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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re G.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. G.A., Defendant and Appellant.	A128632 (Alameda County Super. Ct. No. SJ09013278)

INTRODUCTION

G.A., a minor, appeals from a dispositional order after the juvenile court sustained allegations of felony assault and battery. Specifically, G.A. challenges search and drug testing conditions of her probation and contends they are invalid because they were not pronounced orally by the court. The conditions are not inconsistent with the juvenile court's oral pronouncements and were clearly set forth in the court's order. Any further complaint about the conditions, e.g., that they lacked a nexus to her criminal conduct, was not adequately raised in her opening brief and therefore has been waived. Even if she had adequately raised the issue, the juvenile court did not abuse its discretion in imposing the conditions. We therefore affirm.

BACKGROUND

On July 24, 2009, an encounter between two groups of teenage girls in a park resulted in an assault on a minor victim. The victim and two friends went to a park around 5:00 p.m. to wait for a third friend to pick up her clothes for a sleepover. While they waited, they saw G.A. among a group of teenagers, most of whom were girls. A few years before, G.A. and the victim had a falling out.

The victim testified there were roughly 10 girls present, and another witness testified there were seven to thirteen people. According to witnesses, the group was named the "Nutty Girls," and the dispositional report stated the group was affiliated with the "Norte" gang. Upon seeing the victim, G.A. walked up to her and hit her in the head two to four times with a closed fist. The victim tripped and was kicked on the side of her head. She suffered a fractured nose and a swollen eye. The following day, the victim contacted the police and identified G.A. in a high school yearbook as the person who assaulted her.

On April 1, 2010, the court sustained a Welfare and Institutions Codes section 602, subdivision (a)[1] juvenile wardship petition alleging counts of assault and battery, pursuant to Penal Code sections 245, subdivision (a)(1) and 243, subdivision (d). The court set both counts as felonies, to be reduced to misdemeanors upon successful completion of probation.

Before the court set the level of the counts or the terms of probation, G.A.'s attorney suggested the court not impose a search clause because there was no history of drug use or any indication G.A. would hide anything in her room or otherwise.

In determining the appropriate level of supervision for G.A., the court relied in part on the dispositional report, including the minor's history and her record. The dispositional report included the following: G.A.'s parents were divorced and the minor had minimal contact with her father. G.A. did not have a curfew, and her mother did not implement consequences for G.A.'s misconduct. G.A. stated she did not like school and

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

missed most classes. At one point, she ran away from home for a week. And although she denied using drugs, G.A. admitted she usually drinks beer at parties. Additionally, the report stated the minor was moderately at risk for reoffending within the next year.

The court placed G.A. on probation and orally instructed G.A. to "obey the law" and to "obey [her] parent" Along with several other conditions, the court's oral instructions further specified she was "not to use, possess, or traffic in drugs, weapons, or alcohol" and she should "not . . . belong to any criminal street gang." The minute order, signed by the judge and entered on April 26, 2010, stated G.A. was required to submit to searches of her person, vehicle, room, or property at any time of the day or night. It also required G.A. to "[s]ubmit to urinalysis or other tests for use of narcotics or other controlled substances." This timely appeal followed.

DISCUSSION

A. The Court's Written Order Is Controlling

G.A. asserts the court's oral pronouncement of the probation conditions, which did not include search terms or drug testing, is controlling over the minute order which included those provisions. G.A. therefore contends the minute order should be "corrected" to eliminate the search and drug testing conditions, since they were not orally pronounced in court.

When a court grants probation, it "gives rise to the implication there are conditions. These conditions need not be spelled out in great detail in court as long as the defendant knows what they are; to require recital in court is unnecessary in view of the fact the probation conditions are spelled out in detail on the probation order . . . ." (*People v. Thrash* (1978) 80 Cal.App.3d 898, 901-902 (*Thrash*).) Thus, even if a condition was not "orally communicated to [the minor] in court by the judge," as long as the minor "does not claim he was unaware of the . . . condition," the written order prevails. (*In re Frankie J*. (1988) 198 Cal.App.3d 1149, 1154-1155.)

In *Thrash*, the probation officer's report did not recommend a travel restriction, and the trial court did not pronounce such a restriction in open court. (*Thrash*, *supra*, 80 Cal.App.3d at pp. 900-902.) However, when the trial court placed the defendant on

probation, the court suspended imposition of sentence on the condition he serve one year in custody and " 'on other conditions set forth in the probation report.' " (*Id*. at p. 900.) When the defendant received a copy of the amended probation order, the preprinted part of the order recited travel restrictions. (*Ibid*.) The defendant did not allege he was unaware of the conditions of his probation, only that they should have been verbalized to him in open court. (*Id*. at p. 901.) The Court of Appeal held the travel condition was validly imposed because the defendant had knowledge of it, and to require oral pronouncement in open court would "elevate[] form over substance." (*Ibid*.)

G.A. asserts *Thrash* is inapposite because it did not involve a discrepancy between the oral pronouncement of the court and the clerk's minute order. Citing *People v. Farell* (2002) 28 Cal.4th 381, she contends the "record of the oral pronouncement of the court controls over the clerk's minute order." (*Id*. at p. 384, fn. 2.) In *Farell*, the trial court stated at sentencing it was imposing three months in county jail, but the clerk's minute order indicated five months in county jail. (*Ibid*.) "In a criminal case, judgment is rendered when the trial court orally pronounces sentence," (*People v. Karaman* (1992) 4 Cal.4th 335, 344, fn. 9, limited on other grounds in *People v. Howard* (1997) 16 Cal.4th 1081, 1095) which controls when there is a discrepancy between it and the clerk's minute order. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 386-387.)

