**In Re HAROLD E., a Person Coming Under the Juvenile Court Law.**

**THE PEOPLE, Plaintiff and Respondent,**
**v.**
**HAROLD E., Defendant and Appellant.**

**H044085**

**COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT**

**May 11, 2017**

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

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(Monterey County Super. Ct. No. 16JV000420)

Minor Harold E. was placed on probation after the juvenile court found that he came within its jurisdiction by committing second degree robbery. The sole issue presented in this appeal is whether a probation condition prohibiting minor from associating with persons his probation officer deems as a threat to the successful completion of his probation is facially vague or overbroad. For the reasons explained here, we will affirm the judgment.

## I. BACKGROUND

Minor was charged in a juvenile wardship petition with second degree robbery (Pen. Code, § 211; count 1), criminal threats (Pen. Code, § 422, subd. (a); count 2), and battery (Pen. Code, § 242; count 3). After a contested hearing, the juvenile court found the robbery allegation true. The evidence showed that minor, then 14 years old, bullied a

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12-year-old schoolmate in the school's computer lab, using physical force and threats to obtain some of the victim's lunch money. The robbery was deemed a felony, minor was declared a ward of the court, and he was placed on probation for 12 months in the continued custody of his mother. Among other conditions of probation, minor was ordered to "not knowingly associate/communicate with any individuals identified to you by your Probation Officer as a threat to your successful completion of probation."

## II. DISCUSSION

A juvenile court has wide discretion to impose on a probationer "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." (Welf. & Inst. Code, § 730, subd. (b); *In re Sheena K.* (2007) 40 Cal.4th 875, 889.) Juvenile probation conditions may be broader than those pertaining to adult probationers "because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed." (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) When the state asserts jurisdiction over a minor, it acts as *parens patriae*—standing in the shoes of the parents. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242.) " ' "[A] condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court." ' " (*In re Sheena K.*, at p. 889.) Indeed, "[a] condition of probation which is impermissible for an adult criminal defendant is not necessarily

unreasonable for a juvenile receiving guidance and supervision form the juvenile court." (*In re Frank V.*, at p. 1242.)

**A. VAGUENESS**

The vagueness doctrine is grounded in the due process concept of fair warning—both to provide adequate notice to the potential offender and to guard against arbitrary enforcement. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The vagueness doctrine bars

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enforcement of a law proscribing conduct " ' "in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." ' " (*Ibid.*) To that end, a probation condition must be " 'sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.' " (*Ibid.*) The language used must have " '*reasonable* specificity.' " A vagueness challenge will fail " 'if any reasonable and practical construction can be given' " to the challenged language. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117 (*Acuna*).)

Minor argues that the probation condition is constitutionally infirm because the word "threat" is vague, thereby giving the probation officer unlimited discretion to define and enforce the condition. Minor acknowledges that certain persons may pose "obvious threat[s]" to the successful completion of probation, but that others who pose only "practical obstacles" to minor's adherence to his probation conditions, such as a friend who drives him to school and frequently arrives late, could also be deemed a threat. Leaving the discretion to the probation officer to determine the magnitude of a threat, in minor's view, provides for arbitrary probation restrictions.

We reject minor's argument that the word "threat" is facially vague. The Oxford English dictionary provides a reasonable and practical definition of threat as a "danger" or "peril" (OED Online. March 2017. Oxford University Press. http://www.oed.com/view/Entry/201152?rskey=rWnMoU&result=1), and our Supreme Court has recognized that similar words such as "confront," "annoy," "provoke," "challenge," "harass," "intimidating," "shoving," "crowding," and "assaulting" are sufficiently definite to withstand constitutional challenge. (*Acuna*, *supra*, 14 Cal.4th at p. 1118.) The word provides reasonable specificity and is not vague for lack of definiteness.

