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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re DEVIN T.,

a Person Coming Under the Juvenile
Court Law.

B237198

(Los Angeles County
Super. Ct. No. MJ20453)

THE PEOPLE,

Plaintiff and Respondent,

v.

DEVIN T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Benny C. Osorio, Judge. Affirmed as modified.

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

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

BACKGROUND

Appellant Devin T. appeals from the juvenile court's order declaring him a ward of the court under Welfare and Institutions Code section 602 and ordering him home on probation after finding he committed felony forgery (Pen. Code, § 476). The proceedings arose out of an incident in January 2011, when appellant, then 17 years old, attempted to pay for some clothing in a shopping mall store with a counterfeit \$100 bill.

As one of the conditions of appellant's probation, the court ordered, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where persons whom you know to use illegal drugs or substances congregate." (Condition 21.) On appeal, appellant contends that condition 21 is overbroad. We agree and modify the juvenile court's order.

DISCUSSION

Appellant challenges condition 21 as unconstitutionally vague and/or overbroad and "potentially dangerous to [his] health." According to appellant, condition 21 prohibits him from possessing narcotics, such as pain relievers containing codeine, which a physician could lawfully prescribe to him. Appellant requests this court to modify the condition to prohibit him from using or possessing "*illegal* narcotics, controlled substances, poisons, or related paraphernalia."

The People argue that modifying condition 21 is unnecessary, because the second clause of the condition explicitly refers to "illegal drugs," and thus, a "reasonable person would understand that the probation condition prohibits only [the possession and use of] illegal drugs"

As a threshold matter, we note appellant did not object to this particular condition at the adjudication hearing. Appellant's failure to object in this case, however, did not result in a forfeiture of his claim. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887 ["a challenge to a term of probation on the ground of unconstitutional vagueness or

overbreadth that is capable of correction without reference to the particular sentencing record developed in the trial court *can* be said to present a pure question of law” and not subject to forfeiture even if raised for the first time on appeal].)

“[T]he underpinning of a vagueness challenge is the due process concept of ‘fair warning.’” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) “A probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.] 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.” (*Ibid.*) If a reviewing court concludes on the merits that a probation condition is unconstitutionally vague and/or overbroad in its literal wording, the reviewing court may modify the condition so as to render it constitutionally sound. (*Id.* at pp. 878, 892.)

We agree with appellant that the literal wording of condition 21 is ambiguous as to whether he is permitted to use and possess legally prescribed narcotics (for example, hydrocodone (Vicodin) or codeine) or controlled substances (for example, methylphenidate (Ritalin)). This ambiguity, in certain circumstances, might render it unreasonably difficult for appellant to know what is required of him, and for his probation officer and the court to know whether appellant has violated the terms of his probation. Accordingly, rather than modify the probation condition as prohibiting the use of “illegal” narcotics, we believe inserting the term “without a valid prescription,” after the word “paraphernalia,” provides sufficient notice as to what narcotics and controlled substances appellant may use and possess without violating probation.

It is true the juvenile court has wide discretion in determining probation conditions and may impose and require any and all reasonable probation conditions that it deems to be fitting and proper. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 968.) Thus, “[a] condition of probation which is [legally] impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and

supervision from the juvenile court.” (*In re Todd L.* (1980) 113 Cal.App.3d 14, 19, 20 [juvenile condition of probation requiring defendant not to use or to possess narcotics or other controlled substances was proper based on the minor’s social history].) However, the probation report does not indicate appellant has a record as a drug user, or a social history of substance abuse, such that it would be reasonable for the juvenile court to fashion a probation condition to prevent appellant from using legally prescribed narcotics or controlled substance medication, which could then be abused. Accordingly, we will modify condition 21 to prohibit the use or possession of narcotics “without a valid prescription.”¹

DISPOSITION

Condition 21 of the disposition order is modified to read, “Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia without a valid prescription; stay away from places where persons whom you know to use illegal drugs or substances congregate.” As modified, the order is affirmed. The juvenile court is directed to correct its disposition minute order to reflect this modification.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.

¹ Probation condition 21 appears on the preprinted conditions of probation form 76M423A (Rev. 1-07). To forestall future claims based upon the same language, we suggest the form probation conditions be modified so that condition 21 expressly prohibits the probationer from using or possessing narcotics without a valid prescription.