No. S268437

In the Supreme Court of the State of California

IN RE D.N.,
a Person Coming Under the Juvenile Court

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent;
v.
D.N.,
Defendant and Appellant.

Court of Appeal, Fifth Appellate District, Case No. F080624
Fresno County Superior Court, Case No. 19CEJ600384
The Honorable Gary Hoff, Judge

ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

Was it proper for the juvenile court to grant limited discretion within specific guidelines to the probation department by "authorizing" it to "offer" the minor a certain amount of community service as an "option to work off any alleged probation violations"?

INTRODUCTION

The juvenile court has broad power to promote the best interests of its wards because the goal of the juvenile justice system is to ensure the safety and protection of the public while providing care, treatment, and guidance to minors who have violated the law. The "guidance" received by a juvenile "may include punishment that is consistent with the rehabilitative objectives" of the juvenile justice system (Welf. & Inst. Code,[1] § 202, subd. (b)) and ranges from fines and community service, to probation, to removal from the minor's home for commitment to a local detention or treatment facility (*id.*, § 202, subd. (e)).

In this case, the juvenile court found that D.N. had committed the felony of continuous sexual abuse of a child under the age of 14, adjudged him to be a ward of the court, and placed him on formal probation with directions to reside in the home of a parent or guardian. After announcing the grant of probation, the court said that it was also "authorizing the Probation Department offer the minor community service, up to 50 hours of

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

community service, up to a cumulative total of 10 days, to work off any alleged probation violations." (4RT 517; see also Clerk's Transcript Supplemental [Supp. CT] 7.) But the court "anticipate[d] if there's any significant violation of any term and condition of the grant of probation here, that he would be brought back to court for additional recommendations, which most likely would include substantial amount of time in custody." (4RT 517.)

D.N. claims that the juvenile court's order violates the separation of powers doctrine and due process because it unlawfully delegates authority to the probation officer to find him in violation of probation without notice and a hearing before a judicial officer. (OBM 10-28.) But the juvenile court's community service order is consistent with its broad power to promote the minor's well-being and functions in the spirit of diversion and informal probation described in sections 654, 654.2, and 725. The juvenile court determined that community service was a proper form of punishment for D.N.'s underlying sexual offense but stayed imposition of that punishment pending mutual consent of the probation officer and the minor. Under the court's order, the probation officer may offer, and the minor may accept or reject, community service hours as a way to divert D.N. from formal proceedings to resolve relatively insignificant probation violations. But the order does not allow the probation officer to impose community service hours unilaterally without the minor's agreement.

Contrary to D.N.'s claim, the juvenile court did not unlawfully delegate its authority to the probation officer. The

court has required mutual consent between the probation officer and the minor, and the probation department has not been granted unlimited or open-ended discretion. The probation officer's discretion is constrained to "offer[ing]" the minor the "option" to perform community service to "work off" any "alleged" violation of probation. (4RT 517; Supp. CT 7.) The court has tailored the community service condition to the minor's needs and has also specifically limited the amount of community service that the probation department may offer. In the event the minor rejects the probation officer's offer of community service, the probation officer may consider whether the conduct that originally triggered the probation officer's offer of community service warrants the filing of a notice to seek a more restrictive placement pursuant to section 777.

The community service condition also comports with due process because it merely creates a mechanism for the probation officer to offer community service to the minor as an informal resolution for missteps that technically violate a condition of probation. The order does not allow the probation officer: (1) to modify the court's disposition order without notice or court involvement; or (2) to decide, wholly outside the statutory framework, whether the minor's failure to adhere to the court's conduct rules and behavioral requirements warrants removal from his home and placement in a more restricted environment. Finally, if the minor disagrees that a probation violation has occurred, the minor always retains the option of rejecting the probation officer's offer of community service, at which point the

probation officer may consider whether the alleged violation warrants filing a notice to modify the minor's placement pursuant to section 777.

