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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.D.,

Defendant and Appellant.

B279514

(Los Angeles County
Super. Ct. No. MJ22933)

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

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, Assistant

Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General for Plaintiff and Respondent.

Minor R.D. appeals from the juvenile court's denial of his motion to seal records pursuant to Welfare and Institutions Code section 786.¹ He argues that the juvenile court abused its discretion in finding that he did not satisfactorily complete his probation. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On January 2, 2015, the district attorney filed a petition against minor under section 602, alleging that minor was in possession of marijuana on school grounds, a misdemeanor. (Health & Saf. Code, § 11357, subd. (e).) Minor was 17 years old at the time. The juvenile court referred minor to the probation department for recommendation. At the probation department's recommendation, the juvenile court granted a six-month continuance and placed minor on a program of informal probation pursuant to section 654.2 with terms and conditions.² Among

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

² As relevant here, section 654.2, subdivision (a) provides: "If a petition has been filed by the prosecuting attorney to declare minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court . . . continue any hearing on a petition for six months and order the minor to . . . participate in a program of supervision as set forth in Section 654. . . . If the minor successfully completes the program of

other conditions, the juvenile court ordered that minor not commit any crimes, obey teachers and school officials, have good behavior at school and receive satisfactory grades, not knowingly use or possess alcohol or illegal drugs, submit to random drug tests, and attend substance abuse counseling.

During the period of informal probation, minor completed 18 sessions of substance abuse counseling, but was suspended from school twice for smoking on school grounds and tested positive for marijuana on four occasions. On August 31, 2015, the probation department filed a report describing the violations and recommending that the matter proceed to disposition because minor failed to successfully complete his period of informal probation. The report indicated that minor did not think he had a drug problem. At his pretrial conference the same day, minor admitted the allegations in the section 602 petition filed on January 2. The juvenile court sustained the petition, declared minor a ward of the court, and placed minor home on probation under the same terms and conditions and an additional condition that minor attend substance abuse counseling sessions. By then, minor was 18 years old.

On November 23, 2015, the probation department filed a report stating that in the two and a half months since his last hearing, minor continued to test positive for marijuana and received five school suspensions—two for vulgarity and three for disruption and defiance. The probation department reported that

supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the program of supervision, proceedings on the petition shall proceed no later than 12 months from the date the petition was filed.”

it “[was] apparent minor [was] not learning anything from his participation in substance abuse counseling” In addition, the probation department recommended a stricter placement for minor, filed a section 777 notice alleging that he had violated the conditions of his probation by testing positive for marijuana (count 1), failing to obey teachers and school officials, and failing to behave well in school and achieve satisfactory grades (count 2).³ That day, minor admitted the violations alleged in count 2 and the juvenile court found the section 777 notice true as to those violations, and dismissed count 1. The juvenile court set January 21, 2016, for a disposition hearing, left the order for home on probation in full effect, and placed minor on the Community Detention Program (CDP).⁴ The juvenile court ordered the probation department to detain minor upon his first violation of CDP.

³ In pertinent part, section 777 provides: “An order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after a noticed hearing. [¶] (a) The notice shall be made as follows: . . . (2) By the probation officer . . . if the minor is a court ward or probationer under Section 602 in the original matter and the notice alleges a violation of a condition of probation not amounting to a crime . . . [¶] (b) Upon filing of such a notice, the clerk of the juvenile court shall immediately set the same for hearing within 30 days”

⁴ CDP involves confinement to the home and wearing an electronic monitoring device.

On December 8, 2015, minor was suspended from school for looking up drug paraphernalia on a school computer. The next day, the probation department detained minor and transported him to juvenile hall. The probation department recommended minor be detained in juvenile hall. At minor's detention hearing on December 11, 2015, the juvenile court ordered that minor remain on CDP and postponed his hearing until February 1.

Minor tested negative for drugs while on CDP. However, on January 26, 2016, his mother found marijuana in his backpack and brought the drugs to the probation department. The next day, minor admitted to possessing and using marijuana on or about January 26. In response, the probation department filed a second section 777 notice on February 1, 2016. The juvenile court deemed this notice a disposition report, extended minor's CDP, and ordered further drug testing.

