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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B280461  
(Super. Ct. No. MJ22697)  
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

E.A.,

Defendant and Appellant.

E.A. appeals from an order denying his request to seal his record (Welf. & Inst. Code, § 786)<sup>1</sup> after the juvenile court terminated home on probation on a sustained petition for felony grand theft (Pen. Code, § 487, subd. (a)). Appellant contends that he successfully completed probation and that section 786 mandates that his juvenile record be sealed. We affirm.

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<sup>1</sup> All statutory references are to the Welfare & Institutions Code.

### *Procedural History*

In 2014, a juvenile petition was filed alleging that appellant committed a residential burglary (Pen. Code, § 459) and felony grand theft of property exceeding \$950 in value. (Pen. Code, § 487, subd. (a).) After the prosecution determined that appellant was eligible for deferred entry of judgment (DEJ), appellant admitted the felony grand theft and the court dismissed the burglary count. On September 2, 2014, the juvenile court granted DEJ and placed appellant on probation for a period of 12 to 36 months. (§ 790, subd. (b).) On April 25, 2016, the juvenile court revoked DEJ, sustained the petition and declared appellant a ward of the court, and placed appellant on home on probation.

At a January 26, 2017 progress hearing, the court stated that “it appears that [appellant] has complied with virtually all the terms and conditions of his grant of probation with the exception of attendance and grades at school. We did continue this to give him an opportunity to improve.” The juvenile court found there was slight improvement but that appellant’s school absences were on-going and varied for each class: “for first period it was 12, second period 14, third 13, fourth 18, fifth 21, sixth, 23. I don’t believe continuing him on his grant of home on probation, however, is going to improve that. . . . [W]e’re now at the point where I can’t think any additional services that the court can order that would assist [appellant] in improving his attendance and grades at school, and since he’s complied with all other terms and conditions of his grant of probation it would appear appropriate . . . to terminate jurisdiction.”

Defense counsel asked if the court would consider sealing appellant's juvenile record. The court stated that appellant would qualify to have his record sealed under section 781 if "he improves his attendance [and] he eventually improves his grades in school." The court explained that "[w]e have given him several times to improve that; unfortunately he's not. I don't believe that that's a reason to keep him on probation, but I also don't believe that he qualifies for an automatic sealing."

Appellant's mother indicated that some of the school absences were due to a sinus problem. The court asked if appellant "would like to put this over for a hearing to determine whether or not he qualifies under 786[. H]e'll remain on probation and I'll give you that date for hearing but what I have thus far today doesn't justify it. What would you like to do?" Defense counsel replied that appellant did not want to remain on probation for that purpose. The court terminated probation and found that appellant "does not qualify for automatic sealing."

*Section 786 - Automatic Sealing of Juvenile Record*

Section 786, subdivision (a) provides: "If a person who has been alleged or found to be a ward of the juvenile court 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 the dismissed petition in the custody of juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice."

Appellant argues that he is entitled to have his records sealed because he satisfactorily completed probation. In *In re A.V.* (2017) 11 Cal.App.5th 697, the minor was placed on

probation and had no unexcused absences but received two failing grades in school. The trial court dismissed the petition but declined to seal the juvenile record citing A.V.'s failure on DEJ supervision and two probation violations for using marijuana. (*Id.* at p. 704.) The Court of Appeal reversed on the ground that section 786 requires that the juvenile records be sealed if the minor “satisfactorily completes’ probation . . . .” (*Id.* at p. 705.) “[S]ection 786 requires only ‘satisfactory completion’ with probation and, to underscore the point, specifically defines ‘satisfactory completion’ as ‘substantial[] compl[iance].’ (§786, subd. (c)(1).)” (*Id.* at p. 709.) The court concluded that “nothing in the statutory language suggests that . . . the court may apply a looser standard of satisfactory completion or substantial compliance to measure whether a ward’s conduct on probation warrants dismissal of the petition, and a stricter standard of satisfactory completion or substantial compliance to measure whether sealing records pertaining to the dismissed petition is warranted.” (*Id.* at p. 711.)

Unlike *In re A.V.* there was no finding that appellant satisfactorily completed probation or was the petition dismissed. The juvenile court terminated probation because it was not going to improve appellant’s school attendance. When defense counsel suggested that some of the school absences were due to illness, the trial court asked if appellant wanted to put the matter over to determine whether appellant qualified under section 786 for the automatic sealing of records. Appellant declined and said he did not want to remain on probation. Appellant’s case citations are inapposite and hold that unpaid restitution may not be deemed to be the unsatisfactory completion of probation (*In re J.G.* (2016) 3 Cal.App.5th 521, 525) and that a juvenile court may not deny a

request to seal a juvenile record to continue a probation condition forbidding the minor from owning a firearm (*In re Joshua R.* (2017) 7 Cal.App.5th 864, 866).

In *In re A.V.*, *supra*, 11 Cal.App.5th 697, the court found that the minor did well on probation. (*Id.* at p. 704.) Here, in contrast, the juvenile court found that appellant had only demonstrated slight improvement and the school absences were an on-going problem. It stated that appellant “does not qualify for automatic sealing, though I do hope you continue in your progress with respect to school because you do have the ability to come back under a different provision within the law to ask for your record to be sealed.”

We reject the argument that the order terminating probation was based on an implied finding that appellant substantially complied with the conditions of his probation. The juvenile court made it clear that appellant did not successfully complete probation and that appellant’s school attendance was an on-going problem. “We have given [appellant] several times to improve that; unfortunately he’s not.” Section 786 is not intended to be a panacea for all sealing issues. (*In re Y.A.* (2016) 246 Cal.App.4th 523, 527.) Appellant is not without a remedy. After appellant turns 18 years old, he may petition the juvenile court to seal his juvenile records. (§ 781, subd. (a)(1)(A).)

*Disposition*

The judgment (order denying motion to seal juvenile records pursuant to section 786) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Denise McLaughlin-Bennett, Judge

Superior Court County of Los Angeles

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