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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Crim. No. B277163
(Super. Ct. No. MJ21796)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

H.R.,

Defendant and Appellant.

While a minor, appellant H.R. stole merchandise from three department stores. The Los Angeles County District Attorney's Office filed a felony petition pursuant to Welfare and Institutions Code section 602,¹ alleging that appellant conspired

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

to commit a crime (Pen. Code, § 182, subd. (a)(1); count 1) and committed second degree commercial burglary (*id.*, § 459; counts 2-4).

On August 10, 2015, appellant admitted to a reduced count of misdemeanor shoplifting (Pen. Code, § 459.5; count 2) in exchange for dismissal of the remaining counts. Appellant was declared a ward of the juvenile court and the petition was sustained as to count 2. Appellant was placed on home probation with specified terms and conditions. Her maximum term of confinement was set at one year.

Appellant turned 19 on March 4, 2016. On August 23, 2016, the juvenile court held a non-appearance progress hearing. It terminated jurisdiction over appellant based on her age, but found that she “has not successfully completed Probation” and “[d]oes not qualify for automatic sealing [of records] per 786WIC.” Appellant contends the court abused its discretion by finding that she did not qualify for automatic sealing of her juvenile records. We affirm.

PROCEDURAL BACKGROUND

Appellant’s probation began on August 10, 2015. On March 14, 2016, the Probation Department reported that appellant’s adjustment in the home, compliance with orders, employment performance and general attitude were good. The quarterly report stated: “Subject [appellant] continues to work. I have not been notified of any arrests by our County Jail. Subject recently completed 40 hours of community service and provided documentation. Subject claims to have mailed her restitution payment of \$50. She provided a money order receipt. Subject continues to be compliant. [¶] It appears that the subject has completed her terms of Probation. If in fact she has met all of her

obligations, I am requesting her case be closed.” No action was taken on this request.

On April 25, 2016, appellant received permission from the Probation Department to vacation in Hawaii from April 27, 2016 through June 29, 2016. The permission agreement required that appellant return to California on June 29, 2016 “voluntarily and without further formality.” It also required that she maintain telephone contact with her assigned probation officer.

On August 18, 2016, the Probation Department reported that “[t]he former minor was scheduled to return to the State of California on June 29, 2016. The former minor has not reported to the Los Angeles County California Probation Officer by the time this report was written. The former minor was contacted at the listed telephone number on file on August 16, 2016, regarding the conditions of probation. The former minor has not submitted a statement due to no answer, and no answering machine for messages.” The Probation Department also advised that “[t]he former [minor] is 19 years old and the adult courts would address any further law violations by the former minor.”

On August 23, 2016, the juvenile court determined that “minor’s whereabouts are unknown” and noted that it “is aware [of the] recommendation to term[inate] based on minor’s age.” Accepting that recommendation, the court terminated jurisdiction, but found that appellant had not successfully completed probation and that she is not entitled to automatic sealing of her juvenile records under section 786. The court also did not dismiss the section 602 petition.

DISCUSSION

Appellant contends the juvenile court abused its discretion by not automatically sealing her juvenile records under section 786. We disagree. Even if appellant had satisfactorily completed her probation, as she claims, she was an adult at the time the juvenile court terminated jurisdiction and the applicable version of section 786 applied only to minors.

In 2014, the Legislature enacted section 786 (added by Stats. 2014, ch. 249, § 2, p. 2506), which provided for the automatic and mandatory sealing of juvenile records “[i]f the minor satisfactorily completes . . . a term of probation for any offense not listed in subdivision (b) of section 707.” An amendment to the statute effective January 1, 2016, changed that language in section 786, subdivision (a) from “[i]f *the* minor” to “[i]f *a* minor.” (Stats. 2015, ch. 368, § 1, p. 3442 [Assem. Bill No. 666], italics added; see *In re G.F.* (2017) 12 Cal.App.5th 1, 5.)

Thus, at the time the juvenile court terminated jurisdiction on August 23, 2016, the statute provided: “If *a minor* 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 that dismissed petition in the custody of the juvenile court.” (Former § 786, subd. (a), italics added; see *In re G.F.*, *supra*, 12 Cal.App.5th at p. 5.) Because appellant was 19 years old at the time, she did not qualify to have either her petition dismissed or her juvenile records sealed under section 786. She would only have been entitled to those remedies if she had satisfactorily completed probation while she was still “a minor.” (Former § 786, subd. (a).)

We recognize that effective January 1, 2017, the Legislature amended section 786 to state “a person” instead of “a minor.” (Stats. 2016, ch. 858, § 1 [Assem. Bill No. 1945]; see *In re G.F.*, *supra*, 12 Cal.App.5th at p. 5, fn. 3) It is well established, however, that “[a] new or amended statute applies prospectively only, unless the Legislature clearly expresses an intent that it operate retroactively.” (*People v. Ledesma* (2006) 39 Cal.4th 641, 664; see *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207 [“[it] is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent”].) Here, there is no suggestion that the Legislature intended to give the new version of section 786 retroactive effect. We must presume, therefore, that the Legislature intended the statutory changes to apply prospectively.

Even if we were to give the statute retroactive effect, it would not change the result. Although the record contains numerous favorable references to appellant’s performance on probation, it is undisputed that she did not contact her probation officer after purportedly returning from her approved trip to Hawaii. The conditions of her probation stated that she must return to California no later than June 29, 2016, and that failure to comply with that condition “may result in [her] being considered absent without leave (AWOL).” The conditions also required that she maintain telephone contact with her assigned probation officer.

Not only did appellant fail to contact her probation officer to apprise the officer of her return to California, but she also did not answer the officer’s call to her telephone number of record. Consequently, at the time the juvenile court reviewed the

recommendation to terminate jurisdiction based on appellant's age, it was unknown whether appellant was still in Hawaii or in California or some other state. Thus, the record supports the court's finding that appellant's whereabouts were unknown at the time of the review and that, as a result, she failed to satisfactorily complete probation. Because appellant did not satisfactorily complete probation, the court appropriately found that she was not entitled to have either her 602 petition dismissed or her juvenile records sealed under section 786. (See *In re A.V.* (2017) 11 Cal.App.5th 697, 706-707, 710-711.)

Our decision does not, however, leave appellant without a remedy. Since she is an adult, she may petition the juvenile court for an order sealing her juvenile records. (§ 781, subd. (a)(1)(A); Cal. Rules of Court, rule 5.830.)

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Denise McLaughlin-Bennett, Judge
Superior Court County of Los Angeles

Holly Jackson, under appointment by the Court of
Appeal, for Defendant and Appellant.

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