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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B279647  
(Super. Ct. No. MJ23475)  
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

S.R.,

Defendant and Appellant.

Appellant S.R. punched a fellow student at school. The Los Angeles County District Attorney's Office filed a juvenile petition pursuant to former Welfare and Institutions Code section 602, subdivision (a),<sup>1</sup> alleging that appellant committed a

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

misdemeanor battery on school property in violation of Penal Code section 243.2, subdivision (a). Appellant admitted the allegation, and the juvenile court found the petition to be true. On May 2, 2016, appellant was placed home on probation without wardship (§ 725, subd. (a)) for a period of six months, subject to various terms and conditions. Condition 9 required that appellant attend school every day, be on time to class, engage in good behavior and receive satisfactory grades.

Appellant turned 18 on August 30, 2016. On November 2, 2016, a notice of probation violation was filed pursuant to section 777, alleging that appellant had violated condition 9 by accumulating five unexcused absences, 11 period absences (ditching of classes) and numerous tardies and by engaging in a physical altercation that resulted in a five-day suspension. Appellant admitted the violation, and the juvenile court ordered appellant to wear a device under the Community Detention Program (CDP) to monitor her school attendance. Appellant was continued home on probation.

On December 19, 2016, at appellant's request, the juvenile court terminated jurisdiction over appellant, but denied her request under section 786 for automatic sealing of the section 602 petition. The court found that appellant "has not successfully completed Probation" and "[d]oes not qualify for automatic sealing [of records] per 786WIC." Appellant contends the court abused its discretion by finding that she did not qualify for dismissal of her section 602 petition and automatic sealing of her juvenile records. We affirm.

#### PROCEDURAL BACKGROUND

Appellant's probation began on May 2, 2016. On August 1, 2016, appellant's probation officer reported that

appellant's compliance with the court's orders was "marginal." The officer noted that appellant "displayed defiant behavior during school and was assigned Saturday school due to period absences (ditching)." The officer did observe, however, that appellant's "performance in the academic area is good and she maintained passing grades. She attended summer school and will return to . . . high school for the fall semester to complete her required credits and receive her high school diploma."

Thereafter, appellant's probation performance deteriorated, resulting in the notice of violation under section 777. The probation officer informed the juvenile court that "it appears that [appellant] is not taking her grant [of probation] very seriously. . . . [S]he was involved in a fight on the school's campus and received a five day suspension. She has accumulated several period absences due to ditching class and numerous tardies. [Appellant] was admonished on September 15, 2016, and September 29, 201[6], regarding these issues and instructed to correct her actions, but to no avail. [She] is exhibiting the same type of behavior for which she is on probation for." The officer recommended that appellant be placed in the CDP program for 60 days with the understanding that she is to be detained on first violation. The juvenile court accepted the probation officer's recommendation and continued appellant's probation.

When appellant requested that the juvenile court dismiss her section 602 petition and seal her records under section 786, the court noted that appellant had only been on probation for seven and a half months and that it had been necessary to impose CDP to ensure appellant's compliance with condition 9 of her probation. The court stated it had intended to

continue appellant's probation for an additional three months to allow her to undergo vocational training for future employment.

After conferring with appellant, defense counsel requested that the juvenile court terminate jurisdiction "with a granting of a 786 sealing." Appellant argued that "aside from the issue with school," she had complied with the terms of her probation and thus was entitled to the sealing order. Appellant did not reiterate her request for dismissal of the section 602 petition.

The juvenile court acknowledged that appellant had generally "attend[ed] school" since the section 777 petition was sustained. It explained, however, that appellant had been required to go to "every class, every day on time, or serve detention." The court concluded: "[I]t's not been a full year, the fact that she did not comply completely with the terms and conditions of her grant of probation and the court had to provide the additional structure of house arrest upon the sustaining of the November 2, 2016, 777 petition, the court does not believe that is satisfactory compliance. On this minor's own volition, because of the added structure, . . . and while she received the benefit of now becoming a high school graduate, the court does not believe that [section] 786 would apply. She can come back at a later time and ask to have her record sealed pursuant to section 781. I will accommodate her request to terminate jurisdiction at this time without imposing vocational training or continuing probation."