Minor tested negative for drugs in February and began to improve his grades and behavior. On February 29, 2016, the juvenile court terminated minor's CDP, and left the order for home on probation in full effect, following the probation department's recommendation.

Minor continued to test negative for drugs over the remainder of the school year, and maintained his improved grades and behavior. However, on August 30, 2016, the probation department filed a report stating that minor's behavior had spiraled downward over the summer. It reported that minor received D's in his summer school classes, while recording 13 unexcused absences. In addition, the probation department reported that on August 18, 2016, less than three weeks into the fall semester, minor was suspended for being drunk at school, and that the school had to call the Palmdale Sheriff's Department

because minor refused to leave school grounds. The Sheriff's Department arrested minor and cited him for public drunkenness, a misdemeanor. (Pen. Code, § 647, subd. (f).) Minor was ordered to appear in adult court in October. As a result of the incident, he eventually was expelled from school. On August 30, 2016, the juvenile court ordered minor remain home on probation and scheduled a progress hearing for November, 29, 2016.

On November 29, 2016, the probation department reported that minor had "come a long way in his sobriety and his program as a juvenile" and recommended the juvenile court terminate its jurisdiction. It reported that minor enrolled in a new school on September 13, 2016, and completed high school the following month. It reported that minor appeared in adult court on October 18, 2016, which ordered him to participate in 26 Narcotics Anonymous (NA) sessions and return to court on December 26, 2016. By this point, minor had completed 13 NA sessions for his adult case. The juvenile court followed the probation department's recommendation and terminated its jurisdiction over minor, referring to minor's pending adult case as its reason for doing so. However, the juvenile court found that minor was not entitled to the automatic sealing of his juvenile records under section 786 because he did not "satisfactorily complete" his probation. The juvenile court noted that minor could still subsequently return to the court and petition to have his records sealed under section 781.⁵ This appeal followed.

⁵ In pertinent part, section 781, subdivision (a)(1)(A) provides: "If, after hearing, the court finds that since the

DISCUSSION

Minor contends that the juvenile court erred in finding he did not “satisfactorily complete” his probation and denying his section 786 motion to automatically seal his records. Under section 786, subdivision (a), if a ward of the 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” then the court must dismiss the petition and “order sealed all records pertaining to the dismissed petition.” A minor “satisfactorily completes” a term of supervision or probation if “[1] 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 [2] 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).)

Here, minor satisfied the first prong of satisfactory completion since he had no new finding of wardship or convictions for a felony or misdemeanor involving moral turpitude while on probation. His misdemeanor case was pending before the adult court and thus had not resulted in a

termination of jurisdiction . . . he or she 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 . . . Once the court has ordered the person’s records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.”

conviction, even if it had involved moral turpitude. Rather, the juvenile court found that minor's failure to comply with the reasonable orders of his probation, the second prong of satisfactory completion, precluded him from automatic sealing pursuant to section 786.⁶

Standard of Review

In re A.V. (2017) 11 Cal.App.5th 697, 706, states that a juvenile court has discretion to determine whether a ward of the court "failed to substantially comply" with his probation.⁷ Both parties argue that abuse of discretion is the appropriate standard of review, as it is in the review of a juvenile court's decision not to seal records pursuant to section 781. (See *In re J.W.* (2015) 236 Cal.App.4th 663, 668, 670.) We agree, and review the juvenile court's ruling for abuse of discretion.

Under that standard, an appellant cannot succeed by showing that the trial court's ruling is "merely debatable." (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 390.) Rather, "the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the

⁶ At the hearing, the juvenile court mistakenly referred to "satisfactory compliance," not "substantial compliance." Both parties correctly referred to "substantial compliance" during the hearing. Because the ruling is not inconsistent with the statute, we do not find the juvenile court's mistake significant. Minor does not contend that this mistake is significant.

⁷ *In re A.V.* (2017) 11 Cal.App.5th 697 was published after the initial briefing period for this case concluded. Minor alerted us to the new authority pursuant to California Rules of Court, rule 8.254, and we requested supplemental briefing.

circumstances before it being considered. [Citations.]” (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.) “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. [Citations.]” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478–479.) We find no abuse of discretion.

