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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.L., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

G052498

(Super. Ct. No. DL048886-004)

O P I N I O N

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

Jean Ballantine, 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, and Teresa Torreblanca and Barry Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

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Minor J.L. appeals from the juvenile court's dispositional order. Minor contends a probation condition prohibiting him from possessing graffiti items is unconstitutionally vague and overbroad. For the reasons expressed below, we affirm, but direct the juvenile court to correct its minutes to conform to the probation condition actually ordered by the court.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

In February 2015, the Orange County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602) alleging J.L. (born August 1998) committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) and conspired to commit shoplifting (Pen. Code, § 182, subd. (a)(1)) on July 28, 2014. The evidence at the jurisdictional hearing in May and June 2015 established Balwinder Singh and Megan Singh worked at a convenience store in Buena Park in July 2014. On July 28, around midnight, four teenage girls entered the store. Two feigned purchasing items while a third took beer off a shelf. Balwinder restrained the girl with the beer, but one of the others took the beer and fled with two of her companions. Minor and two other youths entered, pushed the Singhs, and wrested the restrained girl away from them. Minor told Singh they were gang members and threatened to kill him.

## II

### DISCUSSION

#### *Grffiti Items Probation Condition*

In January 2014, the Orange County District Attorney filed two petitions alleging minor possessed graffiti tools (Pen. Code, § 594.2, subd. (a)) in October 2013 and committed felony and misdemeanor vandalism (Pen. Code, § 594) in November 2013. A probation report reflects minor repeatedly used paint markers to apply gang-type graffiti to school property. In March 2014, minor admitted the allegations. In a

disposition agreement, minor and his lawyer agreed to the following condition: “Not use/possess any item for the purpose of defacing any property (including spray paint, felt tip pens, inscribing device).” The juvenile court declared minor to be a ward, and placed him on probation on various terms and conditions. The reporter’s transcript reflects the juvenile court imposed the following condition: “You cannot use or possess any item for the purpose of vandalism.” The court’s minutes described the condition differently: “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.”<sup>1</sup>

At the disposition hearing on the current petition in August 2015, the court stated on the record “it is going to be all of the same terms and conditions of probation he previously had,” plus a few additional conditions. The court’s minutes provide: “All prior terms and conditions of probation not in conflict with these terms and conditions are incorporated by this reference and remain in full force and effect.”

Relying on the version of the probation condition contained in the court’s minutes and clerk’s transcript (“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”), minor filed briefs asserting the probation condition was unconstitutionally vague and overbroad. (See *People v. Freitas* (2009) 179 Cal.App.4th 747, 750 [“A probation condition which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application, violates due process”]; *In re E.O.* (2010) 188 Cal.App.4th 1149, 1154 [a restriction is unconstitutionally overbroad if it impinges on constitutional rights and is not “tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation”].) But minor filed a supplemental brief before oral argument, and for the first time noted the conflict between the court’s oral

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<sup>1</sup> Minor subsequently admitted possessing a dirk (Pen. Code, § 21310) in August 2014.

pronouncement and its minutes. At oral argument, the parties conceded the oral pronouncement controls, and minor agreed to withdraw his constitutional claims if the juvenile court's minutes are corrected to conform to the oral pronouncement. (See *People v. Farrell* (2002) 28 Cal.4th 381, 384 & fn. 2 [court's oral pronouncement of judgment controls over clerk's minutes]; *People v. Little* (1993) 19 Cal.App.4th 449, 451 [trial court has inherent power to correct clerical errors at any time to make its records reflect the true facts].) Minor did not object at oral argument to the Attorney General's request to use the language from the disposition agreement, which is consistent with the oral pronouncement but more specific. Accordingly, we will direct the court to modify its minutes (March 2014 and August 2015) to conform the graffiti items condition to the court's March 2014 oral pronouncement and disposition agreement.

### III

#### DISPOSITION

The juvenile court is directed to correct its minutes to reflect that as a condition of his probation Jorge must "Not use/possess any item for the purpose of defacing any property (including spray paint, felt tip pens, inscribing device)." The juvenile court is further directed to apprise probation authorities of the condition. The disposition order is affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.