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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B294367  
(Los Angeles County  
Super. Ct. No. VJ46018)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Fumiko Wasserman, Judge. Affirmed.

Jenny M. Brandt, 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, Paul M. Roadarmel, Jr. and Kristan J. Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

R.R. was declared a ward of the juvenile court based on sustained allegations he committed felony vandalism and burglary. He and some friends vandalized several elementary school classrooms, and stole items belonging to the school. Cleanup and repair costs, including the value of school employees' time expended, exceeded \$21,000.00. The court ordered R.R. home on probation. On appeal, R.R. contests the constitutionality of the probation conditions restricting his driving privilege and requiring payment of a restitution fine. Because we conclude the probation condition restricting R.R.'s driving privilege was required by law and is constitutional, and R.R. forfeited his challenge to the payment of the restitution fine, we affirm the juvenile court's orders.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Following the incident described above, the People filed a petition pursuant to Welfare and Institutions Code section 602 alleging R.R., then 16 years old, had committed second degree burglary and felony vandalism. After a jurisdiction hearing, the juvenile court sustained the petition. It also declared the offenses felonies and R.R. a ward of the court. At the disposition hearing, the court ordered R.R. placed home on probation. R.R. timely filed a notice of appeal.

## **DISCUSSION**

### **A. The Driving Restriction Condition**

#### **1. Additional factual background**

In placing R.R. home on probation, the juvenile court ordered him to comply with certain conditions, including having his privilege to drive restricted. The court used a numbered,

preprinted minute order that contained a menu of options, which it worked its way through at a hearing. Before imposing the driving restriction, the court asked defense counsel: “[W]hether it’s going to be a delay in privilege or suspension of driver’s privilege, [R.R. is] not in possession of a license?” Defense counsel answered, “No.” Without objection, the court then admonished R.R., “[N]o. 25, you must not drive a motor vehicle. There is a delay issuing your driver’s license for one year.”

## **2. Discrepancy between the orally pronounced and minute order versions of the driving restriction**

The juvenile court’s oral pronouncement of the driving restriction is inconsistent with the preprinted minute order’s version. This discrepancy is reflected in each party’s argument. Relying on the reporter’s transcript, R.R. argues the juvenile court improperly ordered that he may not drive a motor vehicle and is subject to a one-year delay in obtaining his driver’s license as conditions of probation. The People argue the court merely mentioned the no driving condition as a point of reference in locating on the minute order the one-year delay in obtaining a driver’s license. The court then ordered R.R. to comply with that probation condition as the sole driving restriction. In support of their argument, the People note the no driving condition (number 25) on the preprinted minute order is unchecked, while the one-year licensing delay (number 25B) is checked.

When the reporter’s transcript and the clerk’s transcript conflict, “[they] will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater

credence.” (*People v. Smith* (1983) 33 Cal.3d 596, 599.) Traditionally, the court’s oral pronouncements have been deemed to control over the written version. (*People v. Smith, supra*, at p. 599.) With probation conditions, however, a court’s oral pronouncement may be less comprehensive, given that the conditions are set forth in detail in the probation order. (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346 [when reporter’s transcript and clerk’s transcript cannot be reconciled, appellate court adopts the transcript “that should be given greater credence under the circumstances of the particular case.”]; see also *People v. Harrison* (2005) 35 Cal.4th 208, 226.)

Here, the apparent discrepancy between the oral and written versions can be harmonized. Before orally imposing the driving restriction, the juvenile court clarified with defense counsel that R.R. did not yet have a driver’s license, so the probation condition would be, in the words of the court, “a delay in privilege” as opposed to “a suspension of driver’s privilege.” Based on this exchange, it is clear the court intended only to delay R.R. from obtaining a driver’s license for one year, not to prohibit him from driving with a valid license (which he did not have) while on probation. We read the court’s subsequent mention of number 25 and the no driving condition as the court’s attempt to locate where it left off in imposing R.R.’s conditions of probation. Accordingly, we consider R.R.’s challenge as solely to the delay in obtaining a driver’s license.

### **3. Challenge to the delay in obtaining a driver’s license as a probation condition**

A juvenile court has broad discretion to impose reasonable probation conditions. (Welf. & Inst. Code, § 730, subd. (b).)

Under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), a condition of probation will be upheld unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .” (*Id.* p. 486.) A probation condition also may be challenged for constitutional infirmity. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889-893.) A juvenile court’s imposition of a probation condition is generally reviewed for an abuse of discretion, except a constitutional challenge is reviewed de novo. (*In re Malik J.* (2015) 240 Cal.App.4th 896, 901.)

R.R. contends the probation condition preventing him from obtaining a driver’s license for one year fails to satisfy the three-part conjunctive test of *Lent* and is unconstitutionally overbroad because there is no nexus between the offenses he committed and his operation of a motor vehicle. R.R. also argues that if he has forfeited this claim, as urged by the People, his defense counsel rendered ineffective assistance by failing to raise it at the disposition hearing.

