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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B281095
(Super. Ct. No. VJ44507)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.R.,

Defendant and Appellant.

A.R. appeals a juvenile court order denying his motion to dismiss a delinquency petition and seal his juvenile records. (Welf. & Inst. Code, §§ 781, 782, 786.)¹ Pursuant to a two-year plea bargain agreement, appellant admitted one count of forcible sodomy (Pen. Code, § 286, subd. (c)(2)(B)) and one

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

count of forcible lewd conduct on a child under the age of 14 (*id.*, § 288, subd. (b)(1)), and was ordered, among other things, to attend sexual offender counseling. In 2017, after appellant successfully completed probation, the trial court denied appellant's motion to dismiss the juvenile petition and seal his record. We affirm.

Procedural History

Between 2012 and 2014, appellant committed two counts of forcible sodomy (counts 1-2) and three acts of forcible lewd conduct (counts 3-5) on his two cousins. Pursuant to a negotiated plea, appellant admitted counts 1 and 5, which were declared felonies and the remaining counts were dismissed. Appellant was declared a ward of the court (§602), removed from his parent's custody, and placed in a residential facility where he completed a mandatory sex offender program. On January 12, 2017, after appellant completed probation, the trial court terminated placement and section 602 jurisdiction.

On February 2, 2017, three weeks later, appellant filed a motion to dismiss the juvenile petition and seal his records pursuant to sections 781 and 782. Appellant had graduated from high school, had earned 64 credits at a local community college, was taking on-line classes, and planned to transfer to a four-year university and eventually go to medical school. Appellant's therapists reported that appellant had completed a mandatory sexual offender program and "met the clinical criteria to qualify for the sealing of his records."

The trial court stated that appellant had exhausted all resources at the juvenile level and that section 602 jurisdiction was terminated so that future law enforcement contact would be handled at the adult level. The court denied the motion to dismiss the juvenile petition and seal the juvenile

record. We review for abuse of discretion. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668.)

Section 781 Motion to Seal Records

Section 781, subdivision (a) provides that an eligible juvenile offender may, at any time after the person has reached the age of 18, petition to seal his or her juvenile records based on a showing that, since the termination of jurisdiction, the individual has not been convicted of a felony or any misdemeanor involving moral turpitude and rehabilitation has been attained to the satisfaction of the court. (*In re J.W.*, *supra*, 236 Cal.App.4th at p. 668.) Former section 781, subdivision (a)(1)(D), however, bars the juvenile court from sealing a record in any case where the person committed a section 707, subdivision (b) offense when the person was 14 years of age or older.

The Attorney General argues that the exclusion applies here. Appellant was 14 years old when he committed forcible sex offenses listed in section 707, subdivisions (b)(5) and (b)(6). The exclusion is part of Proposition 21 which was approved by the voters “to ‘eliminat[e] confidentiality in some juvenile proceedings in order to hold juvenile offenders more accountable for their actions.’ [Citation.]” (*In re Jeffrey T.* (2006) 140 Cal.App.4th 1015, 1020-1021.) “Under the plain meaning of the statute, the juvenile court has no power to seal juvenile records ‘in any case’ in which (1) the juvenile court has found that the person ‘committed an offense listed in subdivision (b) of section 707,’ and (2) the offense was committed when he was 14 years or older. (§ 781. subd. (a).)” *In re G.Y.* (2015) 234 Cal.App.4th 1196, 1201.)

2018 Amendment to Section 781, subdivision (a)(1)(D)

Appellant, in his reply brief, argues that 781, subdivision (a)(1)(D) was recently amended to provide that a juvenile record may be sealed where the minor committed a section 707, subdivision (b) offense at the age of 14 or older, and has reached 18 years of age and completed probation. (§ 781, subd. (a)(1)(D)(i)(II).)² Appellant correctly asserts that the amendment applies to juvenile cases pending on appeal as of January 1, 2018 and repeals the life-time exclusion that existed under former section 781, subd. (a)(1)(D). (See, e.g., *In re W.R.* (2018) 22 Cal.App.5th 284, 294 [ameliorative, prospective section 786, subdivision (e) amendment to seal record applied to juvenile case pending on appeal].) Newly amended section 781, subdivision (a)(1)(D) is not a mandatory sealing statute but does make appellant eligible to file the petition.

Appellant argues that his therapists believe he meets the “clinical criteria” to qualify for record sealing. The question of whether appellant has been fully rehabilitated and is no longer a risk to public safety is for the trial court to decide. Section 781, subdivision (a)(1)(A) provides that rehabilitation must be “attained to the satisfaction of the court.” Here the trial court reasonably concluded, given the serious nature of the sex offenses and the short two-year sex offender treatment program, that

² As amended, section 781, subdivision (a)(1)(D) provides in pertinent part that a petition to seal the record “may only be filed or considered by the court . . . under the following circumstances: [¶] [¶] (II) The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court.”

dismissal of the petition and sealing of appellant's juvenile records would be premature and contrary to public safety and appellant's best interests. (§ 202, subd. (b).)

