Filed 3/27/18 In re Deandre R. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DEANDRE R., a Person Coming Under the Juvenile Court Law.	B278222
THE PEOPLE, Plaintiff and Respondent, v. DEANDRE R., Defendant and Appellant.	Los Angeles County Super. Ct. No. MJ21280

APPEAL from orders of the Superior Court of Los Angeles County, Denise McLaughlin-Bennett, Judge. Reversed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle, Tannaz Kouhpainezhad, and Colleen M. Tiedemann, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

While on probation for vandalism, Deandre R.—a ward of the juvenile court and a Regional Center client with an IQ of 52—failed to maintain satisfactory grades and was ordered suitably placed. Despite his intellectual disability, Deandre went on to graduate from high school. But the court, citing the probation violation, denied Deandre's motion to seal his records. Because under California law, when a ward of the juvenile court substantially complies with his probation conditions, the court must dismiss the delinquency petition and seal the ward's records, we reverse.

BACKGROUND

On February 6, 2012, a petition was filed under Welfare and Institutions Code[1] section 602 alleging that Deandre had assaulted his mother with a deadly weapon by throwing a pair of scissors. (Pen. Code, § 245, subd. (a)(1); count 1.) On December 10, 2012, the petition was amended to add one count of felony vandalism (Pen. Code, § 594, subd. (a); count 2), which Deandre admitted.

The court dismissed count 1, sustained the petition, declared Deandre a ward of the court, and ordered him suitably placed by the probation department. Among other conditions of probation, the court ordered Deandre to attend school and maintain satisfactory grades, to perform 80 hours of community service under the supervision of his probation officer, and to pay $100 in restitution. The court stressed to the probation

---

1 All undesignated statutory references are to the Welfare and Institutions Code.

department that Deandre was a Regional Center client, and defense counsel agreed to provide the probation department with reports documenting Deandre's intellectual disability, which had been the subject of an earlier competency hearing.

At the May 16, 2013, review hearing, the court noted that Deandre had done very well in placement. He had been receiving educational services, was doing better in school, and had "done everything" the court had asked him to do. In recognition of this success, the court terminated the order for suitable placement and ordered Deandre released to his parents on home probation.

On April 23, 2015, the probation department filed a non-detained probation violation notice under section 777 alleging that Deandre had been disrespectful to and defiant with his father, had missed several daily check-ins with his probation officer, and was doing poorly in school. Deandre admitted violating probation by receiving poor grades. The court found the violation true, dismissed the remaining allegations, detained Deandre, and ordered the probation department to prepare a disposition report regarding potential placements. At the May 7, 2015, disposition hearing, the court terminated the order of home probation and ordered Deandre suitably placed. The court continued the previous probation conditions and added an additional 20 hours of community service and 30 anger management and family counseling classes.

On May 5, 2016, the probation department filed a 12-month review report, which is discussed in more detail below. The report noted that while Deandre had not yet met his rehabilitative goals, he had made significant progress, and his permanent plan was extended foster care services under section 450. At the hearing that followed, the court agreed: "I believe that the

proposed permanent plan for extended foster care services under [ ] section 450 is an appropriate plan, and once the minor meets all of his rehabilitative goals this court will have no problem transferring this from 602 to 450 status, just doesn't appear that we're quite at that point today."

On August 19, 2016, the probation department filed a petition under section 778 requesting termination of probation jurisdiction and the May 7, 2015, suitable placement order. The petition noted that Deandre had "in fact completed his placement program" and had expressed interest "in both [the] transitional housing program (THP) and transitional housing program plus foster care (THP+FC/450WIC)." The probation officer asked the court to schedule a termination hearing.

But rather than schedule the termination hearing, the court granted the section 778 petition that day and terminated jurisdiction effective August 25, 2016. Then, on August 25, 2016, the court held a non-appearance calendar at which it terminated jurisdiction under section 602. The court's minute order indicates that Deandre had been provided with the documents set forth in section 391, subdivision (e), and that he did not want to continue in foster care under section 450. The record does not reveal the basis for either of these conclusions.

On September 1, 2016, Deandre's attorney filed a motion under section 786 to seal his records in this case—and the records of two other section 602 petitions that had previously been dismissed. Later that day, the court issued a minute order denying the motion because Deandre had violated probation by receiving poor grades in May 2015, and the May 7, 2016, probation report had "indicate[d] minor had not met his rehabilitative goals." On September 27, 2016, counsel filed a

supplemental motion to seal or for reconsideration, and on October 4, 2016, the court denied the motion by minute order, referring to the reasons for the earlier denial.

Deandre filed a timely notice of appeal from both orders.

DISCUSSION

Deandre contends the court abused its discretion by denying his motion to seal his records under section 786. We agree.