## DISCUSSION

### *Applicable Law and Standard of Review*

At the time the juvenile court terminated jurisdiction on December 19, 2016, section 786 provided: "If a minor

satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court.”<sup>2</sup> (Former § 786, subd. (a); see *In re G.F.* (2017) 12 Cal.App.5th 1, 5.)<sup>3</sup> “[S]atisfactory completion of [a] term of probation described in subdivision (a) 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 . . . probation *and* if he or she has not failed to substantially comply with the reasonable orders of . . . probation that are within his or her capacity to perform.” (§ 786, subd. (c)(1), italics added.)

A decision to grant or deny a section 786 motion is reviewed for abuse of discretion. (*In re A.V.* (2017) 11 Cal.App.5th 697, 701 (A.V.) [“court has discretion under section 786 to find the ward has or has not substantially complied with . . . probation so as to be deemed to have satisfactorily completed it”].) Under this standard, “a trial court’s ruling will not be disturbed, and reversal of the judgment [or order] is not required,

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<sup>2</sup> Because appellant was no longer “a minor” on December 19, 2016, section 786 arguably does not apply to her. The parties have not raised the issue, and we therefore deem it waived. (See, e.g., *Estate of Sobol* (2014) 225 Cal.App.4th 771, 783; *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538 [failure to brief issue “constitutes a waiver or abandonment of the issue on appeal”].)

<sup>3</sup> Effective January 1, 2017, the Legislature amended section 786, subdivision (a) to state “a person” instead of “a minor.” (Stats. 2016, ch. 858, § 1 [Assem. Bill No. 1945]; see *In re G.F.*, *supra*, 12 Cal.App.5th at p. 5, fn. 3.)

unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’ [Citation.]” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004; see *People v. Kipp* (1998) 18 Cal.4th 349, 371 [“A court abuses its discretion when its ruling ‘falls outside the bounds of reason’”].)

*The Juvenile Court Did Not Abuse Its Discretion by  
Finding Appellant Ineligible for Section 786 Relief*

Appellant contends the juvenile court abused its discretion by denying her motion to dismiss her section 602 petition and to automatically seal her juvenile records under section 786. She maintains that she was entitled to relief under section 786 because she satisfactorily completed her term of probation. We are not persuaded for two reasons.

First, appellant arguably waived her right to challenge the juvenile court’s denial of the motion because, at the hearing, she requested that the court terminate jurisdiction in lieu of dismissing the section 602 petition. Appellant cites no authority suggesting that automatic sealing of records is available when the court grants a request to terminate jurisdiction. To the contrary, when the requirements of section 786 are satisfied, the statute contemplates both dismissal of the petition and automatic sealing of the records. (See former § 786, subd. (a).)

Second, the record supports the juvenile court’s finding that appellant failed to “substantially comply” with the terms of her probation. (§ 786, subd. (c)(1).) Not long after she was placed on probation, appellant’s probation officer reported that her compliance was “marginal.” She displayed defiant behavior during school and was assigned Saturday school due to

her ditching of classes. Thereafter, the court sustained the section 777 petition, based on appellant's numerous unexcused school absences, her chronic tardiness and her involvement in a physical altercation that resulted in a five-day suspension from school. Appellant's probation officer advised that appellant was "not taking her grant [of probation] very seriously" and was "exhibiting the same type of behavior for which she is on probation for." At the December 19, 2016 hearing, the probation officer recommended that probation remain "in full force and effect." The court intended to adopt that recommendation and only terminated jurisdiction to accommodate appellant's request.

While it is true that appellant's school performance improved after the section 777 petition was sustained, it was only because of sanctions imposed by the juvenile court to secure her compliance. Appellant emphasizes the court's statement that "[appellant] has done what she was supposed to," but the court noted it was only "because if she didn't she would have been detained on first violation." The court found that because sanctions were necessary to secure her compliance with her school-related obligations, she had not substantially complied with the conditions of her probation. In other words, appellant failed to show that she was capable of complying with her probation terms without the imposition of house arrest and the threat of immediate detention. Thus, in the court's estimation, appellant's post-sanction compliance did not excuse her prior probation violations.