Orders Within Minor’s Capacity to Perform

Minor argues the juvenile court abused its discretion because he substantially complied with reasonable orders of probation that were “within his capacity [to perform] as someone struggling with substance abuse issues.” In essence, minor argues the juvenile court should not have considered the revocation of his initial grant of informal probation for drug use, his numerous failed drug tests, his section 777 violation, the extension of his CDP for drug use, and his arrest for being drunk at school (minor refers to them collectively as his “struggles” while on probation), because they were beyond his capacity to perform “as someone struggling with substance abuse issues.” He contends that he otherwise substantially complied with his probation orders, those that were within his capacity to perform, and that the juvenile court thus held him to a standard of perfection that is inconsistent with substantial compliance.

That minor did not comply with some of his probation orders does not mean that those orders were not within his capacity to perform. Faced with the same argument at minor’s November 29, 2016, hearing, the juvenile court specifically found that minor did have the capacity to remain drug free in light of a

series of negative drug tests during minor's initial grant of CDP.⁸ This finding is supported by the record, which includes a probation report indicating that minor did not believe he had a drug problem as well as a later report indicating the probation department did not believe minor had learned anything from his substance abuse sessions. Faced with this argument, minor contends that "it only makes sense that appellant might have less insight into his substance problem early in the process, as opposed to later on." While we appreciate the challenges faced by those battling substance abuse, minor's contention, at best, shows that it was arguable whether he had the capacity to remain drug free. Thus, the juvenile court did not abuse its discretion when it found minor had the capacity to remain drug free and thus comply with the orders of his probation.

Minor points to adult law, specifically Proposition 36 (Pen. Code, § 1210.1) and cases stemming from it, to support his position that the juvenile court should not have considered his struggles. "Anticipating that drug abusers often initially falter in their recovery, Proposition 36 gives offenders several chances at probation before permitting a court to impose jail time." (*In re Taylor* (2003) 105 Cal.App.4th 1394, 1397.) Minor concedes that Proposition 36 is inapposite (see § 203 [proceedings in juvenile

⁸ The juvenile court referenced the time minor was on CDP between November 23, 2015, and February 1, 2016, as an indication that minor "had the ability to remain drug free." The juvenile court then referred to the section 777 notice filed February 1, which was based on minor's admission to probation that he used marijuana on or about January 26, 2016. From this we infer the juvenile court was referring to the series of negative drug tests minor produced during CDP as an indication that minor had the ability to remain drug free.

courts are not criminal proceedings and adjudging the juvenile a ward of the court shall not be deemed a conviction of a crime for any purpose]; *In re Dorothy B.* (1986) 182 Cal.App.3d 509, 519). However, he argues that juveniles “should similarly benefit from [the] understanding that the minors dealing with substance abuse issues will suffer relapses.”

Minor’s argument does not account for similar protections that are built into the juvenile law system, from which minor himself has benefitted. “One of the primary objectives of juvenile court law is rehabilitation, and the statutory scheme contemplates a progressively more restrictive and punitive series of dispositions” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250; see, e.g., *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396 [commitment to the California Youth Authority requires “evidence demonstrating (1) probable benefit to the minor and (2) that less restrictive alternatives are ineffective or inappropriate”].) Minor was placed home on probation only after he used drugs while on informal probation. Then, minor was placed on CDP only after a section 777 violation. Not until he violated CDP was minor temporarily detained, but the juvenile court released him on CDP, going against the probation department’s initial recommendation of detention in juvenile hall, even after minor admitted to possessing or using marijuana on or around January 26. Moreover, and most relevant to this appeal, juvenile law provides multiple opportunities for record sealing. As the juvenile court correctly noted when it found that minor did not qualify for automatic sealing, minor can still petition to have his records sealed under section 781 upon a showing of rehabilitation.

Minor argues: “a secondary mechanism for sealing does not negate the fact that the court was erroneous in this decision.” As we next discuss, the juvenile court’s decision, based on the proper finding that minor had the capacity to remain drug free and thus comply with the orders of his probation, was not erroneous.

Substantial Compliance

The juvenile court did not abuse its discretion when it found that minor failed to substantially comply with the reasonable orders of probation within his capacity to perform.