1. Section 786 applies to non-minor wards.

We begin by addressing whether section 786 applies to this case. When the court terminated jurisdiction over Deandre, section 786 applied to any "*minor* who has been alleged or found to be a ward of the juvenile court … ." (Italics added.) Effective January 1, 2017, however, the statute was amended to refer to any "*person* who has been alleged or found to be a ward of the juvenile court … ." (Italics added.) The People contend that section 786 does not apply to Deandre because on September 1, 2016, when the court terminated jurisdiction, he was over 18—and in 2016, the statute applied only to minors. We disagree.

We review a statute's retroactivity de novo. (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 183.) Typically, we assume statutes operate prospectively absent a clear indication to the contrary. (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 229–231.) "A statute has retrospective effect when it substantially changes the legal consequences of past events. [Citation.] A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. [Citation.] Of course, when the Legislature clearly intends a statute to operate retrospectively,

we are obliged to carry out that intent unless due process considerations prevent us. [Citation.]" (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.)

"A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. [Citations.] Such a legislative act has no retrospective effect because the true meaning of the statute remains the same." (*Western Security Bank v. Superior Court*, *supra*, 15 Cal.4th at p. 243.)

In this case, it is apparent from the legislative history that the amendment was a "clean up proposal" (Assem. Com. on Pub. Safety, analysis of Assem. Bill No. 1945 (2015–2016 Reg. Sess.) as amended Aug. 19, 2016, p. 3) meant to "clarif[y] that existing sealing laws pertaining to informal supervision or probation apply even if the person with the juvenile records no longer is a minor" (Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1945 (2015–2016 Reg. Sess.) Aug. 19, 2016, p. 1). Because the 2016 amendment to section 786 merely clarified that the word *minor* always included non-minor wards, we conclude the statute applies to Deandre.

2. Proceedings Below

The May 5, 2016, 12-month review report on which the court relied in denying Deandre's motions explained that when he was placed in May 2015, Deandre had trouble adjusting to

"group home norms and social dynamics." He "had difficulty following staff directions, and was often engaged in arguments with them." But it also emphasized that since the six-month report, Deandre's behavior had improved, and there had been only one report of negative behavior. Because Deandre was not yet 18 and had not yet met all of his rehabilitative goals, he was "not currently eligible for non minor dependent status under AB 12/212 at this time." Yet while some areas still needed improvement, Deandre had "actively participated in his treatment," had "shown the ability and desire to change, and [had] made good progress in demonstrating appropriate behavior with staff and peers during his placement program." Thus, Deandre's permanent plan was "to transition to 450WIC jurisdiction upon successful completion of his placement program."

At the subsequent hearing, the court agreed with this plan. The court explained: "I believe that the proposed permanent plan for extended foster care services under [ ] section 450 is an appropriate plan, and once the minor meets all of his rehabilitative goals this court will have no problem transferring this from 602 to 450 status, just doesn't appear that we're quite at that point today. So what I also intend to do is to continue this to the 6-month date of November 3rd. If prior to November 3rd it is determined by probation that the minor has met the requirements for [ ] section 450, probation does have leave to file a 778 petition asking that the court change [Deandre]'s designation as a 602 minor to a 450 non-minor dependent."

The court then made "the follow[ing] findings: … the court agrees with probation that extended foster care services under [ ] section 450 appears to be appropriate at this time." And the court

cautioned probation that a "778 petition if it is going to be filed must demonstrate or show how [Deandre] has met his rehabilitative goals and would otherwise qualify for extended foster care benefits."

In accordance with the court's directions, on August 19, 2016, the probation department filed a petition to terminate jurisdiction over Deandre. The termination petition explained that Deandre had "actively participated in individual and group therapies, substance abuse counseling, anger management, an educational program, and life skills training." He got along with "his peers and staff members with no significant problems to report," "maintained a respectful attitude with staff, and followed the rules of the group home appropriately." "Academically, [Deandre had] made great progress." At the 12-month review, Deandre had been "behind in credits and need[ed] to work hard to catch up on credits." But by June 2016, he had graduated from high school and gotten a job at Hometown Buffet. In short, Deandre "in fact completed his placement program." The petition also noted that Deandre had "made substantial progress towards his conditions of probation." Since the May report, Deandre had paid all court-ordered fines and restitution, and though he did not complete the court-ordered 100 hours of community service, the probation department asked the court to waive that condition—which it had long ranked as Deandre's least important objective. Finally, the department requested a termination hearing.

But the court did not hold a termination hearing. Instead, notwithstanding its comments at the 12-month review hearing, it found Deandre had refused section 450 benefits and terminated jurisdiction.