Appellant contends that the recent decision in *A.V.*, *supra*, 11 Cal.App.5th 697, compels reversal of the juvenile court's ruling. We disagree. The minor in that case (*A.V.*) was placed on deferred entry of judgment probation after admitting

allegations of a section 602 petition. The juvenile court later lifted the deferred entry of judgment, declared A.V. a ward of the court and placed him on probation. (A.V., at p. 702.) Following two probation violations, A.V.'s probation officer recommended that the section 602 petition be dismissed because A.V. had "completed all of his Court ordered obligations, has continued to submit chemical tests negative for intoxicating substances, and is now actively employed." (A.V., at p. 704.) The court dismissed the petition, but refused to order sealing of A.V.'s records under section 786. It found that A.V. had not "substantially complied" with the terms of his probation because the deferred entry of judgment had been lifted and because he had two probation violations. (A.V., at p. 704.)

The Court of Appeal reversed, concluding that "if A.V.'s performance was good enough to warrant dismissal of the petition, it was good enough to warrant the sealing of the petition." (A.V., *supra*, 11 Cal.App.5th at p. 711.) The court recognized that "[s]ubstantial compliance [does not mean] perfect compliance," but clarified that "[b]y reaching [our] conclusion, we do not restrict the court's discretion to find, or not to find, that a ward before the court has satisfactorily completed his or her probation. We hold only that, whichever way the juvenile court exercises its discretion, it applies to dismissing *and* sealing the petition." (*Id.* at pp. 709, 711.)

Here, the juvenile court did not dismiss appellant's section 602 petition or implicitly find that she "had demonstrably achieved the rehabilitative goals of probation." (A.V., *supra*, 11 Cal.App.5th at p. 711.) Instead, it exercised its discretion to find that appellant had not satisfactorily completed probation and then terminated jurisdiction at appellant's request. The



termination of jurisdiction “cannot reasonably be construed as an implicit finding that appellant had ‘substantially complied’ with the terms of [her] probation for purposes of section 786.” (*In re N.R.* (Sept. 21, 2017, B278221) \_\_\_ Cal.App.5th \_\_\_ [2017 Cal.App. Lexis 809, pp. 16-17] (*N.R.*)). To the contrary, the court found there was no satisfactory compliance because appellant “did not comply completely with the terms and conditions of her grant of probation and the court had to provide the additional structure of house arrest upon the sustaining of the November 2, 2016, 777 petition.” Appellant has not demonstrated that this decision “‘falls outside the bounds of reason.’ [Citation.]” (*People v. Kipp, supra*, 18 Cal.4th at p. 371.)

As we stated in *N.R.*, “The abuse of discretion standard is not particularly susceptible to case-specific factual comparisons. The issue here is not whether a grant of relief under section 786 would have been [proper], but rather whether the denial of such relief was an abuse of discretion. Nothing in *A.V.* undermines our conclusion that there was no abuse of discretion here.” (*N.R., supra*, \_\_\_ Cal.App.5th at p. \_\_\_ [2017 Cal.App. Lexis 809, p. 17].)

This does not mean, however, that appellant is without a remedy. Since she is now an adult, she may petition the juvenile court for an order sealing her juvenile records. (§ 781, subd. (a)(1)(A); Cal. Rules of Court, rule 5.830.)

*The Juvenile Court did Not Improperly Extend  
Probation to Allow for Section 786 Relief*

Appellant further argues that the juvenile court was not permitted to add a probation condition to defer appellant’s eligibility under section 786. She points to Rule 5.840(b) of the California Rules of Court, which provides that “[t]he court may

not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786,” and to section 786, subdivision (c)(1), which similarly states that “[t]he period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section.”

The record reflects, however, that the juvenile court was not planning to extend the period of probation “*solely* for the purpose of deferring or delaying eligibility” for section 786 relief. (Cal. Rules of Court, rule 5.840(b), italics added; § 786, subd. (c)(1).) The court explained: “My intention was to keep the home on probation order in full force and effect for at least the next few months and order vocational training for her so that hopefully she can become employed. And for the reasons stated if she wants this 786 that’s what the court intended to order.” Thus, although the court intended to extend the probation period to give appellant a chance to qualify for section 786 relief, that was not its only reason for the planned extension. Its main purpose was to promote vocational training and employment.

In any event, the juvenile court did not actually extend the period of probation. Instead, it terminated jurisdiction at appellant’s request. Because probation was not extended for any purpose, the court did not violate the rule prohibiting the court from “extend[ing] the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.” (Cal. Rules of Court, rule 5.840(b); § 786, subd. (c)(1).)

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Denise McLaughlin-Bennett, Judge  
Superior Court County of Los Angeles

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