirect contact with anyone *known to be* disapproved by parent(s)/guardian(s)/probation officer, staff'"].)

Gilberto argues that although the association condition was constitutional when it was imposed, while this appeal has been pending, he turned 18. Thus, Gilberto is no longer a *minor*; he is now an *adult*. Therefore, he argues the association restriction should be reviewed by standards applicable to adult probationers. And as a now adult, he argues it is unconstitutional to give either his parents or his probation officer such broad discretion over his choice of associates. Gilberto relies on *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1354, which held a probation condition providing defendant "'shall not associate socially, nor be present at any time, at any place, public or private, with any person, as designated by [his] probation officer[,]" was overbroad and permitted an unconstitutional infringement on defendant's right of association. "[T]he condition . . . is unlimited and would allow the probation officer to banish defendant by forbidding contact with his family and close friends, even though such a prohibition may have no relationship to the state's interest in reforming and rehabilitating defendant." (*Id.* at p. 1358.)

The Attorney General argues Gilberto has forfeited his objection to the probation condition by failing to object below. Assuming, for purposes of discussion, there was no forfeiture or waiver, Gilberto is wrong on the merits. Gilberto's argument is based on the erroneous premise that he is an *adult probationer*. He is not. Gilberto is under the jurisdiction of the juvenile court. He was under age 18 when he committed his offense (§ 602, subd. (a); *Rucker v. Superior Court* (1977) 75 Cal.App.3d 197, 200), and when he was placed on probation, and the juvenile court may retain jurisdiction over him until the age of 21. (§ 607, subd. (a); *In re Maria A.* (1975) 52 Cal.App.3d 901, 903-904.) Despite his having reached the age of majority, Gilberto is nonetheless a *juvenile probationer*. The juvenile court "has wide discretion to select appropriate [probation] conditions and may impose "any reasonable condition that is 'fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.'" [Citations.]" (*Sheena K., supra*, 40 Cal.4th at p. 889.) "[T]he power of the juvenile court is even broader than that of a criminal court." [Citation.]" (*In re Christopher M.* (2005) 127 Cal.App.4th 684, 692, overruled on other grounds in *People v. Gonzales* (2013) 56 Cal.4th 353, 375, fn. 6.) "The juvenile court's broad discretion to fashion appropriate conditions of probation is distinguishable from that exercised by an adult court when sentencing an adult offender to probation. Although the goal of both types of probation is the rehabilitation of the offender, '[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor's reformation and rehabilitation.' [Citation] . . . [¶] In light of this difference, a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. [Citations.]" (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81-82, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

As explained above, Gilberto has conceded the cases have uniformly upheld the constitutionality of the association condition when imposed on juvenile

probationers. (*Ramon M.*, *supra*, 178 Cal.App.4th at p. 676; *Byron B.*, *supra*, 119 Cal.App.4th at p. 1018; *Frank V.*, *supra*, 233 Cal.App.3d at pp. 1242-1243.) Indeed, in *Ramon M.*, *supra*, 178 Cal.App.4th at page 676, this court upheld the constitutionality of a similar condition (“[d]o not associate with anyone named by the court, your parent/guardian, probation officer . . .”), imposed on a juvenile probationer. It is noteworthy the juvenile probationer had already turned 18 at the time he was placed on probation. (*Id.* at p. 671.)

Gilberto’s claim the association condition could be misused to arbitrarily “prohibit him from dating a certain person based upon sex or race, or any other reason unrelated to his rehabilitation” was addressed and rejected in *Ramon M.* The juvenile probationer in that case complained the “[d]o not associate with anyone named by the court, your parent/guardian, probation officer” condition “requires him to seek the approval of his probation officer to have any contact with, for example, grocery clerks, mailmen or health care providers. Such an argument is belied by both context and common sense. The context of the provision relates to gang members and persons [the juvenile probationer] met in county institutions. No reasonable person would read this provision to mean that [he] is required to seek prior approval to encounter people he does not yet know, or encountered only in incidental or formal situations. (See *People v. Bravo* (1987) 43 Cal.3d 600, 606 . . . [probation conditions should be given ‘meaning that would appear to a reasonable, objective reader’].)” (*Ramon M.*, *supra*, 178 Cal.App.4th at pp. 676, 678.) Read in its full context, the condition prohibits Gilberto from associating with persons he knows have been disapproved by the court, his parents, or probation officer; persons he knows are on probation or parole or are members of criminal street gangs or tagging crews; or anyone he knows is using, selling, possessing, or under the influence of alcohol or illegal controlled substances. The condition is plainly directed towards Gilberto’s association with persons who will undermine his rehabilitation.

2. *No Possession of Graffiti Implements Condition*

At the October 28, 2013, dispositional hearing, the juvenile court orally imposed a probation condition Gilberto “not use or possess any item for the purpose of defacing any property, including spray paint, felt tip pens or inscribing devices.” However, the minute order from the hearing states the probation condition as being “minor not to use or possess any incendiary devices/any aerosol container/felt tip marker, or any other implement that is capable of defacing property.” Gilberto contends, and the Attorney General agrees, the minute order should be amended to accurately set forth the court’s oral pronouncement of the probation condition. (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345 [oral pronouncement of probation conditions controls]; *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073 [same].) We will oblige them.

DISPOSITION

The October 28, 2013, minute order is modified by revising the probation condition “minor not to use or possess any incendiary devices/any aerosol container/felt tip marker, or any other implement that is capable of defacing property” to read “minor not use or possess any item for the purpose of defacing any property, including spray paint, felt tip pens or inscribing devices.” The order is affirmed as modified.

O’LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.