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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B271992
(Los Angeles County
Super. Ct. No. MJ23121)

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

JARON P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Denise McLaughlin-Bennett, Judge.
Affirmed.

Torres & Torres and Steven A. Torres, under appointment
by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler and
Lance E. Winters, Assistant Attorney General, Susan Sullivan
Pithey and Alene M. Games, Deputy Attorneys General, for
Plaintiff and Respondent.

Jaron P. (minor) appeals from the juvenile court's refusal to seal his juvenile records upon termination of jurisdiction. Minor contends that the juvenile court abused its discretion in denying automatic sealing under Welfare and Institutions Code section 786.¹ He also seeks a decision holding that graduation from high school may not be a prerequisite to any future request for sealing his juvenile court records. While we find no abuse of discretion in the juvenile court's ruling, we decline to review a hypothetical ruling on a future petition. We thus affirm the juvenile court's order.

BACKGROUND

Early in 2015, two petitions were filed pursuant to section 602, to bring minor within the jurisdiction of the juvenile court. One petition charged vandalism, alleging that minor had punched a window at his high school after arguing with his girlfriend, breaking the window and cutting his hand.² That petition was dismissed when minor admitted the allegations of the other petition, which charged battery in violation of Penal Code section 243, subdivision (e)(1.) The battery allegation stemmed from another argument at school, during which minor pushed his girlfriend after she attempted to walk away from him and enter her classroom.

In May 2015, prior to adjudication, the probation officer reported that minor was in the 11th grade, enrolled in special education at a regular public high school, with an IEP (Individualized Education Program), but no mental health, developmental, or physical needs that might affect achievement.

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

² The facts are taken from probation reports in the record, as minor does dispute them.

Minor had several behavior incidents on his discipline record, and although he was earning a B in algebra, he had D's and one F in other subjects, and was lacking credit to be on track to graduate. Minor was active in football and track, felt he was good at sports, and wanted to improve at school, go to college, and pursue a career in aviation. He believed that his temper was his biggest risk factor.

Minor was declared a ward of the juvenile court on June 1, 2015. The court found the battery to be a misdemeanor, ordered minor released to his parents, and placed him on home probation with 23 conditions of probation. Probation condition No. 9 reads: "You must go to school every day. You must be on time to each class. You must have good behavior at school. You must receive satisfactory grades." Condition No 9A: "You must participate in a high school diploma or GED program." In relevant part, No. 10 reads: "You must attend and participate in tutoring . . . as directed by your . . . Probation Officer."

In February 2016, minor's probation officer reported that minor had completed his community service, as well as his counseling program, which included anger management and domestic violence counseling. Further, he had paid all but 50 cents of his ordered restitution, his behavior at home had been satisfactory, and minor had had no contacts with law enforcement. On the other hand, minor's grades were unsatisfactory. Minor's grade report showed two F's, three D's, and one B minus. The report reflected 36 absences and three tardies. In addition, two teachers reported to the probation officer five incidents involving problem behavior between mid-December 2015 and mid-February 2016. In mid-December, minor failed to turn in a test, and failed to keep an appointment made with the teacher to help him. On January 26, 2016, minor was told repeatedly to work on his assignment and to put away

his phone. Though each time he began to comply, after a few minutes he returned to his phone. Two days later the teacher gave minor time to complete the assignment, but minor instead used his phone the entire period. In February 2016, minor went to the computer lab for three days, and instead of doing his assigned work, watched car videos. Four days after that, after failing to complete the task of finding a monologue on the computer, minor blamed others for his failure. When the teacher told minor to leave her classroom, minor responded with a “string of phrases with the F word (too numerous to count) punctuating every word.”

On April 27, 2016, minor appeared before the juvenile court for a final progress report. The probation officer reported a behavior incident that occurred the preceding week. Minor had gone to class upset, was asked to step outside to cool down, and when he returned, he refused to work on his assignments despite the teacher’s numerous cues and prompts. The probation officer also reported that minor’s grades had improved, with a D in history and drama, an A+ in earth science, and a B in both mechanics and English. Minor’s absences for the year had grown to 49, and his tardies had grown to 10.

The juvenile court read and considered the probation officer’s report and intended to terminate jurisdiction, but ruled that minor was not entitled to an automatic sealing of the juvenile records. Although the court acknowledged that minor’s grades had been raised, it found his school performance had been an issue throughout the time that the minor had been before the court, and there remained some behavioral issues, with one incident occurring as recently as April 21, 2016. The court added: “However, if you continue to progress in school, continue to keep your grades up and eventually graduate you always have the

right to come back to the court and petition . . . to have your record sealed.”

Minor’s counsel argued that the minor was entitled to automatic sealing because no petition had been filed pursuant to section 777 alleging probation violations. Counsel also claimed that there had been only one isolated behavior incident, that minor’s grades had improved, and he had done everything else asked or required of him. The juvenile court described the several behavior incidents noted in the probation officer’s report, agreed that minor had improved to the point that supervised probation was no longer necessary, but found that minor’s behavior and grades had not progressed sufficiently for sealing the record at that time.