Whether or not R.R. has forfeited this claim, it fails on the merits. Vehicle Code section 13202.6 requires that “[f]or every conviction of a person for a violation of Section 594 [vandalism] . . . of the Penal Code, committed while the person was 13 years of age or older, the court shall suspend the person’s driving privilege for not more than two years . . . . If the person convicted does not yet have the privilege to drive, the court shall order the [Department of Motor Vehicles] to delay issuing the privilege to drive for not less than one year nor more than three years subsequent to the time the person becomes eligible to

drive.”<sup>1</sup> (Veh. Code, § 13202.6, subd. (a)(1).) Although the juvenile court has significant authority to impose probation conditions, it does not have the authority to disregard the explicit requirements of a statute. Because the driving restriction was mandatory, as triggered by R.R.’s vandalism conviction, the probation condition delaying his access to a driver’s license for one year was properly imposed. No ineffective assistance of counsel resulted from the failure of R.R.’s counsel to proffer a futile objection. (See *People v. Anderson* (2001) 25 Cal.4th 543, 587.) R.R. is not challenging the validity of Vehicle Code section 13202.6 and fails to make a reasoned argument that application of that statute to R.R. violates his due process rights or is otherwise unconstitutional. Any constitutional challenge to the statute therefore is waived. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.)

In any event, withholding or delaying the privilege of driving a motor vehicle is a time-honored method of rehabilitating miscreant young people by incentivizing their good behavior. Whether it is a parent “taking away the keys” or a legislature mandating delay or revocation of the driving privilege, the hope is that the young person will conform his or her conduct to the required norms in the hope of regaining or obtaining the ability to drive. In this case, the probation condition also reflects an important safety concern directly related to R.R.’s offense.

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<sup>1</sup> Vehicle Code section 13202.6 states the term “conviction” “includes the findings in juvenile court proceedings.” (Veh. Code, § 13202.6, subd. (a)(3).) The statute also enables the person affected to petition the court to modify the order imposing the delay if there are no further vandalism convictions in the 12 months following the original conviction. (Veh. Code, § 13202.6, subd. (a)(1).)

Senseless vandalism of an elementary school classroom reflects immaturity, bad judgment, and a callous disregard for the rights and property of others. These are hardly the hallmarks of a good driver. Allowing some time for maturity and better judgment to take root helps protect innocent motorists and pedestrians from potential carnage. We see no constitutional infirmity in the legislature's common-sense decision to limit the driving privilege in this manner.

Because the probation condition at issue is legislatively mandated, it is far from clear that *Lent*, *supra* 15 Cal.3d 481 (*Lent*), upon which appellant principally relies, is even applicable. The legislature's power to condition exercise of the drivers privilege was not addressed in that case. Rather, *Lent* adopted a three-part test from *People v. Dominguez* (1967) 256 Cal.App.2d 623 for determining whether a judge has abused his or her discretion by imposing a condition of probation: A condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." (*Lent*, at p. 486, quoting *Dominquez*, at p. 627.) "[A]ll three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 384.)

Moreover, unlike the probation condition recently invalidated in *In re Ricardo P.* (2019) 7 Cal.5th 1113, 1124 (warrantless search of a juvenile's electronic devices), delaying the driving privilege involves no invasion of privacy and is not a disproportionate burden compared to the legitimate interests served by that condition (promoting society's interest in licensing

only responsible drivers and incentivizing responsible, lawful behavior). (*Id.* at p. 12.)

## **B. The Restitution Fine**

### **1. Additional factual background**

The juvenile court also ordered R.R. to pay victim restitution in an amount to be determined by the probation department as a condition of probation. The court further ordered R.R., “[Y]ou must pay a restitution fine which goes to a victims’ fund in the amount of \$100. All payments to be credited first to victim restitution. If restitution is paid in full, the fine will be deleted.” There was no objection.

### **2. Challenge to the imposition of the \$100 restitution fine**

The juvenile court was authorized to impose the \$100 restitution fine pursuant to Welfare and Institutions Code section 730.6, which is the juvenile offender counterpart to the restitution provision for adult offenders codified in Penal Code section 1202.4. R.R. relies on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) to argue the court violated his due process rights by imposing the fine without conducting a hearing on his ability to pay and maintains the imposition of the fine should be stayed pending a hearing on the issue.

R.R. concedes that unlike the defendant in *Dueñas*, he did not object in the court below that he lacked the ability to pay the restitution fine. He thus forfeited his challenge to the restitution



fine.<sup>2</sup> (See e.g. *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153 [defendant forfeited his challenge to the court operations assessment, court facilities assessment, and a \$10,000 restitution fine by failing to object at sentencing]; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464 [defendant forfeited *Dueñas* issue by failing to object to fees or fines in the trial court].)

In any event, R.R.'s challenge to the restitution fine is not ripe for review because the juvenile court intended to strike this probation condition if R.R. satisfied his obligation to pay victim restitution. (See e.g. *People v. Garcia* (2018) 30 Cal.App.5th 316, 327-328.)

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<sup>2</sup> R.R. is not claiming his defense counsel provided ineffective assistance by failing to raise the issue of his inability to pay the restitution fine in juvenile court.

**DISPOSITION**

The orders are affirmed.

CURREY, J.

We concur:

WILLHITE, Acting P.J.

COLLINS, J.