BACKGROUND PRINCIPLES REGARDING JUVENILE PROBATION AND DIVERSION

When a state asserts jurisdiction over a minor, it "'stands in the shoes of the parents'" and occupies "a 'unique role . . . in caring for the minor's well being.'" (*In re Victor L.* (2010) 182 Cal.App.4th 902, 909-910, quoting *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) Consistent with this role, when a juvenile court grants probation to a ward, "the court may impose '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.'" (*Victor L.*, at p. 910, quoting § 730, subd. (b).)

The juvenile court has wide discretion to select appropriate probation conditions. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) "Flexibility is the hallmark of juvenile court law . . . [and] the juvenile court has long enjoyed great discretion in the disposition of juvenile matters. . . ." (*In re Greg F.* (2012) 55 Cal.4th 393, 411.) Indeed, 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., supra*, 78 Cal.App.4th at p. 941; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016.) The court may "impose a condition of probation that would be unconstitutional or otherwise improper so long as it is

tailored to specifically meet the needs of the juvenile." (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5; see also *Victor L.*, *supra*, 182 Cal.App.4th at p. 910.)

Section 777 governs juvenile court probation revocation proceedings aimed at changing the ward's placement to a more restrictive environment and provides: "An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution . . . shall be made only after a noticed hearing." Where the minor has been declared a ward of the court under section 602, a notice may be filed by the probation officer or the prosecuting attorney alleging "a violation of a condition of probation not amounting to a crime" and must "contain a concise statement of facts sufficient to support this conclusion." (§ 777, subd. (a)(2).) The prosecution must prove a minor's probation violation by a preponderance of the evidence. (*In re Eddie M.*, (2003) 31 Cal.4th 480, 501; § 777, subd. (c).) Generally speaking, juvenile courts "follow section 777 procedures by: (1) hearing evidence as to the efficacy of the prior disposition, (2) considering independently on the whole record whether the prior dispositional order had entirely failed, and (3) determining if a more restrictive level of confinement was necessary to the minor's rehabilitation." (*In re Jorge Q.* (1997) 54 Cal.App.4th 223, 236.) "After hearing evidence, the court must reassess the disposition in light of the then prevailing circumstances." (*Id.* at p. 233.)

But the Welfare and Institutions Code also contemplates informal arrangements between the probation officer and a minor. For example, after investigating an allegation that a minor has committed a low-level criminal offense, the probation officer may, with the consent of the minor and the minor's parents, institute a program of informal probation for six months under section 654[2] in lieu of filing a wardship petition. (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 745.) Similarly, after a wardship petition has been filed, the juvenile court has the option of placing a minor on informal supervision for six to 12 months so long as the minor and the minor's parents consent under section

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[2] Section 654, subdivision (a), as relevant here, provides: "In any case in which a probation officer, after investigation of an application for a petition or any other investigation the probation officer is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, the probation officer may, in lieu of filing a petition to declare a minor a ward of the court under Section 601 or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court under subdivision (e) of Section 601.3 or Section 602 and with consent of the minor and the minor's parent or guardian, refer the minor to services provided by a health agency, community-based organization, local educational agency, an appropriate non-law-enforcement agency, or the probation department. If the services are provided by the probation department, the probation officer may delineate specific programs of supervision for the minor, not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court."

654.2.[3] (*In re C.Z.* (2013) 221 Cal.App.4th 1497, 1502-1503.)[4] Likewise, after the juvenile court's jurisdiction has been established, the juvenile court has the option of placing a minor on a summary nonwardship probation for up to six months. (§ 725, subd. (a); *C.Z.*, at p. 1504.)[5] But parental consent is not required for this form of probation. (See § 725, subd. (a).)