Minor filed a timely appeal from the juvenile court’s order.

DISCUSSION

I. Automatic sealing

Minor contends that the juvenile court abused its discretion in denying his request for automatic sealing of the court’s records under section 786. Section 786 provides that if “a minor satisfactorily completes . . . a term of probation for any offense, the court shall order the petition dismissed” and “shall order sealed all records pertaining to that dismissed petition.” (§ 786, subd. (a).) “[S]atisfactory completion of [a] term of probation . . . shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if 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).)

Although the standard of review of a ruling under section 786, subdivision (c)(1) has not been addressed in a published

opinion, minor and respondent agree that like review of the juvenile court's denial of a petition under section 781 to seal the records, the proper standard of review is abuse of discretion. (See *In re J.W.* (2015) 236 Cal.App.4th 663, 667-668.) We agree.³

A lower court's "discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]" (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) A discretionary "decision will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.]' [Citation.]" (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978 (*Alvarez*)). So long as the record reflects "a thoughtful and conscientious assessment of all relevant factors," we do not reweigh the factors or second-guess the juvenile court. (*Id.* at p. 979.)

Minor contends that the juvenile court should have found substantial compliance with the terms of probation, because he had no new law enforcement contacts or arrests, had not failed to report to his probation officer, had paid his entire restitution and fine, less 50 cents, had completed his community service, as well

³ In another context, the California Supreme Court held that where a specific result is required absent a finding of specific facts, a decision unsupported by substantial evidence is necessarily an abuse of discretion. (See *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681, 694-695 [fitness finding under § 707, subd. (c)].) Where, as here, minor does not contend that the court's factual findings were unsupported by substantial evidence, the court's ultimate ruling is reviewed for abuse of discretion. (See *Jones*, at pp. 680-681.)

as his counseling requirements, and because by April 2016, his grades had improved to D's, A's, and B's.

Minor argues that such accomplishments on probation should not be ignored.⁴ Minor, on the other hand, ignores or attempts to diminish negative factors. For example, minor acknowledges five earlier occasions when teachers reported that he was disruptive or not doing his work, but fails to address these problems. Minor makes no attempt to argue that 49 absences and 10 tardies during the 2015-2016 school year substantially complied with the probation condition which required daily, punctual school attendance. Instead, he seems to dismiss his many absences by suggesting that despite his poor attendance most of his grades had improved.

As the juvenile court considered all the factors enumerated by minor, his argument essentially amounts to no more than a contention that if the juvenile court had given greater weight to them and less weight to other factors, it might have come to a different conclusion. We must reject minor's approach as the record reflects the juvenile court's decision was based upon "a thoughtful and conscientious assessment of all relevant factors." (*Alvarez, supra*, 14 Cal.4th at p. 979.) In particular, as the juvenile court carefully considered minor's performance and behavior at school, the very problems that brought him within

⁴ Minor suggests that the juvenile court should have considered the less serious nature of a misdemeanor battery charge without injury, and the fact that minor was in compliance while held in a Community Detention Program in 2015. Such facts obviously do not relate to the question whether minor substantially complied with the terms of probation, as they occurred prior to his placement on probation. Since such facts do not logically support or relate to minor's contention that the court abused its discretion, we do not address them.

the juvenile court's jurisdiction, we find no abuse of discretion in the court's denial of automatic sealing.

II. Future petition

Minor also contends the juvenile court erred in making scholastic achievement and graduating from high school prerequisites to granting a *future* petition to seal his juvenile record. Minor cites the following comment, which the juvenile court made after its ruling: "However, if you continue to progress in school, continue to keep your grades up and eventually graduate you always have the right to come back to the court and petition . . . to have your record sealed."

The issue before the juvenile court was automatic sealing under section 786, and the court's comment related to minor's right to petition for sealing in the future. Minor retains that right to petition under section 781, subdivision (a)(1)(A), which permits a former ward of the court to seek to have his juvenile court records sealed at any time after reaching the age of 18. "If, after hearing, the court finds that since the termination of jurisdiction [the petitioner] has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records [sealed]." (*Ibid.*) Although the juvenile court's comments here may have suggested how the court might view the issue of minor's rehabilitation in the future, it cannot reasonably be construed as a restriction on minor's right to file a petition under section 786 or have it heard; nor can it be reasonably construed as a present ruling on any future petition. If we were to decide here that it would be error for the court to deny such a petition based upon minor's hypothetical failure to graduate from high school, we would be rendering an advisory opinion, which we decline to do. (See *People v. Slayton* (2001) 26 Cal.4th 1076, 1084.)

DISPOSITION

The order of the juvenile court is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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