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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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

H036746
(Santa Clara County
Super. Ct. No. JV36689)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

The juvenile court sustained a wardship petition under Welfare and Institutions Code section 602 alleging that appellant A.H. had engaged in conduct amounting to second degree burglary. It placed appellant on probation subject to certain conditions, including one restricting his access to any “school campus.” Later the court sustained three subsequent petitions and directed that all previous orders not inconsistent with the new order would remain in effect. On appeal from this later order, appellant contends that the school restriction is unconstitutionally overbroad. Respondent contends that this challenge cannot now be entertained, but was only reviewable on appeal from the order

in which the restriction was originally imposed. We follow published authority from this district and dismiss the appeal.

BACKGROUND

On January 19, 2010, a petition was filed alleging that on or about January 13, 2010, appellant committed second degree robbery (Pen. Code, §§ 211-212.5, subd. (c)). On or about March 13, 2010, the petition was amended to allege in two counts that (1) on January 13, 2010 appellant committed grand theft from the person (Pen. Code, §§ 484-487, subd. (c)); and (2) on December 28, 2009, he committed second-degree burglary (Pen. Code, §§ 495-460, subd. (b)). According to a probation report, the first charge arose from an incident in which appellant “was involved with two other co-participants in taking personal property, cash and chocolate from the victim against his will by means of force and fear.” In the second, he “took a bottle of vodka from a liquor store.”

On April 16, 2010, the court issued an order of probation declaring appellant a ward of the court and permitting him to return home under the supervision of the probation officer. Among the conditions of probation was a directive “[t]hat said minor not be on or adjacent to any school campus unless enrolled or with prior administrative approval.”

On January 7, 2011, a notice of hearing was filed, apparently accompanied by a petition (referred to below as Petition B), alleging that appellant had violated the terms of his probation by incurring numerous unexcused absences from school, several positive drug tests indicating marijuana use, and two curfew violations.

On January 25, 2011, a further petition, referred to below as Petition C, was filed charging first degree robbery, with an enhancement for having committed the crime “with a person who [was] armed with a firearm in the commission of a felony or

attempted felony.” Accompanying police reports stated that appellant admitted being involved in the armed robbery of a pizza delivery driver on January 22.

On January 26, 2011, a further petition, referred to below as Petition D, was filed, charging appellant with petty theft in that on September 7, 2010, he stole a sweater from a department store.

After a contested hearing, the court sustained the allegations of Petition C (the pizza robbery), and appellant admitted the allegations of Petition B (probation violations) and C (theft of sweater). The court adopted and incorporated the dispositional recommendations of the probation department. These included a directive that “all previous Orders of the Court not inconsistent with today’s Orders remain in full force and effect.” The court’s written jurisdictional and dispositional orders contained numerous additional recitals to the same effect.

Appellant filed this timely appeal.

DISCUSSION

Appellant’s sole claim of error is that the probation condition limiting his presence on school property is unconstitutionally vague and overbroad. This condition was imposed, however, not as part of the orders now under review but as part of the order of April 16, 2010, first declaring appellant a ward of the court. It was that order which directed appellant “not [to] be on or adjacent to any school campus unless enrolled or with prior administrative approval.” The order now under review merely declared that the earlier directive, along with all other orders not inconsistent with the latest order, would “remain in full force and effect.”

As appellant concedes, a divided panel of this court has held that an appellate challenge like his will not lie under the present circumstances. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129 (*Shaun R.*) The trial court there had imposed a number of probation conditions in 2008 when it first declared the minor a ward of the court. In 2009

it sustained a later petition and again imposed several probation conditions while directing that all previous orders not conflicting with the newly imposed orders would remain in effect. While many of the new conditions touched on the same subject matter as the 2008 conditions, and thus in effect superseded them, one of the 2008 conditions—concerning weapons—had no counterpart in the later order. On appeal from that order the minor challenged many of the 2008 conditions, including the weapons provision, as well as some of those imposed in the 2009 order. The court held that the challenge to the 2008 conditions was untimely and that the 2009 order continuing those conditions in effect did not operate to “reimpose” them so as to expose them to appellate challenge on appeal from the later order. (*Id.* at pp. 1137-1141.)

Appellant contends that *Shaun R.* was wrongly decided insofar as it concerned the timeliness of a challenge like his.¹ He contends that the general policy favoring the finality of orders in dependency and criminal cases does not apply in the delinquency context. He embraces the argument of the dissent in that case, that a prior dispositional order “does *not* ordinarily continue to be in force” after adoption of a new order because the latter “‘effectively terminate[s]’ ” the former. (*Shaun R.*, *supra*, 188 Cal.App.4th at p. 1147 (dis. opn. of Mihara, J.), quoting *In re Ruben M.* (1979) 96 Cal.App.3d 690, 699, disapproved on another ground in *In re Michael B.* (1980) 28 Cal.3d 548, 554.) Accordingly, the argument concludes, a recital continuing previous orders in effect must be viewed not as merely leaving those orders intact but as “adopt[ing] and reimpos[ing]” those conditions so as to expose them anew to appellate review. (*Ibid.*)

¹ Appellant does not separately address a second holding, which was that review was precluded by the minor’s failure to refer to the 2008 order in his notice of appeal. (*In re Shaun R.*, *supra*, at pp. 1138-1139, citing Cal. Rules of Court, rule 8.405(a)(3) and *In re Melvin J.* (2000) 81 Cal.App.4th 742, disapproved of on another ground in *John L. v. Superior Court* (2004) 33 Cal.4th 158, 181, fn. 7.) That holding, however, was essentially a corollary of the proposition that the conditions were not part of the 2009 order but remained part of the 2008 order.

Appellant has failed to persuade us that the majority opinion in *Shaun R., supra*, 188 Cal.App.4th 1129 wrongly applied the law. We would be particularly reluctant to reach such a conclusion since it would create a split of authority within this district. We therefore adhere to the holding in that case and conclude that appellant's challenge to the probation condition is in effect a challenge to the order of April 16, 2010, rendering the appeal untimely.

DISPOSITION

The appeal is dismissed.

RUSHING, P. J.

WE CONCUR:

PREMO, J.

WALSH, J.*

* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.