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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H040958
(Santa Clara County
Super. Ct. No. JV40549)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

J.P., who was adjudged a ward of the court, appeals from the juvenile court's disposition. (Welf. & Inst. Code, §§ 602, 800.)¹ Some of his contentions have merit. We will modify some of the court's dispositional orders and affirm.

I

Procedural History

A six-count juvenile wardship petition was filed against J.P. in San Mateo County Superior Court. J.P. admitted a violation of Penal Code section 212.5, subdivision (c) (count one) and Penal Code section 496, subdivision (a) (count five) and the remaining counts were dismissed.

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

The delinquency matter was transferred into the Santa Clara County Superior Court. At the disposition on March 17, 2014, the juvenile court adjudged J.P. a ward of the court, placed him on the electric monitoring program for 90 days, returned him to his parents under the supervision of the probation department, and imposed a number of terms and conditions.

II

Discussion

A. Courthouse Condition

The court ordered the following in this case: “You must not attend any gang-related case unless at least one of these things is true: [¶] 1-You are a party to the case. [¶] 2-You or member of your immediate family is a victim of the activity charged in the case. [¶] 3-You are there to obey a subpoena, summons, court order, or other official order to attend. [¶] 4-A party’s attorney has asked you to testify or to speak to the court. [¶] *In all other cases, you must stay at least 50 feet away from the entrance to any courtroom or courthouse where you know there is a gang-related case going on.* [¶] [] A gang-related case is a court case that you know involved charges of gang-related activity, or other charges against a person you or have been told by your probation officer is a member of gang. A gang is a “ ‘criminal street gang’ ” as defined in section 186.22 of the Penal Code. [¶] You must not try to scare or otherwise cause anyone not to take part in a gang-related case. This includes a witness, a victim, juror or court worker. You must not try to get any witness in any court case not to testify. You must not try to get them to change their testimony. [Internal paragraph numbering omitted.]”² (Italics added.)

² We ignore the inconsistencies between numbering of the relevant probation conditions set forth in the court’s written Order of Probation (Nos. 33 to 40) and those set forth in its written disposition (Nos. 25 to 27).

J.P. asserts that the probation condition requiring him to stay 50 feet away from the entrance to a courthouse where he “know[s] there is a gang-related case going on” is unconstitutionally overbroad.³ He argues that the condition “unconstitutionally restricts his First Amendment right to access to criminal and civil trials” J.P. requests that “this court strike the courthouse condition in its entirety [*sic*] and remand to the juvenile court for consideration of a narrower condition” or modify the condition to be consistent with the language proposed in this court’s decision of *In re E.O.* (2010) 188 Cal.App.4th 1149.

“Even conditions that infringe on constitutional rights may be valid if they are specifically tailored to fit the needs of the juvenile. [Citation.]” (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1142.) “A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]” (*In re Sheena K., supra*, 40 Cal.4th at p. 890.) A challenge that a probation condition is unconstitutionally overbroad on its face may be raised for the first time on appeal. (*Id.* at pp. 888-889.)

In this case, language adopted by the juvenile court is very close to the language proposed in *In re E.O.*, which J.P. indicates is acceptable. (See *In re E.O., supra*, 188 Cal.App.4th at p. 1157, fn. 5.) The critical difference between them is that the stay-away order imposed in this case applies to “the entrance to any courtroom or courthouse where you know there is a gang-related case going on” whereas the stay-away order proposed in

³ J.P. forfeited the argument, raised for the first time in his reply brief, that “there is no nexus between the challenged condition and the underlying offense.” “ ‘Normally, a contention may not be raised for the first time in a reply brief. [Citation.]’ [Citations.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 353-354.) Moreover, the nexus argument is not a facial challenge involving a pure question of law and, therefore, it cannot be raised on appeal unless it was advanced below. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 888-889.)

In re E.O. applies to only “the entrance to *any courtroom* where you know there is a gang-related case going on.” (*Ibid.*, italics added.)

