Filed 6/28/18 In re E.H. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re E.H., a Person Coming Under the Juvenile Court Law.	2d Crim. No. B281415 (Super. Ct. No. MJ22737) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. E.H., Defendant and Appellant.	

E.H., a former ward of the juvenile court, appeals a juvenile court order declining his request to seal his juvenile court records. The court sustained a Welfare and Institutions Code section 602 petition ("section 602 petition"), finding E.H. was a minor who was in possession of a firearm. (Pen. Code, § 29610.)[1]

[1] All statutory references are to the Penal Code unless otherwise stated.

It placed him on probation and subsequently terminated jurisdiction over E.H. We conclude, among other things, that the juvenile court did not err by declining his request to seal his juvenile court records. (Welf. & Inst. Code, § 786.) We affirm.

FACTS

On June 18, 2014, a sheriff's deputy responded to a report that a male inside a van had brandished a gun. The deputy saw the van in a parking lot and ordered E.H., who was in the van, "to exit the vehicle." The officer recovered a handgun from the van. The officer read E.H. his *Miranda* rights. E.H. agreed to talk. He said he "found the handgun while walking through the desert." He said, "I knew I shouldn't have fucked with that shit."

On June 20, 2014, the People filed a section 602 petition alleging E.H., 15 years old, possessed a firearm (§ 29610), a felony (count 1), and live ammunition (§ 29650) (count 2). E.H. admitted the allegations of count 1; count 2 was dismissed. The petition was sustained. The juvenile court placed E.H. in a camp community placement program. The court noted E.H. had "two previously sustained petitions for possession of firearms and bringing a firearm to school grounds in 2012." It said his "behavior is considered to be a threat to public safety." E.H. admitted that he had violated prior court-ordered conditions requiring him "to attend class, maintain satisfactory grades and attendance."

On June 22, 2015, the People filed a section 602 petition alleging that on June 18, 2015, E.H. had again possessed a firearm (§ 29610), a felony (count 1), and live ammunition (§ 29650) (count 2). E.H. admitted the allegations of count 1; count 2 was dismissed. The petition was sustained.

On July 9, 2015, the probation department filed a report stating that E.H. was a "self-admitted gang member [of the] AFC Bloods [gang]." The probation department said E.H. had made "little" or "no" effort to comply with his court-ordered conditions. It noted he 1) failed to attend school, 2) tested positive for marijuana use on two occasions, and 3) failed to attend a court hearing. The juvenile court warned E.H. about the negative "consequences" of "continuing to engage in gang-related activity."

The juvenile court ordered E.H. to be "screened" by the Glen Mills Schools Placement Program (GMSPP). E.H. eventually was admitted to that program.

In July 2016, the probation department determined that E.H. made "better than expected progress" at GMSPP and no longer needed this placement alternative.

On July 11, 2016, the juvenile court found that "[t]he minor's compliance with the case plan has been substantial." It ordered E.H. to be placed "home on probation." His probation conditions included the requirement that 1) he must provide a urine sample "whenever asked" to test for drug and alcohol use, and 2) he be "randomly tested" for drugs and alcohol a minimum of one time per month.

An October 2016 probation report indicated that E.H. tested "positive for marijuana" on September 22, 2016. The probation officer said that "[a]n area of concern which will be monitored is the positive drug test for marijuana."

At an October 18, 2016, probation progress hearing, the juvenile court noted E.H. "is now an adult." It said to E.H., "[Y]ou have done everything we've asked of you except refrain from using marijuana." The court told E.H. that if he wanted "an

opportunity to have [his] record sealed," he must remain "drug free" and not use marijuana.

In a February 21, 2017, probation report, the probation officer said E.H. was detained by law enforcement officers in the company of "self admitted Rollin 60's gang members." E.H. failed to provide proof that he completed his GED program. He had three positive drug tests in 2017 "for the use of marijuana."

On March 14, 2017, the juvenile court terminated jurisdiction. It ruled E.H. does not qualify for automatic sealing of the record under Welfare and Institutions Code section 786.[2] It found he "has not successfully completed Probation." The court said E.H. had "consistent positive testing for marijuana use." It felt additional substance abuse counseling would not "change that behavior." The court said, "So I believe it is time that we part ways."

DISCUSSION

Sealing the Record

E.H. contends "the juvenile court abused its discretion when it found [he] did not qualify for automatic sealing of his juvenile records pursuant to section 786." We disagree.

Section 786, subdivision (a) provides, in relevant part, "If a person who has been alleged or found to be a ward of the juvenile court *satisfactorily completes* . . . 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 . . . ." (Italics added.)

Relying on *In re A.V.* (2017) 11 Cal.App.5th 697, E.H. contends the juvenile court was required to seal the records after

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[2] All further statutory references are to the Welfare and Institutions Code.

it terminated jurisdiction over E.H. But his reliance on *In re A.V.* is misplaced. There the court said, "A minor who satisfactorily completes probation is entitled to have the petition of wardship dismissed and the records pertaining to the petition sealed." (*Id.*, at p. 709.) But in that case the Court of Appeal held the trial court impliedly found A.V.'s performance on probation was "sufficient." It said, "Clearly, in the court's discretionary estimation, A.V. had 'substantially complied' with the essential requirements of his probation . . . ." (*Id.* at p. 711.)

By contrast, here we cannot conclude the juvenile court made such an implied finding because it expressly and unequivocally found that E.H. "has *not successfully completed Probation*." (Italics added.)

The current case is similar to *In re N.R.* (2017) 15 Cal.App.5th 590 where we affirmed a trial court's order that a juvenile record not be sealed. There we said, "Although the court terminated jurisdiction, that action cannot reasonably be construed as an implicit finding that appellant had 'substantially complied' with the terms of his probation for purposes of section 786." (*Id.* at p. 599.) "Rather, the court made clear its conclusion that appellant had *not* satisfactorily completed probation. In terminating jurisdiction, the court merely recognized there was no reason to continue supervising appellant given that he had turned 19 years old and was adamant in his decision to quit school." (*Ibid.*)

Here the juvenile court terminated jurisdiction. But it did not do so because E.H. had successfully completed probation. Instead, as in *In re N.R.*, the court "merely recognized there was no reason to continue supervising appellant." (*In re N.R.*, *supra*, 15 Cal.App.5th at p. 599.) The court said to E.H., "I believe it is

time that we part ways"; "I can't think of any additional services to offer [E.H.] than what's been offered, notwithstanding the *consistent positive testing for marijuana use*. I don't believe that an additional substance abuse counseling program[,] given that he's completed several during his tenure with this court[,] *would change that behavior*." (Italics added.) The court said, "So if you want to gain the benefit of everything that you have learned you need to change your direction"; "[y]ou better pick better friends because I am also mindful of the detention you recently had where you were staying with people that were self-admitted Rolling 60's gang members." E.H. has not shown the court erred by deciding not to seal the records.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Denise McLaughlin-Bennett, Judge

Superior Court County of Los Angeles

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