As noted, on September 1, 2016, Deandre's attorney filed a motion to seal his records in this case—and the records of two other section 602 petitions that had previously been dismissed—under section 786. Counsel explained that she "was not present when the court granted the WIC § 778 Petition and had no opportunity to move for a sealing of records pursuant to WIC § 786." But counsel noted that Deandre "did more than substantially comply with the orders made by this court." According to the "778 petition filed August 19, 2016, Deandre completed his placement program, graduated from High School, secured a job at Hometown Buffet, paid the fines and restitution ordered, followed the rules of the group home, maintained a respectful attitude with staff, and has been getting along with peers and staff at the group home. The only affirmative obligation owed the court was completion of community service"—and the probation department had asked the court to waive the community service requirement.

The court denied the motion later that day: "The Court finds that the last suitable placement order [dated May 7, 2015 was] based on minor's violation of his probation terms. [The] May 5, 2016 JDRV report indicates minor had not met his rehabilitative goals and thus could not remain in placement after 18th birthday under AB12212 unless such goals were met. Jurisdiction Terminated to prevent minor from becoming homeless and that he can transition to ILP. Minor can apply [to have his records sealed] under WIC 781 if rehabilitation is shown."

On September 27, 2016, counsel filed a supplemental motion to seal or for reconsideration. Counsel noted that in light of Deandre's IQ of 52, there had been real questions about his

capacity to comply with the probation condition that he maintain satisfactory grades—the condition that led to the May 2015 violation and suitable placement. Yet despite his intellectual disability, he had gone on to graduate from high school. Counsel also explained that while the May 5, 2016, report had referenced a failure to meet all rehabilitative goals, it also noted that family reunification was no longer appropriate in light of Deandre's mother's failure to comply with the case plan, and that the goal of extended foster care services under section 450 would be appropriate. The report had explained that Deandre's behavior at the group home had improved—and while he needed to improve his academics and continue therapy, those concerns were allayed in the section 778 petition filed in August 2016.

On October 4, 2016, the court denied the motion.

3. Section 786

"Welfare and Institutions Code section 786, particularly as amended, is a broadly written statute, which requires sealing the records of certain juvenile offenders." (*In re Joshua R.* (2017) 7 Cal.App.5th 864, 868.) "Section 786 authorizes the juvenile court to employ a streamlined, court-initiated procedure for dismissing juvenile delinquency petitions and sealing juvenile records in the custody of the juvenile court, law enforcement agencies, the probation department, and the Department of Justice, when a ward 'satisfactorily completes' probation or supervision, as long as the offense is not one listed in section 707, subdivision (b). (§ 786, subds. (a), (d).)" (*In re A.V.* (2017) 11 Cal.App.5th 697, 705.)

"Satisfactory completion of probation under section 786 has significant benefits for a juvenile offender. A minor who satisfactorily completes probation is entitled to have the petition

of wardship dismissed and the records pertaining to the petition sealed. (§ 786, subd. (a).) With satisfactory completion of probation, 'the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to any inquiry by employers, educational institutions,' and others. (§ 786, subd. (b).)" (*In re J.G.* (2016) 3 Cal.App.5th 521, 525.)

" '[S]atisfactory completion' of probation or supervision has occurred if the person has no new findings of wardship, or a felony conviction, or a misdemeanor conviction involving moral turpitude, and he or she 'has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.' (§ 786, subd. (c)(1).)" (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 705.)

4. Deandre substantially complied with the conditions of probation.

"The court has the discretion under section 786 to find the ward has or has not substantially complied with his probation so as to be deemed to have satisfactorily completed it." (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 701.) But the findings underlying that discretion are findings of fact—and factual findings are reviewed for substantial evidence. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 680–681.) Thus, if the court's determination of no substantial compliance rests on a finding unsupported by substantial evidence, the determination is necessarily an abuse of discretion. (*Id.* at p. 681; accord *Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709, 715 ["the sound discretion of the juvenile court" "must be exercised within the framework of the Juvenile Court Law," based on "substantial evidence adduced at the hearing"].)

Here, the court denied Deandre's motion to seal because (1) he had violated probation in May 2015, and (2) in May 2016, the probation department indicated he had not yet met his rehabilitative goals.[2] This was error.

4.1. The May 2015 Probation Violation

The court's first reason for concluding Deandre did not satisfactorily complete probation was that he had admitted failing to achieve good grades in May 2015.

" 'When referring to the completion of probation, judges and litigants often use the terms "successful" and "satisfactory" interchangeably. But the terms are not always interchangeable and even the same term can have different statutory definitions. Differing statutes require that care be taken to identify the statute at issue, use the correct statutory term, and apply the definition specific to that statute to avoid confusion as to the nature of the court's finding and its effect.' [Citation.] For example, successful completion of probation, for purposes of dismissal under Penal Code section 1203.4, 'requires that a defendant successfully complete *every condition of probation* for "the entire period" of probation.' [Citation.]

