Filed 7/27/18 In re C.M. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re C.M., a Person Coming Under the Juvenile Court Law.	B283842 (Los Angeles County Super. Ct. No. YJ38593)
THE PEOPLE, Plaintiff and Respondent, v. C.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, David S. Wesley, Judge. Affirmed.

Holly Jackson, 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, Shawn McGahey Webb and

Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

Minor C.M. admitted to making a criminal threat under Penal Code section 422. The juvenile court placed C.M. on home probation with his mother and ordered C.M, among other terms and conditions of probation, to complete certain programs and community service, pay a restitution fine, and submit to random drug testing.

Although C.M. complied with these conditions of probation, he failed to appear altogether for one court hearing and appeared several hours late for a second hearing while a bench warrant from his first failure to appear was pending.

The juvenile court terminated probation but refused to seal C.M.'s record. The juvenile court observed that C.M.'s responses to why he appeared so late after not appearing at all previously, and his attitude towards the juvenile court during the hearing, demonstrated that C.M. was not "rehabilitated" and that he was not taking the proceedings "seriously." The juvenile court further stated that C.M. would have to "earn" sealing his record in a future motion. C.M. asserts the refusal to seal his record was an abuse of discretion and violated Welfare & Institutions Code section 786.[1] We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 22, 2016, C.M., then 15 years old, reported late to high school and when his teacher told him to take his seat, he

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

stated, "This is bullying, this is how school shootings start," and further said, "This is Columbine." The teacher saw on C.M.'s social media a picture of a male sporting a "large swastika tattoo on his chest, as well as various photos of marijuana being glorified." C.M.'s comment made the teacher fearful for her students' and her own safety and caused her "not [to] feel safe in school anymore."[2]

On March 23, 2016, the district attorney filed a petition pursuant to section 602 alleging C.M. made a criminal threat under Penal Code section 422, subdivision (a). On June 1, 2016, after C.M. admitted the allegations of the petition, the juvenile court sustained the petition, declared C.M. a ward of the court, declared the offense to be a misdemeanor, and placed C.M. with his mother under home probation.

As conditions to C.M.'s probation, the juvenile court ordered C.M. to: take anger management classes; write apology letters to his parents and the teacher he threatened; complete 100 hours of community service; pay a $50 restitution fine to the Victims Fund; attend school and maintain satisfactory grades; submit to random drug testing; have no contact with the teacher; obey his parents', school officials', and probation officer's rules; and "not commit any crimes and you must follow the rules I am giving you." The juvenile court ordered C.M. to appear on August 31, 2016 and set for May 31, 2017 a "Nonappearance calendar [in Department 241] for ANRV."

At the August 31, 2016 hearing, the probation department reported C.M.'s satisfactory progress on the terms and conditions of his probation, and the juvenile court continued probation again

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[2] These facts are taken from the probation report.

referring to a "Nonappearance calendar" of May 31, 2017 and continuing "the matter" to December 21, 2016. Following a satisfactory probation report, the juvenile court continued "the matter" several times, each time continuing probation and referring to the May 31, 2017 "nonappearance calendar."

On March 22, 2017, the juvenile court continued "the matter" to June 1, 2017 and ordered that the "[n]ext report . . . address recommendation possible termination." A handwritten note on the March 22, 2017 probation department report referenced "6-1-17 termination." In contrast to previous minute orders, the juvenile court "advanced and vacated" the May 31, 2017 "nonappearance calendar."

Because C.M. failed to appear on June 1, 2017 "without sufficient excuse," the juvenile court issued, but held a bench warrant until the next hearing date of June 15, 2017. On June 15, 2017, the juvenile court issued the bench warrant when C.M. failed to appear during the "A.M. session." C.M. appeared only during the "P.M. session." The minute order recites "MINOR APPEARED LATE. Bench warrant issued in A.M. is quashed. The court does not seal the juvenile records at this hearing, due to minor['s] failure to appear on time to court." The juvenile court terminated jurisdiction, released C.M. to his parents, and did not set any future hearing dates. The juvenile court did not dismiss the case and ordered the probation department to submit all future reports two court days prior to the court hearing and to hole-punch all such reports properly.

On July 13, 2017, C.M. filed this timely notice of appeal from "the court's determination to not seal minor's record."[3]

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[3] We note that neither party addresses whether the refusal to seal C.M.'s record is an appealable order and that other courts

DISCUSSION

The parties do not dispute our standard of review. We review the juvenile court's refusal to seal C.M.'s records for abuse of discretion and the juvenile court's factual findings for substantial evidence. (*In re N.R.* (2017) 15 Cal.App.5th at 590, 599 (*N.R.*).) C.M. argues that the juvenile court abused its discretion in not sealing C.M.'s record because (1) section 786 mandates sealing C.M.'s record after C.M. had satisfactorily completed the terms and conditions of his probation; and (2) C.M.'s tardiness was not willful and was similar to the tardiness in *People v. Zaring* (1992) 8 Cal.App.4th 362 (*Zaring*) in which the appellate court reversed the trial court's revocation of the defendant's probation for a drug offense based on being 22 minutes late to a court appearance.

Section 786, subdivision (a) requires sealing a minor's records when the following conditions are met: "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 the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice."

In subdivision (c), section 786 deems "satisfactory completion of an informal program of supervision or another term of probation" to have occurred "if the person has no new findings

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faced with the same issue appear to presume appealability. (See, e.g., *In re N.R.* (2017) 15 Cal.App.5th 590.)

of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and 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."

