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

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

H043154
(Monterey County
Super. Ct. No. J48759)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

In October 2015, R.R. stole a pair of converse tennis shoes from a J.C. Penny store in Monterey County. R.R. was confronted by a two loss preventions officer outside of the store, and then they attempted to detain him, R.R. kicked them multiple times.

Following the incident, the Monterey County District Attorney filed a juvenile delinquency petition (Welf. & Inst. Code, § 602) alleging that R.R, age 17 at the time, committed second-degree robbery (Pen. Code, § 211). The juvenile court sustained the allegation after a contested jurisdictional hearing.

The juvenile court adjudged R.R. a ward of the court and placed him on probation for 12 months in his mother's home. As a condition of probation, the court ordered the

following: “You are not to associate with any individuals known by you to be disapproved of by your parents or guardians. You shall not knowingly associate/communicate with any individuals identified to you by your Probation Officer as a threat to your successful completion of probation. You are not to associate with any individuals known by you to be on Probation or Parole (adult or juvenile).” Before imposing the recommended conditions, the juvenile court asked, “Any objection to any of the individual conditions?” Counsel for R.R. responded, “There is none.”

R.R. appeals from the judgment arguing that the probation condition is vague and overbroad.

DISCUSSION

A juvenile court is empowered to impose upon a ward placed on probation “any and all reasonable 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).) “The juvenile court has wide discretion to select appropriate 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.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) This discretion is in fact broader with respect to the imposition of probation conditions for juveniles than it is for adult offenders. (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1152; see also *In re Sheena K., supra*, at p. 889 [probation condition that may be unconstitutional for adult offender may be permissible for minor under juvenile court’s supervision].)

Both adult offenders and juveniles may challenge a probation condition on the grounds that it is unconstitutionally vague or overly broad. (See *Sheena K., supra*, 40 Cal.4th at p. 887.) As we have explained: “Although the two objections are often mentioned in the same breath, they are conceptually quite distinct. A restriction is

unconstitutionally vague if it is not ‘ “sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.” ’ [Citation.] A restriction failing this test does not give adequate notice—“fair warning”—of the conduct proscribed. [Citations.] A restriction is unconstitutionally overbroad, on the other hand, if it (1) ‘impinge[s] on constitutional rights,’ and (2) is not ‘tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.’ [Citations.] The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 910.)

Any objection to the reasonableness of a probation condition is forfeited if not raised at the time of imposition. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 814; see also *Sheena K.*, *supra*, 40 Cal.4th at p. 883, fn. 4; *People v. Welch* (1993) 5 Cal.4th 228, 237.) Constitutional challenges to probation conditions on their face, however, may be raised on appeal without objection in the court below. (*Sheena K.*, *supra*, at pp. 887-889.)

R.R. argues that “[t]he condition prohibiting [him] from associating with individuals ‘disapproved of by [his]parents or guardians’ is overbroad because it restricts association without defining a class of people or meaningful standard as to whom the parents may disapprove of.” R.R. requests that this court reverse or modify the condition to “sufficiently define: 1) who [*sic*] the parent’s [*sic*] may disapprove of; and 2) what is a ‘threat to [minor’s] successful completion of probation.’ ”

R.R. cites *People v. O’Neil* (2008) 165 Cal.App.4th 1351 (*O’Neil*) in support of his challenge of the association condition. In *O’Neil*, the trial court imposed the

following condition: “ ‘You shall not associate socially, nor be present at any time, at any place, public or private, with any person, as designated by your probation officer.’ ” (*Id.* at p. 1354.) The reviewing court observed that, “[a]s written, there are no limits on those persons whom the probation officer may prohibit defendant from associating with.” (*Id.* at p. 1357.) The court further noted that the condition failed to “identify the class of persons with whom defendant may not associate” or “provide any guideline as to those with whom the probation department may forbid association.” (*Id.* at pp. 1357-1358.)

The *O’Neil* court explained that while a trial court “may leave to the discretion of the probation officer the specification of the many details that invariably are necessary to implement the terms of probation,” “the court’s order cannot be entirely open-ended.” (*O’Neil, supra*, 165 Cal.App.4th at pp. 1358-1359.) It concluded that “[w]ithout a meaningful standard, the order is too broad and it is not saved by permitting the probation department to provide the necessary specificity.” (*Id.* at p. 1358, fn. omitted.) As a caveat, the court noted that it was dealing with conditions of adult probation and “[c]onditions of juvenile probation may confer broader authority on the juvenile probation officer than is true in the case of adults [citations].” (*Id.* at p. 1358, fn. 4.)

O’Neil is not dispositive in this case. It concerned a probation condition giving a probation officer, not a parent or guardian, broad discretion in determining the persons with whom the probationer could associate. And it involved an adult offender, not a juvenile, a distinction specifically noted by the *O’Neil* court. (*O’Neil, supra*, 165 Cal.App.4th at p. 1358, fn. 4.)

In re Frank V. (1991) 233 Cal.App.3d 1232 (*Frank V.*), and *In re Byron B.* (2004) 119 Cal.App.4th 1013 (*Byron B.*), are on point in this case. In *Frank V.* the minor “challenge[d] as overbroad the condition limiting his right of association to those approved by his probation officer or parents.” (*Frank V., supra*, at p. 1243.) The juvenile court told the ward that, if his mother, father, or probation officer instructed him

to not associate with certain persons, he could not “ ‘hang around’ ” or “ ‘hang out’ ” with them. (*Id.* at p. 1241.) The appellate court, recognizing that a juvenile court acts in *parens patriae*, upheld the probation condition: “The juvenile court could not reasonably be expected to define with precision all classes of persons which might influence [the minor] to commit further bad acts. It may instead rely on the discretion of his parents, and the probation department acting as parent, to promote and nurture his rehabilitation.” (*Id.* at p. 1243.) Similarly, the court in *Byron B.*, rejected the minor’s challenge to a probation condition prohibiting contact with any person disapproved by a parent or probation officer. It held that the condition was not overly broad (*Byron B., supra*, 119 Cal.App.4th 1013, 1017), and concluded that “[t]he juvenile court, acting in *parens patriae*, could limit appellant’s right of association in ways that it arguably could not limit an adult’s.” (*Id.* at p. 1018.)

Here, R.R. fails to show that the probation condition restricting his association is unconstitutionally vague or overbroad. The condition properly relies on the discretion of R.R.’s parents and the probation department to determine the people in R.R.’s life who might influence him to commit further bad acts. (See, e.g., *Frank V., supra*, 233 Cal.App.3d at p. 1243; *Byron B., supra*, 119 Cal.App.4th at p. 1018.) In addition, the condition properly relies on “the discretion of his parents, and the probation department acting as parent, to promote and nurture his rehabilitation.” (*Frank V., supra*, at p. 1243.)

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

People v. R.R.
H043154