"By contrast, section 786 requires only 'satisfactory completion' with probation and, to underscore the point, specifically defines 'satisfactory completion' as 'substantial[ ]

---

[2] Of course, as the court's failure to hold the termination hearing required under section 778 makes it impossible for us to determine what legal standard the court applied and whether the court had some other issue in mind when it concluded Deandre was not in substantial compliance with the terms of his probation, we must accept the reasons provided in the minute order.

compl[iance].' (§ 786, subd. (c)(1).) Substantial compliance is not perfect compliance. Substantial compliance is commonly understood to mean 'compliance with the substantial or essential requirements of something (as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not complied with.' [Citation.]" (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 709, alterations original.)

The substantial compliance language was added to section 786 in 2015 to address courts' concerns about consistent implementation. (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 708.) As the bill's author explained it, *satisfactory completion* "is viewed as providing a 'passing grade' standard for 'satisfactory' completion. Many probation orders in delinquency cases are checklists of conditions that are difficult or impossible for many adolescents to perform at an 'A' grade level. ... On occasion, children on probation backslide by perhaps failing a drug test or skipping an appointment—but this does not mean that they cannot or do not rebound to a level of **satisfactory overall performance**. ... [¶] Our goal, after all, is to support the re-entry, rehabilitation and employability of juveniles having justice system histories, and not to impose lifetime barriers to success based on probation performance criteria that are too rigid or unrealistic from an adolescent development perspective.' [Citation.]" (*Id.* at pp. 708–709, emphasis added.) Put another way, the statute does not require the ward to satisfy *every* probation condition. Instead, it asks him to achieve a passing grade *overall*.

While we can imagine circumstances under which a single probation violation could be so significant that it would, without more, make a ward a probationary failure, this is not one of those cases. We are not convinced that Deandre—a Regional Center

client with an IQ of 52—had the capacity to maintain satisfactory grades when he was on home probation. (§ 786, subd. (c)(1) ["satisfactory completion … shall be deemed to have occurred if the person" substantially complies with "reasonable orders of … probation that are within his or her capacity to perform."]; *In re Juan G.* (2003) 112 Cal.App.4th 1 [intellectually disabled minor did not have capacity to earn satisfactory grades]; *In re Robert M.* (1985) 163 Cal.App.3d 812 [same; IQ of 70].) But even assuming he did, Deandre ultimately managed to graduate from high school. That achievement demonstrates that *overall*, Deandre managed to remedy the May 2015 violation and fulfill the probation condition.

4.2. The May 2016 Report

The court also held that the May 5, 2016, probation report indicated Deandre had not "met his rehabilitative goals" and could not remain in extended foster care unless such goals were met. This was not a proper basis for the court to deny the motion to seal.

First, the court's references to "rehabilitative goals" and "placement … under AB12212" indicate that it conflated the question under section 786—whether Deandre substantially complied with the conditions of probation—with the requirements for extended foster care under section 450.[3] And

---

[3] Assembly Bill No. 12 (Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by Assembly Bill No. 212 (Stats. 2011, ch. 459) made it possible to access federal funding for foster care services for dependents and wards after their 18th birthdays. As relevant here, extended foster care is available to non-minor dependent wards with section 450 status who meet one of

while section 450 requires the ward to meet "rehabilitative goals … as set forth in the case plan," section 786 contains no such requirement—and our research has not uncovered any authority for the proposition that section 450 eligibility is a prerequisite to section 786 sealing. As such, it is unclear how the court's findings on this point are relevant to section 786.

Second, to the extent the court's reference to "rehabilitative goals" can be construed as a reference to probation conditions, the court apparently misread the May 5, 2016, report. While the report indicated Deandre had not *yet* met the requirements of long-term foster care, it still listed long-term foster care as the ultimate goal, indicating that the probation officer believed Deandre *would* ultimately meet the requirements. The court itself recognized this at the 12-month review hearing, where it explained: "I believe that the proposed permanent plan for extended foster care services under [ ] section 450 is an appropriate plan, and once the minor meets all of his rehabilitative goals this court will have no problem transferring this from 602 to 450 status, just doesn't appear that we're quite at that point today." The record does not reveal why the court changed its mind on this point.

Third, it is unclear how the 12-month report's conclusions are relevant in light of the August 19, 2016, petition, which the court apparently failed to consider despite having invited the department to file it. The petition explained that since the May 5, 2016 report, Deandre had remedied the deficiencies identified in that report and had "in fact completed his placement program."

---

the five eligibility conditions as described in their Transitional Independent Living Plans. (§§ 366.32, 11400, subd. (v).)

In light of this success, the probation department recommended waiving the incomplete community service—a request the court does not appear to have noted or acted on.

DISPOSITION

The post-judgment orders are reversed and the matter is remanded with directions to enter a new order granting Deandre's motion to seal under section 786.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

CURREY, J.*

---

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