Filed 12/10/19 In re D.T. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.T., a Person Coming Under the Juvenile Court Law.	B295253
THE PEOPLE, Plaintiff and Respondent, v. D.T., Defendant and Appellant.	(Los Angeles County Super. Ct. No. PJ52491)

APPEAL from an order of the Superior Court of Los Angeles County. Morton Rochman, Judge. Affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

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D.T., a minor, admitted one count of felony sexual battery and three counts of misdemeanor sexual battery. The juvenile court declared him a ward of the court pursuant to Welfare and Institutions Code section 602 and ordered him home on probation. D.T.'s sole contention on appeal is that the juvenile court violated his constitutional rights by ordering him to complete 52 weeks of sexual offender counseling but failed to make a finding of his ability to pay for that counseling.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to Welfare and Institutions Code section 602, D.T. was initially charged in Santa Barbara Superior Court (case No. 17JV00528) with eight counts of lewd act upon a child (Pen. Code, § 288, subd. (a)). The charges involved five different minor victims.

Four additional counts were added: one felony count of sexual battery (Pen. Code, § 243.4, subd. (a) [count 9]) and three misdemeanor counts of sexual battery (§ 243.4, subd. (e)(1) [counts 10-12]). D.T. admitted to counts 9 through 12 and the court accepted his waiver on the record. D.T. also signed a General Advisement, Waivers and Admission form. Counts 1 through 8 were dismissed.

The following week, the matter was transferred to Los Angeles Superior Court because D.T. had changed his residence and was now living with his adult sister as his guardian.

At the disposition hearing, the court declared D.T. a ward of the court pursuant to Welfare and Institutions Code section 602 and ordered him home on probation, subject to the care, custody and control of the Probation Department. D.T. was permitted to remain in the home of his adult sister.

In discussing the proposed terms and conditions of probation with the court, counsel for D.T. objected to D.T. being required to participate in 52 weeks of sex offender counseling. Counsel argued that such counseling was expensive and urged

the court to impose instead only 26 weeks of sexual boundary counseling. The juvenile court indicated its intent to follow the recommendations in the probation report.

Condition 30, as ordered by the court, required D.T. to participate in family counseling and 52 weeks of "Sex Offender (Sexually Abusive Youth) Counseling." The court did not make payment of the counseling sessions a condition of probation.

This appeal followed.

DISCUSSION

The sole issue concerns whether the juvenile court violated D.T.'s constitutional rights in ordering him to participate in 52 weeks of sexual offender counseling without first having conducted an ability-to-pay hearing.

Respondent contends the issue has been forfeited. We agree. D.T. did not request an ability-to-pay hearing and never made any argument or presented any evidence that he would be unable to pay for the counseling sessions. Rather, D.T. merely said the sexual offender sessions were expensive and suggested the court impose instead 26 weeks of sexual boundary counseling.

Apart from forfeiture, D.T.'s contention has no merit. Once the juvenile court has determined a minor to be a ward of the court, it has broad discretion to order an appropriate disposition. D.T. had been charged with multiple sex offenses involving five different minor victims. He admitted one felony count of sexual battery and three counts of misdemeanor sexual battery. The probation report recommended family counseling as well as sexual offender counseling. The juvenile court was well within its discretion in concluding that 52 weeks of counseling was warranted.

D.T. appears to concede the court had the discretion to order the mandatory counseling sessions, but argues the court was required to first conduct an ability-to-pay hearing. In so arguing, D.T. relies on Welfare and Institutions Code section 730,

subdivision (d) and *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). Neither authority applies here.

Welfare and Institutions Code section 730, subdivision (d) provides that when a minor is adjudged a ward of the court "by reason of the commission of *rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code*, the court shall order the minor to complete a sex offender *treatment program*." (Italics added.) It further requires that "[i]f ordered by the court to complete a sex offender treatment program, the minor shall pay all or a portion of the reasonable costs of the sex offender treatment program after a determination is made of the ability of the minor to pay." (*Id.*, subd. (d).)

D.T. concedes he was *not* charged with any of the sexual offenses enumerated in Welfare and Institutions Code section 730, subdivision (d). The provision does not apply here. Moreover, the juvenile court did not order him to participate in a treatment program. D.T. was ordered only to participate in counseling. D.T. has not offered any information on which this court can conclude the counseling ordered by the court is the same as a sexual offender treatment program. The juvenile court was not required to conduct an ability-to-pay hearing pursuant to section 730, subdivision (d).

Dueñas is similarly of no assistance. *Dueñas* concerned the imposition of mandatory restitution fees and fines. *Dueñas* has nothing to do with probation terms. Nothing in the record demonstrates that D.T. is indigent. Indeed, the probation report notes he has a stable and supportive family.

In the event D.T. is unable to pay and attend all of the counseling sessions and is required to appear at a probation revocation hearing, D.T. will have the opportunity to demonstrate to the court whether his inability to complete the court-ordered counseling was due solely to an inability to pay. It is well established the court can only revoke probation and order a more restrictive placement for a *willful* violation. (*People v. Cervantes*

(2009) 175 Cal.App.4th 291, 295 [court may not revoke probation "unless the evidence supports 'a conclusion [that] the probationer's conduct constituted a willful violation of the terms and conditions of probation' "].) D.T. has not shown he will suffer any additional punitive consequences or other prejudice.

DISPOSITION

The order of wardship and disposition is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.