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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

G050572

(Super. Ct. No. DL042552)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,  
Lewis W. Clapp, Judge. Affirmed as modified.

Jeanine G. Strong, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and  
Allison V. Hawley, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

C.G. (the minor), who was then 11 years old, and his siblings committed sexual offenses against a seven-year-old neighbor. The juvenile court found the allegations against the minor to be true, and made him a ward of the court. The court imposed probation conditions on the minor. On appeal, the minor challenges a number of those probation conditions. We will direct the juvenile court to modify some of the conditions to add a scienter requirement. In all other respects, however, we conclude the probation conditions are not vague or overbroad, and therefore pass constitutional muster.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

The minor, who was then 11 years old, lived in the garage of the home in which the seven-year-old victim lived. The minor's older brother thought the victim was annoying. On May 5, 2012, the minor and his two brothers restrained the victim and took him out of his bedroom to an enclosed outdoor shower, where the minor's older brother sodomized the victim. The minor's older brother told the victim they would kill him if he reported what had happened.

The minor's older brother told investigating officers that he had watched pornography sometime before the assault, and was thinking about that pornography while assaulting the victim. The minor's older brother pleaded guilty to charges that he had raped the victim, and served 330 days in juvenile hall. At the minor's adjudication hearing, his older brother denied committing the offense, and claimed he had been lying when he admitted guilt in his own proceedings.

A petition was filed pursuant to Welfare and Institutions Code section 602, alleging the minor had committed rape of a minor under age 14 (Pen. Code, § 264.1, subd. (b)(1)); sodomy by force of a minor under age 14 (*id.*, § 286, subd. (c)(2)(B)); forcible lewd act on a child under age 14 (*id.*, § 288, subd. (b)(1)); and assault of a minor

with the intent to commit a sexual offense (*id.*, § 220, subd. (a)(2)).<sup>1</sup> After a contested adjudication and disposition hearing, the juvenile court found those counts true beyond a reasonable doubt. The court declared the minor to be a ward of the court, declared the maximum term of confinement to be 14 years, and placed the minor on probation with conditions. The minor filed a timely notice of appeal.

## DISCUSSION

### I.

#### *STANDARD OF REVIEW*

We review the probation conditions imposed by the juvenile court for abuse of discretion. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.) A juvenile court “may impose and require any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) A minor may raise for the first time on appeal a challenge to a probation condition based on vagueness, overbreadth, or violation of due process. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885-887.)

### II.

#### *COMPUTER USE PROBATION CONDITIONS*

The minor challenges the following probation conditions relating to his use of computers and the Internet: “Court will allow minor to have unsupervised computer use, however, probation may monitor minor’s usage. [¶] Do not use a computer for any

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<sup>1</sup> The petition also alleged that the minor had committed kidnapping to commit a sex offense (Pen. Code, § 209, subd. (b)(1)), and dissuading a witness by force or threat (*id.*, § 136.1, subd. (c)(1)). The juvenile court dismissed those counts on the minor’s motion. (Welf. & Inst. Code, § 701.1.)

purposes other than school related assignments, and only in the common area of his residence or in a supervised school setting. [¶] Do not password protect any file or computer he uses. [¶] Do not participate in any chat rooms, email, engage in instant messaging, ICQ, or other similar communication programs. [¶] . . . [¶] Do not possess or access any modem or device allowing a computer to connect to another computer or network without permission of the probation officer. [¶] Do not have encrypted files, including any steganographic, or otherwise secured files.”

“A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.” (*People v. Lent* (1975) 15 Cal.3d 481, 486, fn. omitted.)