We first note that the record does not contain a request by C.M. to dismiss his case. Had the juvenile court dismissed C.M.'s case, then sealing C.M.'s record would have been mandatory if the conditions in section 786 had otherwise been met. (*In re A.V.* (2017) 11 Cal.App.5th 697, 701 ["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"].) As the Attorney General asserts, a juvenile court may terminate probation even if the juvenile court has found that the minor is not yet rehabilitated. (*N.R.*, *supra*, 15 Cal.App.5th at p. 599 [juvenile court did not abuse its discretion in lifting minor's deferred entry of judgment, placing minor on at-home probation and terminating jurisdiction, but refusing to dismiss minor's case and seal his record when he violated condition of his deferred entry of judgment to stay in high school].)

We assume, arguendo, that C.M.'s request to seal his record also included a request to dismiss his case. Accordingly, C.M.'s appeal turns on whether the juvenile court abused its discretion in finding that C.M. had not substantially complied with the terms and conditions of his probation.

It is undisputed that by June 15, 2017, C.M. had completed all the programs, had satisfactory grades and clean drug tests, and paid the restitution fine, as the juvenile court ordered. It was also undisputed that C.M. failed to appear for the

June 1, 2017 hearing causing the then held bench warrant to issue when he did not appear again at the appointed time on June 15, 2017.

C.M. finally appeared in the afternoon on June 15, 2017, only after the juvenile court instructed C.M.'s counsel to contact her client because C.M. was going to be arrested on the bench warrant. The following colloquy with C.M. then ensued:

"The court: Why did you feel you shouldn't come to court today? Tell me why.

"The minor: Today?

"The court: Yeah. Tell me why.

"The minor: I am here.

"The court: Hah?

"The minor: I am here.

"The court: I know. But why did you feel you couldn't come this morning?

"The minor: I didn't feel like that.

"The court: Then why weren't you here this morning?

"The minor: I just overslept.

"The court: You what?

"The minor: I just overslept.

"The court: You overslept. You just never give the right answers, do you? Do you? This doesn't mean much to you, does it? [¶] No, [defense counsel]. He is sitting right here. If this doesn't mean much to him, maybe he will change my mind again; he's done that before. I don't think he is rehabilitated. I will take him off probation. I will not seal his record. He is going to have to come back and earn that. I am not satisfied with what I'm seeing."

This record reveals that C.M. was at best non-responsive to the juvenile court's questioning, and probably more accurately, somewhat insolent. The juvenile court was unequivocal about its reasoning for refusing to seal C.M.'s record: "Well, the problem is that the last two court appearances he failed to appear, and that includes today when he was [supposed] to be here at 8:30 a.m. Telling me 'I overslept,' what kind of nonsense is that? You had to be in court this morning. And, mom, you are shaking your head yes, yes, yes. He should have been here in court. He had a date in court, June 1st, he wasn't here. He had a date in court this morning, he wasn't here. That's as much your fault as his. If you disobey a court order that he is to appear at 8:30 a.m., why should I seal his record? He shows no compliance there at all. So I will not seal his record because neither he or his mother are taking seriously the court's orders that he appear here on time. [¶] He can make a motion to seal his record in the future. I will not seal it today."

Considering that (1) this was C.M.'s second unexcused failure to appear; (2) C.M.'s dismissive attitude towards the juvenile court; and (3) obeying the court's orders was a condition of probation, we conclude the juvenile court did not abuse its discretion in finding that C.M. had not substantially complied with the terms and conditions of his probation "within his . . . capacity to perform" (§ 786, subd. (c)), and thus not yet deserving of the clean slate[4] sealing his record would have then provided.

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[4] Section 786, subdivision (b) describes such a clean slate: "Upon the court's order of dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may

C.M.'s appellate counsel argues that C.M. may have been confused when he failed to appear at the June 1, 2017 hearing because the March 22, 2017 minute order contained two different dates: the June 1, 2017 hearing date and the reference to advancing and vacating the May 31, 2017 "nonappearance calendar" date. First, there is nothing in the record indicating C.M. made this argument to the juvenile court. Second, there is nothing in the record indicating that C.M. ever read the March 22, 2017 minute order. Third, as set forth above, previous minute orders also contained the reference to the May 31, 2017 "nonappearance calendar" as well as other dates, and these minute orders apparently did not confuse C.M. about appearing on those other dates. In short, appellate counsel's argument is mere speculation.

Finally, *Zaring*, *supra*, 8 Cal.App.4th 362 does not assist C.M. There, the defendant was on probation for a drug offense and was 22 minutes late for a hearing on whether defendant had been accepted into a certain drug program. At the probation revocation hearing, the trial court found that defendant had willfully violated her terms of probation by failing to appear on time at the earlier date, and sentenced her to prison even though she was making all her appointments at the drug program and her tardiness was caused by unforeseeable childcare issues causing her ride to court to be late. The appellate court reversed defendant's sentence in holding that the trial court abused its discretion in finding her failure was willful. (*Id*. at p. 379.)

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reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case."

In contrast, here C.M. had no excuse for failing to appear altogether on June 1, 2017 and for arriving several hours late on June 15, 2017. He had no unforeseen circumstances causing his tardiness. The best he could say was that he overslept on June 15, 2017. The record reveals no excuse for failing to appear at all on June 1, 2016. Indeed, the June 1, 2017 minute order reflects the juvenile court's finding that C.M.'s absence was "without sufficient excuse."

DISPOSITION

The order refusing to seal C.M.'s record is affirmed.
NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.