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[3] Section 654.2, subdivision (a), provides: "If a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. If the probation officer recommends additional time to enable the minor to complete the program, the court at its discretion may order an extension. Fifteen days prior to the final conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall submit to the court a followup report of the minor's participation in the program. The minor and the minor's parents or guardian shall be ordered to appear at the conclusion of the six-month period and at the conclusion of each additional three-month period. If the minor successfully completes the program of supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the program of supervision, proceedings on the petition shall proceed no later than 12 months from the date the petition was filed."

[4] Section 654.3 sets forth the specific criteria for determining whether a minor is eligible for a grant of informal probation under sections 654 and 654.2 and was amended by the Legislature during the 2021 session to expand eligibility for informal probation. (Stats. 2021, ch. 603, § 1.) However, none of the amendments to section 654.3 affect the outcome in this case.

[5] Section 725, subdivision (a), provides in relevant part: "If the court has found that the minor is a person described by Section 601 or 602, by reason of the commission of an offense

(continued…)

Under these aforementioned schemes, rather than formally adjudicating a petition or undergoing formal proceedings to establish the minor as a ward of the court, the minor is given the opportunity to comply with the conditions of probation and, if successful, the petition is dismissed. (§§ 654, 654.2, 725, subd. (a); *C.Z.*, *supra*, 221 Cal.App.4th at pp. 1502-1504.) The matter returns to the juvenile court for further formal disposition only when the minor fails to perform successfully while under informal supervision or when the minor fails to comply with the conditions of summary probation.[6] (§§ 654, 654.2, 725, subd. (a); *C.Z.*, at pp. 1502-1504.)

(…continued)

other than any of the offenses set forth in Section 654.3, it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months. The minor's probation shall include the conditions required in Section 729.2 except in any case in which the court makes a finding and states on the record its reasons that any of those conditions would be inappropriate. . . . If the minor fails to comply with the conditions of probation imposed, the court may order and adjudge the minor to be a ward of the court."

[6] The amendments made to section 654.3 by Senate Bill No. 383 (Stats. 2021, ch. 603) demonstrate the Legislature's commitment to providing minors with more, rather than less, opportunities to resolve matters informally.

STATEMENT OF THE CASE

D.N., a minor, is the victim's cousin and frequently went to her house to play with her older brother.[7] (3RT 218-219, 228-229, 319-320.) One afternoon in the summer of 2019, the victim reported to her mother that D.N. had touched her "private" with his hand and had tried to lick her "private." (3RT 249, 313, 322.) The evidence established that D.N. had touched her "private" with his hand or finger on at least three occasions. (CT 82-117; 3RT 214-316.) The victim estimated that D.N. had touched her "private" with his hand "between five and ten times" from the time she was five or six years old (in kindergarten) until the final incident in 2019. (3RT 239, 252-253, 272, 314-315.) The touchings occurred both over and under her underwear and, during some of the encounters, D.N. exposed his "private" to her. (CT 82-117; 3RT 214-315.)

In August 2019, the district attorney filed a wardship petition pursuant to section 602, subdivision (a), in the Juvenile Division of the Fresno County Superior Court alleging that D.N. had committed the crime of continuous sexual abuse of a child under the age of 14 (Pen. Code, § 288.5). (CT 5-13.) Following a contested jurisdictional hearing, the court found the allegation to be true. (CT 119-120.)

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[7] At the time of the jurisdictional hearing, D.N. and the victim's brother were 14 years old; the victim was 7 years old. (3RT 213, 319.)

The court subsequently adjudged D.N. as a ward of the court, placed him on probation, and directed him to reside with a parent or guardian. (CT 121-124.) Among the terms and conditions of probation, D.N. was ordered to report to the probation officer when notified, obey all laws, court orders, and directives of the probation officer, notify the probation officer of any change of address or school within 48 hours, attend school as required by the California Education Code, and obey curfew from 8:00 p.m. until 6:00 a.m. (CT 124.) The juvenile court also "authoriz[ed] the Probation Department [to] offer the minor community service, up to 50 hours of community service, up to a cumulative total of 10 days, to work off any alleged probation violations." (4RT 517.) The court further explained, "I would anticipate if there's any significant violation of any term and condition of the grant of probation here, that [D.N.] would be brought back to court for additional recommendations, which most likely would include substantial amount of time in custody."[8] (4RT 517.)