Quoting from *In re E.O.*, *supra*, 188 Cal.App.4th at page 1155, J.P. contends that the courthouse condition in this case “would not only ‘prevent appellant from being *near* a building where gang-related proceedings are known to be underway . . . [but] also from attending other proceedings in the same, and perhaps adjacent, buildings, or indeed from entering such a building for any reason, other than as a party or witness, without his probation officer’s permission, unless he “needs” to enter for “a legitimate purpose.” Indeed appellant could violate the condition if a car or bus in which he is a passenger *passes* by such a building.’ ” Of course, the probation condition under consideration in *In re E.O.* was completely different than the probation condition at issue here and, thus, some of the remarks in that case have no application to the present probation condition.⁴

In our view, the tacit suggestion that some courthouses might be part of a larger governmental campus or facility that J.P. might need to visit or that a nearby road might be within 50 feet of a courthouse are fact-based inquiries beyond the scope of a facial challenge. J.P. suggests that he might need to go to a courthouse for other legitimate reasons, impliedly at the time he knows “a gang-related case [is] going on.” That contention is also an “as applied” argument not cognizable in this appeal since it requires a factual inquiry into those reasons.⁵

⁴ The probation condition in *In re E.O.* required the minor to *not* “ ‘knowingly come within 25 feet of a Courthouse when the minor knows there are criminal or juvenile proceedings occurring which involves [*sic*] anyone the minor knows to be a gang member or where the minor knows a witness or victim of gang-related activity will be present, unless the minor is a party in the action or subpoenaed as a witness or needs access to the area for a legitimate purpose or has prior permission from his Probation Officer.’ ” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1152.)

⁵ J.P. is free to go to the courthouse at permissible times, i.e., when he does not “know there is a gang-related case going on.” We also note that, in some jurisdictions, certain transactions that ordinarily take place at a courthouse, such as paying a traffic (continued)

In *Sheena K.*, the Supreme Court made clear that “as applied” constitutional challenges to probation conditions are not cognizable for the first time on appeal. “[A] probation condition may not be patently unconstitutional but may suffer nonetheless from . . . overbreadth. Or in some instances, a constitutional defect may be correctable only by examining factual findings in the record or remanding to the trial court for further findings.” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 887.) “[The Supreme Court did] not conclude that ‘all constitutional defects in conditions of probation may be raised for the first time on appeal, since there may be circumstances that do not present “pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court.” [Citation.] In those circumstances, “[t]raditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the trial court.” [Citation.]’ [Citation.]” (*Id.* at p. 889.) “[A]n appellate claim—amounting to a ‘facial challenge’— . . . does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts—a task that is well suited to the role of an appellate court.” (*Id.* at p. 885.)

The principal concern generating courtroom or courthouse stay-away probation conditions is the “prevention of intimidation by gang members of witnesses to or victims of crimes with which other gang members are charged.” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1155.) Presumably, those victims and witnesses must enter a courthouse to reach courtrooms where gang members are being tried. J.P. has failed to persuade us that the challenged condition as written is unconstitutionally overbroad on its face. We decline to modify the condition or to strike it.

ticket or obtaining a copy of a marriage certificate, may be accomplished online or by mail. The reviewing of court documents or the filing of a lawsuit is commonly done by an attorney on behalf of a client. Of course, J.P. may ask the juvenile court to modify the probation condition if he believes it poses a hardship. (See § 775.)

B. Attorney Fees

The juvenile court ordered J.P. and his mother jointly and severally liable for \$50 in attorney fees. J.P. argues that he cannot be made personally liable for the attorney fees since he is a minor. If there is any possibility that the obligation to pay attorney fees was made a condition of his probation, J.P. asks this court to make clear that the obligation is not a probation condition.