The doctrine of substantial compliance is well established: “Substantial compliance is not perfect compliance. Substantial compliance is commonly understood to mean ‘compliance with the substantial or essential requirements of something (as a statute or a contract) that satisfied its purpose or objective even though its formal requirements are not complied with.’ [Citation.]” (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 709; cf. *People v. Jacobs* (1987) 43 Cal.3d 472, 483 [describing substantial compliance with statutory requirements].)

Section 202 declares the purposes underlying juvenile law: “The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court” (§ 202, subd. (a).) “Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate under the circumstances.” (§ 202, subd. (b).) Probation itself “guides reform, promotes public accountability, and protects the public.

[Citation.]” (*In re Eddie M.* (2003) 31 Cal.4th 480, 487–488.) “A juvenile court enjoys broad discretion to fashion conditions of probation for the purposes of rehabilitation” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) Probation conditions related to drug and alcohol use are reasonable probation conditions for a minor whose wardship is predicated on a drug offense. Likewise, those orders were central to the rehabilitative purpose of minor’s probation.

Minor argues that he substantially complied with the reasonable orders of his probation because he graduated high school, submitted to drug testing, engaged in community service, and attended substance abuse counseling. He points to the probation report that recommended the juvenile court terminate its jurisdiction over minor, stating “the youth has come a long way in his sobriety and his program as a juvenile. It is with no doubt the youth will be able to continue on a good path” Minor’s achievements are commendable, but do not negate his shortfalls while on probation, which the juvenile court properly found were within his capacity to avoid.

The juvenile court read and considered the probation report, which stated that minor’s adult case was pending along with his NA sessions, and followed its recommendation to terminate its jurisdiction over minor. The probation report did not address dismissal of minor’s petition, or the sealing of his juvenile records. The juvenile court recognized that minor made some progress on probation, including graduating from high school, but found that he had not substantially complied with the conditions of his probation because of his “continual issue, notwithstanding the efforts and services the court has engaged in attempting to rehabilitate the minor” After summarizing

minor's record on probation—including the revocation of his initial grant of informal supervision for drug use, multiple violations while home on probation, including the November 23, 2016, section 777 violation, the extension of his CDP because he admitted using marijuana on or about January 26, 2016—the juvenile court found minor was “on now yet another violation of the same nature in adult court,” based on his arrest for being drunk at school. These defaults, central to the rehabilitative purpose of minor's probation for a drug offense, were far from technical, or insignificant under the circumstances.

Nothing in the record suggests the juvenile court would have sealed minor's records only if his record on probation had been perfect. If anything, the juvenile court's emphasis on minor's relatively recent adult case suggests that it might have been inclined to seal minor's records despite his imperfect compliance before that. In light of minor's continued failure to comply with the reasonable orders of his probation, which were central to the rehabilitative purpose of minor's probation and within his capacity to perform, the juvenile court's finding that minor did not substantially comply with the reasonable orders of his probation was well within the bounds of reason. Thus, the juvenile court did not abuse its discretion when it concluded that minor was not entitled to automatic sealing under section 786.

Minor contends the circumstances of his case are similar to *In re A.V.*, *supra*, 11 Cal.App.5th 697, where the court of appeal ordered a juvenile court to seal a minor's records pursuant to section 786. There, the prosecutor filed a section 602 petition against A.V., charging him with possession of marijuana for sale, a felony, and possession of concentrated cannabis, a misdemeanor. (*Id.* at p. 701) A.V. initially was placed on