An order granting probation pursuant to certain conditions, however, is not part of a judgment creating vested rights, and "[a] court has the authority to revoke, modify, or change its order." (*Thrash, supra*, at pp. 900-902.) Thus, if a court modifies its oral pronouncement of probation conditions in a written order, the written order controls. (*Ibid.*)

Here, there was no inconsistency between the juvenile court's oral pronouncement and the search and drug testing conditions in the minute order. Though the court did not specifically state G.A. was required to submit to searches or testing, it expressly stated G.A. was not to use, possess, or traffic in drugs, weapons, or alcohol. This condition would require the probation officer to use methods, such as random searches and alcohol and drug testing, to monitor G.A.'s compliance. Furthermore, the "minute order" was not

simply the clerk's "ministerial act of entering the judgment as pronounced." (*People v. Hartsell* (1973) 34 Cal.App.3d 8, 13, disapproved on other grounds as stated in *People v. Karaman, supra*, 4 Cal.4th at pp. 348-350.) Rather, it was a separate document entitled "Minute Order," signed by the judge, and served on G.A. and her parents. As such, it could also be viewed as a permissible "modification" of the court's oral pronouncement relative to probation. (See *Thrash, supra*, at pp. 901-902.)

In addition, as in *Thrash*, G.A. does not claim she had no knowledge of the search and testing conditions. In fact, at the disposition hearing, her defense counsel objected to the "four-way search clause" recommendation included in the disposition probation report. G.A. was served with a copy of the minute order, which included those conditions. Accordingly, she can make no claim she was unaware of the terms and conditions of her probation.

B. The Drug Testing and Search Conditions Are Valid

G.A. also suggests the search and drug testing conditions are invalid because they lack any nexus to her offenses. She did not, however, raise this as an independent argument in her opening brief or cite any authority in support of such a claim. Rather, she simply mentioned this supposed problem in passing as the basis for her attorney's objection to the conditions before the juvenile court. Having failed to properly raise and support such a claim in her opening brief, she has forfeited any such claim on appeal. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840; see Cal. Rules of Court, rule 8.204(a)(1)(B).)

In any case, the juvenile court has " 'broad discretion' in formulating conditions of probation." (*In re D.G.* (2010) 187 Cal.App.4th 47, 52 (*D.G.*).) Under section 730, subdivision (b), in placing a ward on probation, the juvenile court " 'may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' [Citation.]" (*D.G.*, at p. 52, quoting § 730, subd. (b).) This is because the juvenile court "stands in the shoes of a parent when it asserts jurisdiction over a minor." (*D.G.*, at p. 52, citing *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) "[W]ards are

thought to be more in need of guidance and supervision than adults and have more circumscribed constitutional rights." (*Ibid*.) Hence, minors are subject to reasonable regulations by the state not permissible with adults. (*In re Todd L.* (1980) 113 Cal.App.3d 14, 20.) Furthermore, because the state assumes the parents' role and thus assumes the parents' authority to limit the minor's freedom, "in planning the conditions of appellant's supervision, the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history." (*Ibid.*)

Despite the difference between adult and juvenile probation, juvenile probation conditions are judged by the same three-part test applied to adult probation conditions set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), superseded on another ground by Proposition 8 as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-295. (*D.G., supra,* 187 Cal.App.4th at p. 52.) Under *Lent*, " '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 . . . ." [Citation.]' " (*D.G.*, at p. 52, quoting *Lent, supra*, 15 Cal.3d at p. 486.) The *Lent* factors are "conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379-380.)

Under section 729.3, "If a minor is found to be a person described in Section 601 or 602 and the court does not remove the minor from the physical custody of his or her parent or guardian, the court, as a condition of probation, *may require the minor to submit to urine testing* upon the request of a peace officer or probation officer for the purpose of determining the presence of alcohol or drugs." (§ 729.3, italics added; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 708 (*Kacy S.*).) In *Kacy S.*, the Court of Appeal applied section 729.3 according to its "plain meaning," and thus refused to hold a urine testing condition invalid merely because the minor did not have a history of drug abuse. The court's "task [was] simply to construe, not amend, the statute." (*Kacy S.*, at p. 709.) The court also held the urine testing condition was valid under *Lent*, because it "related to conduct which is . . . in itself criminal." (*Kacy S.*, at p. 709, citing *Lent, supra,* 15 Cal.3d

at p. 486.) It reasoned the urine testing condition was designed to detect alcohol and drugs, the use of which by minors is unlawful. (*Kacy S.*, at p. 709.)

As in *Kacy S.*, G.A. is a minor described in section 602 and was not removed from the custody of her parents. As a result, she is subject to section 729.3, and the testing condition of her probation is statutorily permissive. It also passes muster under *Lent*, given that it is aimed at prohibiting conduct that is unlawful for minors. The record also indicates G.A. admitted to unlawfully consuming alcoholic beverages.

The search condition also passes muster under *Lent*. It goes hand in hand with the testing condition—both are intended to discourage G.A. from engaging in conduct that "is in itself criminal" and to prevent future criminality. Moreover, the record indicates the group G.A. was with at the time of the assault and battery was affiliated the "Norte" gang. Accordingly, the search condition was entirely appropriate to help prevent G.A. from engaging in unlawful conduct, including discouraging her from possessing and trafficking illegal substances and weapons.

Accordingly, even if G.A. had adequately challenged her probation conditions in her opening brief, she cannot establish all three *Lent* factors. The search and testing conditions were therefore not an abuse of discretion.

DISPOSITION

The dispositional order is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.