Section 782 Motion to Dismiss

Section 782 provides that a juvenile court may dismiss a delinquency petition if it is in the interests of justice and the welfare of the minor requires it, or where the minor is not in need of treatment or rehabilitation. (*In re Greg F.* (2012) 55 Cal.4th 393, 417.) Former section 781, subdivision (a)(1)(D) does not preclude a juvenile court from sealing the records if the juvenile petition is dismissed pursuant to section 782. (See *In re David T.* (2017) 13 Cal.App.5th 866, 878.) In granting or denying a section 782 motion, the trial court considers whether a dismissal is consistent with public safety and the minor's best interests. (§ 202, subd. (b); *In re Greg F.*, *supra*, 55 Cal.4th at p. 417.)

The trial court reasonably concluded that a dismissal should not be ordered at this point in time due to the serious nature of the sex offenses and the short time that had elapsed after probation was completed. Appellant argues that if the petition is not dismissed, it will jeopardize his ability to transfer to a four-year college and obtain financial aid or employment. That is speculative. When the motion was heard, appellant had not yet obtained his AA degree and there was no evidence that a university transfer or application for financial aid or employment had been denied because of appellant's juvenile record.

We reject the argument that appellant's recent completion of probation is controlling. In *In re J.W.*, *supra*, 236 Cal.App.4th 663, the minor committed various theft-related offenses that escalated over time. The minor completed

probation and, a year later, petitioned to have his juvenile records sealed based on evidence that he graduated from high school, was enrolled in community college, and wanted to join the Air Force. (*Id.* at p. 667.) Denying the motion to seal records, the trial court found the more recent crimes -- attempted robbery and battery -- were serious and an insufficient time had elapsed. (*Ibid.*) The trial court concluded that the minor was not yet rehabilitated but could renew his motion to seal the records after more time had passed. (*Ibid.*) The Court of Appeal affirmed, holding that the trial court acted well within its discretion in concluding that the seriousness of the offenses and their recent commission weighed against a finding of rehabilitation. (*Id.* at p. 670.) “[A]n individual’s offenses, especially when committed recently, may serve as a predictor of future behavior and may suggest in light of all the evidence that rehabilitation has not been reached.” (*Id.* at p. 669.)

The same analysis applies here. The trial court considered the serious nature of the sex offenses and that the charges involved multiple young victims on separate occasions. Less than a month had passed since the court terminated section 602 jurisdiction. To establish rehabilitation, appellant had to “make a showing sufficient to convince the court that criminal behavior is in the past and will not be repeated. This is a determination based on the totality of the circumstances and individual factors will . . . vary.” (*In re J.W.*, *supra*, 236 Cal.App.4th at pp. 671-672.) Here there were many factors including appellant’s history of substance abuse (marijuana and alcohol), a history of suicidal ideation with three past attempts, and appellant’s own victimization and decision not to be tethered to medication the rest of his life. Appellant’s therapists reported

that the “offenses were inexcusable harmful acts that caused harm to [appellant’s] 2 victims, their parents, [appellant’s] parents, and split the family system.” The trial court reasonably concluded that it was too early to say that appellant was sufficiently rehabilitated. (*Id.* at p. 672.) “[T]he passage of time works in [appellant’s] favor, and if appellant furthers his rehabilitation, he will in the future have the opportunity to ask the trial court to seal his records.” (*Id.* at p. 670.)

Section 786

Appellant contends that the trial court erred in not dismissing the juvenile court petition and sealing his records pursuant to section 786. Section 786 provision (d), subdivision, provides: “A court shall not seal a record or dismiss a petition pursuant to this section if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older *unless the finding on that offense was dismissed* or was reduced to a misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.” (*Italics added.*) Although section 786 eliminates the requirement of satisfactory rehabilitation (see *In re I.F.* (2017) 13 Cal.App.5th 679, 689), there is no automatic sealing of appellant’s juvenile records until the sodomy and lewd conduct counts are first dismissed. (§ 786, subd. (d).) Appellant makes no showing that the trial court abused its discretion or that the order is inconsistent with the general purpose of rehabilitation and the protection of public safety. (§ 202, subd. (b); *In re J.W.*, *supra*, 236 Cal.App.4th at pp. 667-668.)

Disposition

The judgment (order denying motion to dismiss and to seal juvenile records) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Fumiko Wasserman, Judge

Superior Court County of Los Angeles

Torres & Torres and 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, Senior
Assistant Attorney General, William H. Shin, Esther P. Kim,
Deputy Attorneys General, for Plaintiff and Respondent.