A contextual examination of the probation condition shows it is not facially standardless. (*Acuna*, *supra*, 14 Cal.4th at pp. 1116-1117.) Acting as *parens patriae*, the

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juvenile probation officer is tasked with promoting and nurturing minor's rehabilitation. (*In re Frank V.*, *supra*, 233 Cal.App.3d at p. 1243.) As the *In re Frank V.* court recognized, the juvenile court cannot reasonably be expected at the outset of the probationary period to identify specific persons who may jeopardize a minor's successful completion of probation. (*Id.* at p. 1243.) It may reasonably rely on the juvenile probation officer to assess a minor's performance on probation, and to determine whether his ability to succeed at any point is being jeopardized by other people. (*Ibid.*) Understood in the appropriate context of juvenile probation, the delegation of discretion to the probation officer to determine whether a person threatens the successful completion of minor's probation is not a vague directive subject to arbitrary enforcement.

**B. OVERBREADTH**

A probation condition is unconstitutionally overbroad if it "imposes limitations on a person's constitutional rights" that are not "closely tailor[ed] ... to the purpose of the condition." (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) A condition impinging on a constitutional right (here minor's First Amendment right to association) "must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation." (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) In our view, the condition is reasonably related to minor's reformation and rehabilitation, as its purpose is to remove impediments to minor's successful completion of probation. And the condition is narrowly tailored because it limits minor's rights only by proscribing association with persons deemed a threat by a court officer charged with caring for and supervising minor. (*Ibid.*)

Minor's authorities are distinguishable. In *People v. O'Neil* (2008) 165 Cal.App.4th 1351, the court struck as overbroad an adult probation condition stating: "You shall not associate socially, nor be present at any time, at any place, public or private, with any person, as designated by your probation officer," because "[a]s written,

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there are no limits on those persons whom the probation officer may prohibit defendant from associating with." (*Id.* at pp. 1355, 1357.) Here, the condition applies to a ward of the juvenile court, whose probation officer is acting in *parens patriae*. Further, the condition is not unbounded. The proscribed association must be a threat to the successful completion of juvenile probation.

This court in *In re E.O.* (2010) 188 Cal.App.4th 1149 held that a condition prohibiting a juvenile from knowingly coming within 25 feet of a courthouse with some exceptions was not narrowly tailored to its objective of preventing witness intimidation by gang members and was too vague to effectively limit the restriction. (*Id.* at pp. 1155-1156, & fn. 3.) However, the purpose of the condition here—minor's successful reformation and rehabilitation—is markedly different than the narrow objective of preventing witness intimidation. And, as we have explained, the means to that legitimate end is not overreaching, as the restriction on minor's association is limited to persons jeopardizing his successful completion of probation.

We reject minor's argument that the probation condition is overbroad "because the probation officer has diminished authority in determining the appropriate course of minor's rehabilitation, as compared to minor's parents." Minor points to the *In re Frank V.* court's observation that parents "have powers greater than that of the state to curtail a child's exercise of [] constitutional rights," given the parent's liberty interest in raising the child. (*In re Frank V.*, *supra*, 233 Cal.App.3d at p. 1243.) The court's recognition of the liberty interest of a minor's parent does not advance minor's overbreadth claim. As relevant here, the *In re Frank V.* court rejected the overbreadth challenge to a juvenile probation condition prohibiting association with people identified by the parents *or the probation officer*, recognizing the discretion of the probation department, "acting as parent, to promote and nurture [the minor's] rehabilitation" by restricting his associations. (*Id.* at p. 1243.)

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**C. FORFEITURE**

Minor argues that the probation condition is overbroad for the additional reason that the sentencing record shows his association with others is not a risk to the successful completion of his probation. That claim is forfeited for failing to raise it in the trial court. Responding to the Attorney

General's forfeiture argument, minor presses in his reply brief that the forfeiture rule does not apply because his challenges are facial, citing *In re Sheena K.* The Supreme Court in *In re Sheena K.*, however, made clear that only constitutional claims presenting " ' "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court" ' " are not subject to forfeiture, and that the forfeiture doctrine continues to apply to reasonableness challenges under *People v. Lent* (1975) 15 Cal.3d 481. (*In re Sheena K.*, *supra*, 40 Cal.4th at pp. 884-889.) Adhering to the forfeiture rule as articulated in *In re Sheena K.*, we will not review the sentencing record here to resolve what may be viewed as either a reasonableness or an as-applied challenge to the probation condition.

**III. DISPOSITION**

The judgment is affirmed.

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/s/_____
Grover, J.

**WE CONCUR:**

/s/_____
Rushing, P. J.

/s/_____
Premo, J.