Filed 4/4/18 In re F.G. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re F.G., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B283828 (Super. Ct. No. YJ39214) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. F.G., Defendant and Appellant.	

F.G. appeals a judgment of the juvenile court adjudging him a ward of the court and committing him to the care, custody, and control of the probation officer for suitable placement. (Welf. & Inst. Code, § 602.) We conclude that a probation condition prohibiting F.G.'s presence on a school campus unless he is enrolled therein is constitutional, and we affirm. (*In re Edward B.* (2017) 10 Cal.App.5th 1228, 1236-1238 [school campus probation condition not impermissibly vague].)

FACTUAL AND PROCEDURAL HISTORY

On May 9, 2017, the Los Angeles District Attorney filed a wardship petition alleging that on May 7, 2017, 16-year-old F.G. committed first degree burglary and attempted first degree burglary. (Pen. Code, §§ 459, 664.) The petition also alleged that, when arrested, F.G. possessed burglary tools. (*Id.*, § 466.)

The first degree burglary count involved F.G.'s entry into the Dancee Brown residence on West 94th Street in Los Angeles. Brown was asleep but awakened when she heard her locked bedroom door open. She saw a young black man with a backpack standing in her bedroom doorway. When she cried out, he left the residence through the open kitchen window. Brown identified F.G. in a field identification, but she could not identify him later in court.

The attempted first degree burglary count involved F.G. prying a screen in the bedroom window of the Gregory Thompson residence on South Denker Avenue in Los Angeles. Thompson was then asleep in the bedroom but awoke to "a scraping sound." He opened the curtains and saw a young man with a backpack hiding by the air conditioner. The young man quickly walked away. Thompson flagged down a patrolling police officer and, within 10 minutes, identified F.G. in a field identification. Thompson was unable to identify F.G. in court, however.

Police officers later searched F.G.'s backpack and found a "punching tool." The tool was a hard object that could break or pry open windows or doors.

The juvenile court sustained the allegations of the wardship petition and declared F.G. a ward of the court. The court determined that the first degree burglary and attempted first degree burglary offenses were felonies, and that the

possession of burglary tools was a misdemeanor. It placed the care, custody, and control of F.G. with the probation officer and ordered him suitably placed.

The juvenile court also imposed several probation conditions upon F.G. Probation condition No. 11 states: "You must not be on the grounds of a school unless enrolled, attending classes, participating in school programs or with [a] parent/caretaker." F.G. did not object to any of the probation conditions imposed at the disposition hearing.

F.G. appeals and challenges the constitutionality of the school-grounds probation condition.

DISCUSSION

F.G. argues that the probation condition impermissibly intrudes upon his constitutional right to travel. He concedes that he did not object to the school-grounds restriction, but asserts that it is reviewable as a question of law. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 [appellate claim that the language of a probation condition is unconstitutionally vague or overbroad "does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts -- a task that is well suited to the role of an appellate court"].) F.G. points out that his criminal offenses did not occur upon school grounds and were unrelated to school property. (*In re D.G.* (2010) 187 Cal.App.4th 47, 50 [probation condition prohibiting ward from coming within 150 feet of any school campus other than the one in which he is enrolled is unreasonable and overbroad].)

F.G. also argues that the probation condition is impermissibly vague because it does not define "school" or "grounds" and it does not include a knowledge element.

The juvenile court is authorized to "impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf & Inst. Code, § 730, subd. (b).) We review the juvenile court's imposition of probation conditions for an abuse of discretion. (*In re Edward B.*, *supra*, 10 Cal.App.5th 1228, 1232.) Moreover, the permissible scope of discretion regarding conditions of juvenile probation is greater than that allowed for adults. (*Id.* at pp. 1232-1233.) This broad discretion rests upon the power of the state to guide and control the conduct of children and care for their well-being. (*Id.* at p. 1232.) A probation condition that might be improper for an adult is permissible for a juvenile "if it is tailored specifically to meet the needs of the juvenile." (*Id.* at p. 1233.)

Nevertheless, the juvenile court's broad discretion in imposing probation conditions is not unlimited. (*In re Edward B.*, *supra*, 10 Cal.App.5th 1228, 1233.) A probation condition is valid if it relates to the crime for which the juvenile was convicted, relates to other criminal conduct, or requires or forbids conduct that is reasonably related to future criminality. (*People v. Hall* (2017) 2 Cal.5th 494, 498; *Edward B.*, at p. 1233.)

F.G. has forfeited his claim that the probation condition is factually, as opposed to facially, overbroad. (*In re Sheena K.*, *supra*, 40 Cal.4th 875, 887 [forfeiture rule does not apply to an obvious legal error at sentencing that is correctable without referring to factual findings in the record].) F.G.'s claim of factual overbreadth requires scrutiny of the factual circumstances of his case and is precluded by his failure to object in the juvenile court. The probation condition in question could be factually overbroad in certain cases, but entirely appropriate

in others. It is a question for the trial court in the first instance. Unlike the circumstances in *In re D.G.*, *supra*, 187 Cal.App.4th 47, 51, F.G. failed to object to the school-grounds condition. (*Ibid.* [parties argued the nexus for the campus clause].)

Forfeiture aside, the school-grounds condition is not factually overbroad or unreasonable. A second probation condition imposed on F.G. requires him to attend school each day that school is in session, receive passing grades, and participate in a high school diploma program. The state has a legitimate interest in ensuring that F.G. participates in his education and ensuring that the probation officer maintains continuous monitoring and supervision of his whereabouts. The school-grounds probation condition serves the state interest in reforming and rehabilitating F.G. by restricting his access to school grounds other than his own unless he is participating in school activities or under the control of a parent or caretaker. It is also generally consistent with Penal Code section 627.2 ("Registration by Outsiders"), and the approved-as-modified probation condition in *In re D.G.*, *supra*, 187 Cal.App.4th 47, 57 ["'Do not enter on the campus or grounds of any school unless enrolled, accompanied by a parent or guardian or responsible adult, or authorized by the permission of school authorities'"].)[1] The school-grounds condition is not a blanket condition that entirely precludes F.G.'s entry on a school campus in which he is not enrolled.

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[1] Penal Code section 627.2 provides: "No outsider shall enter or remain on school grounds during school hours without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering."

F.G. may challenge the school-grounds condition on facial grounds although he did not object in the juvenile court. (*In re Sheena K.*, *supra*, 40 Cal.4th 875, 887; *In re Edward B.*, *supra*, 10 Cal.App.5th 1228, 1236.)

The probation condition is not impermissibly vague. (*Connally v. General Constr. Co.* (1926) 269 U.S. 385, 391 [the void-for-vagueness doctrine bars the government from enforcing a provision that "forbids or requires the doing of an act in terms so vague" that people of "common intelligence must necessarily guess at its meaning and differ in its application"].) Our Supreme Court recently confirmed that a violation of a probation condition must be willful. (*People v. Hall*, *supra*, 2 Cal.5th 494, 501.) Thus, a probationer cannot be punished for presence, possession, or association without proof of knowledge. (*In re Edward B.*, *supra*, 10 Cal.App.5th 1228, 1237.) The school-grounds condition also identifies the places that F.G. is to avoid – school campuses unless he is enrolled. (*Ibid.*) The vagueness doctrine demands no more than a reasonable degree of certainty. (*Hall*, at p. 503.) That degree of certainty exists here.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

J. Christopher Smith, Judge

Superior Court County of Los Angeles

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