Section 903.1, subdivision (a), provides in pertinent part: “The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county or the court, whichever entity incurred the expenses, of legal services rendered to the minor by an attorney pursuant to an order of the juvenile court.” This court has determined that this provision “does not authorize juvenile courts to impose attorney fees on a minor if the minor is under 18 years of age when counsel is appointed.” (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1083 (*Gary F.*)) “[C]ounsel fees incurred on behalf of a minor child are in the nature of ‘necessaries’ for which the parents are liable. [Citations.]” (*In re Ricky H.* (1970) 2 Cal.3d 513, 521.) Only a minor’s parents, and not the minor, may be held liable for attorney fees incurred in representing the minor in a delinquency matter. (*Gary F.*, *supra*, at p. 1083.)

Like the minor in *Gary F.*, J.P. was under the age of 18 when his counsel was appointed. Since the imposition of attorney fees on a minor constitutes an unauthorized dispositional order, it may be corrected on appeal even where there was no objection below. (*Gary F.*, *supra*, 226 Cal.App.4th at p. 1083, fn. 5.) We will modify the dispositional attorney fee order accordingly.

We see nothing in the record that shows the juvenile court included the obligation to pay attorney fees in the probation conditions governing J.P.’s conduct. Mother is responsible for the obligation to pay attorney fees.

C. Restitution

At the March 17, 2014 disposition, the deputy public defender representing J.P. told the court that she agreed that \$300 should be paid to Daniel Guerrero and asked the court to continue the matter of restitution with respect to the restitution proposed in paragraph Nos. 31 and 32 of the recommendations set forth in the probation officer's report. The juvenile court orally ordered J.P. to pay \$300 in victim restitution to Daniel Guerrero (the robbery victim named in dismissed count two) as "stipulated."⁶ The juvenile court noted the request to postpone restitution setting as to the victims named in paragraph Nos. 31 and 32, Eder Franco and Singmala Kodandaramireddy, and it indicated that it would not make the restitution orders recommended in paragraph Nos. 31 and 32. Instead, the court made "general orders of restitution" for those two victims and scheduled "restitution setting" for April 16, 2014.

While paragraph Nos. 31 and 32 of the probation officer's recommendations were stricken by hand from the probation officer's report, filed March 17, 2014, those paragraphs were not stricken from the copy of the recommended orders incorporated into the juvenile court's written disposition and the corresponding restitutions orders were not stricken from its order of probation. At another place in the court's written disposition, the court correctly orders J.P. to pay victim restitution to only Guerrero and indicates that restitution setting hearing will held on April 16, 2014.⁷

J.P. asks us to correct the "minute order" by striking the erroneously included restitution orders. The parties agree the court's oral pronouncements control. We will modify the dispositional orders under our authority to correct clerical error. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

⁶ J.P. is not challenging this order.

⁷ The record before us indicates that a hearing was held on April 16, 2014, but the court did not issue any additional restitution orders or continue the matter to another court date.

D. Days in Custody

“A juvenile is entitled to credit against his maximum period of physical confinement for any time he spends in actual custody prior to disposition. [Citation.]” (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1231-1232; see § 726, subd. (d); *In re Eric J.* (1979) 25 Cal.3d 522, 536.) “[W]hen a juvenile court elects to aggregate a minor’s period of physical confinement on multiple petitions . . . , the court must also aggregate the predisposition custody credits attributable to those multiple petitions. [Citation.]”⁸ (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067-1068.)

The parties agree that J.P. was continuously in custody from January 26, 2014 to March 17, 2014, a total of 51 days. The record supports this determination. Accordingly, for future reference, we will modify the dispositional orders to accurately reflect the number of days in predisposition custody even though J.P. was not removed from his mother’s custody at disposition in this case.

DISPOSITION

The dispositional orders are modified to make only J.P.’s mother, and not J.P., liable for attorney fees, to strike the restitution orders concerning Eder Franco and Singmala Kodandaramireddy, and to reflect 51 days of actual custody. As modified, the judgment is affirmed.

⁸ Section 726, subdivision (d)(3), provides: “If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code”

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.