The minor cites two cases in which restrictions on the defendants’ access to the Internet were upheld because the probation conditions were related to the offenses and necessary to protect the public. In *People v. Harrison* (2005) 134 Cal.App.4th 637, 639-640, the defendant pleaded no contest to possession of child pornography. The probation condition completely banning his use of the Internet was upheld because he had used the Internet to send pornographic images and to solicit sex with a minor; had expressed a desire to seek revenge against the prosecutor; and had violated probation by reviewing pornography online while looking for a job. (*Id.* at pp. 646-647.) In *In re Hudson* (2006) 143 Cal.App.4th 1, 4-5, 10-11, the defendant parolee was a convicted child molester who used the Internet to download instructions on what to do if accused of child molestation, and had encrypted his computer while on probation for a previous offense. The court upheld the probation condition prohibiting the defendant parolee from

possessing or having access to computers, the Internet, or camera equipment without permission from his parole officer. (*Id.* at pp. 9-11)

The minor contends that because he did not use a computer or the Internet in committing the crimes against the victim, it is inappropriate to include probation conditions that restrict his use of computers and the Internet. The minor contends such conditions do not serve a rehabilitative purpose and are not necessary to protect the public. (*In re Stevens* (2004) 119 Cal.App.4th 1228, 1234.)

Probation conditions restricting computer use and Internet access are not reserved exclusively for those convicted of computer-related crimes, however. In *In re Victor L.* (2010) 182 Cal.App.4th 902, 926-927, the court upheld probation conditions that prohibited Victor from accessing any social networking site, and that required Victor's Internet access to be supervised. Victor had admitted violating Penal Code section 12020, subdivision (a), by possessing an illegal weapon. (*In re Victor L., supra*, at p. 908.) The court concluded the probation conditions were appropriate because “[t]hey limit Victor's access to the Internet in ways designed to minimize the temptation to contact his gang friends or to otherwise use the computer for illegal purposes by requiring adult supervision whenever he goes online.” (*Id.* at p. 926.)

The probation conditions in the present case were reasonably related to the goal of rehabilitating the minor by preventing him from accessing sexual content on the Internet and engaging in acts of “cyberbullying,” by ensuring that his only access to the Internet would be in situations where there would be adult supervision.

The minor also argues that the probation conditions listed above are overbroad and must be modified to add a scienter requirement. We disagree. The probation conditions that the minor argues are most in need of a scienter requirement—that the minor not access a modem or connection device, not participate in e-mailing or messaging, not have encrypted files, and not password-protect computers or files—all

involve intentional activity, and could not reasonably be inadvertently violated by the minor.

### III.

#### *SEXUALLY EXPLICIT MATERIALS PROBATION CONDITIONS*

The minor also challenges the following probation conditions relating to sexually explicit materials as vague and overbroad: “Minor not to use or possess any sexually explicit material, including but not limited to, CDs, DVDs, video cassettes, magazines, pictures, letters, or drawing, which depict or describe any sexual act, or nudity. [¶] . . . [¶] Minor not to use, subscribe to, or download any sexually explicit content to a personal electronic device. [¶] . . . [¶] Do not possess any pornographic material, including computer files, and disks, nor frequent any area of pornographic activity. [¶] Do not access any adult sexually explicit web site. [¶] Do not frequent any establishment where sexually explicit movies, videos, materials, or devices are viewed or sold.”

To survive a challenge on vagueness grounds, a probation condition must be precise enough to allow the probationer to determine what is required of him or her, and to allow the court to determine whether the condition has been violated. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The minor contends that the probation conditions restricting possession of and access to sexually explicit and pornographic materials are vague because those terms are “imprecise and capable of various interpretations.” In *People v. Moses* (2011) 199 Cal.App.4th 374, 377, another panel of this court concluded the phrase “‘sexually explicit . . . devices’ is not so imprecise that defendant will be unable to determine whether he is in compliance with the terms of his probation. [Citation.]” Here, too, we conclude the terms “sexually explicit” and “pornographic” are sufficiently clear so as to permit the minor to determine whether he is complying with the terms of his probation.

The minor correctly argues, and the Attorney General concedes, that these probation conditions are overbroad due to the lack of a scienter requirement. We direct the trial court to modify its minute order and the minor's probation conditions to explicitly include a knowledge requirement.

#### DISPOSITION

We direct the trial court to modify its minute order and the minor's probation conditions to add the phrase "you know or reasonably should know" to each and every probation condition that refers to sexually explicit or pornographic materials, activities, or Web sites. In all other respects, the order is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.