deferred entry of judgment probation with terms and conditions. (*Ibid.*) While on probation, A.V. failed two drug tests. (*Id.* at p. 702) Because of this, the juvenile court vacated A.V.'s deferred entry probation, declared him a ward of the court, and placed him on probation. (*Ibid.*) A.V. initially struggled to comply with the terms and conditions of his probation. Within the first month of his probation, the probation department filed a notice alleging that minor violated his probation by smoking marijuana and disobeying his curfew. (*Ibid.*) Minor admitted the violation and the juvenile court reinstated probation with a condition that he spend 30-45 days in juvenile hall. (*Id.* at 703) Six months later, A.V. violated probation a second time by possessing marijuana on school grounds. (*Ibid.*) After the second violation, A.V.'s compliance with the terms and conditions of his probation improved considerably. A.V. tested negative for drugs, his parents reported "exceptional" behavior at home, he worked part time, he had no behavioral referrals or unexcused absences from school, and he completed the remaining conditions of his probation. (*Id.* at pp. 703–704) A.V.'s grades dipped temporarily and the juvenile court continued probation but commended his progress. (*Id.* at p. 703) A.V. improved his grades, and six months after his second violation, the probation department submitted a report recommending that the juvenile court dismiss A.V.'s petition because he had completed all of the conditions of his probation. (*Id.* at 704) The juvenile court commended minor's performance on probation, terminated jurisdiction over him, and dismissed A.V.'s petition, but declined to seal A.V.'s records, citing his earlier violations. (*Ibid.*)

On appeal, the court addressed a question of statutory interpretation: "whether, under section 786, a ward's compliance

with his or her probation can be satisfactory for dismissal purposes, and yet *unsatisfactory* for record-sealing purposes.” (*In re A.V.*, *supra*, 11 Cal.App.5th 697, 704) It answered that question in the negative, holding: “The court has the discretion under section 786 to find the ward has or has not substantially complied with his probation so as to be deemed to have satisfactorily completed it; but if the court finds the ward in substantial compliance so that he or she has satisfactorily completed probation, the court must dismiss the petition *and* seal the ward’s records in accordance with the statute.” (*Id.* at p. 701) After reviewing the record, the court of appeal concluded that the juvenile court’s dismissal of A.V.’s petition reflected its “discretionary estimation” that A.V. substantially complied with the conditions of his probation. (*Id.* at pp. 711–712) Accordingly, the court of appeal reversed the juvenile court’s order and remanded the matter, ordering the juvenile court to issue an order dismissing A.V.’s petition and sealing his records under section 786. (*Ibid.*)

Pointing to the similarities between A.V.’s compliance with the conditions of his probation and minor’s, minor argues that he likewise substantially complied with the conditions of his probation and thus qualifies for automatic sealing under section 786. This argument ignores the court of appeal’s reasoning. It was not A.V.’s performance on probation that led the court of appeal to order his records sealed. Rather, that court ordered A.V.’s records sealed because it concluded, based on the juvenile court’s dismissal of A.V.’s petition and its statements at the hearing, that A.V. had substantially complied with the terms and

conditions of his probation.⁹ (*In re A.V.*, *supra*, 11 Cal.App.5th at p. 711.) Here, there was no such dismissal when the juvenile court terminated its jurisdiction over minor, and nothing in the record suggests that in the juvenile court’s “discretionary estimation,” minor had substantially complied with the terms and conditions of his probation.¹⁰ To the contrary, here, the juvenile court’s finding was that minor failed to substantially

⁹ Moreover, minor’s compliance is not as similar to A.V.’s as he suggests. Whereas A.V.’s record showed significant progress for the six months following his second probation violation, minor was arrested for being drunk at school just over three months prior to the juvenile court terminating its jurisdiction over him, while his adult case was still pending and he continued to participate in NA sessions.

¹⁰ A juvenile court may terminate jurisdiction over a ward of the court “when it is satisfied that further supervision is unnecessary. [Citations.]” (*In re W.R.W.* (1971) 17 Cal.App.3d 1029, 1037, fn. omitted; see § 775 [“Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper”].) A juvenile court may terminate jurisdiction over a ward of the court without dismissing the petition that led to wardship. (See § 782 [allowing the juvenile court where a petition was filed against a minor to dismiss the petition after wardship is terminated].) Here, the juvenile court terminated jurisdiction over minor on account of his pending adult case and the 26 NA sessions that the adult court ordered, apparently satisfied that supervision on its part was unnecessary with the adult court involved. Minor does not contend this was improper. Rather, he argues that the juvenile court erred by not also finding that he substantially complied with the orders of his probation that were within his capacity to perform and sealing his records accordingly.

comply with the orders of probation. As we have already discussed, this finding was not an abuse of discretion. Thus, unlike in *In re A.V., supra*, 11 Cal.App.5th 697, the juvenile court was not required to automatically seal minor's records.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.