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[8] The juvenile court's written disposition ordered D.N. to perform 50 hours of community at the direction of the probation department. (CT 123.) However, after receiving a letter from D.N.'s first appellate counsel notifying the court that its written disposition order was inconsistent with its oral pronouncement, the juvenile court issued a corrected written disposition order on September 3, 2020, which matched its oral pronouncement and stated, "Probation is authorized to offer the minor up to 50 hours of community service, or up to a cumulative total of 10 days on the community service work program as an option to work off alleged probation violations." (Supp. CT 7.)

In the Fifth District Court of Appeal, D.N. argued, among other things, that the community service condition, which he characterized as permitting the probation officer to "punish" D.N. for a violation of probation without a judicial finding that D.N. had "actually" violated probation, was an unlawful delegation of judicial authority that violated his right to due process. (See AOB 16-20, quoting AOB 16.) The Court of Appeal declined to find the claim forfeited but held that the condition was a proper delegation of judicial authority because the juvenile court had set a basic condition while leaving the specific details to the probation officer and D.N. to resolve, and the probation officer was not given absolute discretion. (Opinion 5-8.) The appellate court recognized that "the [juvenile] court delegated incidental authority regarding possible community service, and the [juvenile] court retained ultimate control over this issue." (Opn. 8.)

Thereafter, this Court granted review.

ARGUMENT

I. THE JUVENILE COURT'S COMMUNITY SERVICE ORDER BENEFITS THE MINOR BY FUNCTIONING AS A FORM OF DIVERSION FOR ALLEGED PROBATION VIOLATIONS

When a court interprets a probation condition, it gives it "'the meaning that would appear to a reasonable, objective reader.'" (*People v. Olguin* (2008) 45 Cal.4th 375, 382.) Here, a simple, common-sense reading of the words and language of the challenged order puts the minor on notice of what is expected of him: he must abide by all terms and conditions of probation and, if he fails to do so, the probation officer may "offer" him the

"option" to complete a specified amount of community service in lieu of initiating formal proceedings to change his placement under section 777. (See 4RT 517; Supp. CT 7.)

Significantly, the juvenile court's community service condition does not empower the minor's probation officer to create and impose a new condition not expressly authorized by the court. Rather, the juvenile court found that community service hours were a reasonable consequence in the minor's case to ensure the minor's rehabilitation. (See Argument II.B., *post*.) The court's oral and written orders make clear that a specific amount of community service—up to 50 hours, or a cumulative total of 10 days—are available for the probation officer's implementation, as needed and with the minor's consent, to address insignificant conduct that could also arguably trigger the initiation of formal proceedings to change the disposition order by modifying the minor's placement pursuant to section 777. (4RT 517; Supp. CT 7.)

In this regard, the scheme is similar to the diversion and informal probation arrangements that are allowed under sections 654, 654.2, and 725, subdivision (a), discussed *ante*, which contemplate an informal arrangement between the probation officer and a minor following the commission of a criminal offense. As with those statutory forms of diversion, here D.N. only has to perform community service if he agrees to do so, i.e., only when he and the probation officer come to a mutual agreement that the minor will perform community service for acknowledged minor violations (such as a violation of curfew, a failure to attend school,

or a failure to report to the probation officer). While D.N. now claims that the condition suffers from legal defects, at the time of the disposition hearing he (and his parents and trial counsel) did not object to the court's order, which suggests that they may have seen having an informal resolution immediately available as a beneficial alternative to taking the time and expense of returning to court for minor misconduct. (See 4RT 517.) Indeed, as with diversion in other statutory contexts, such an outcome is restorative and limits the minor's exposure to the juvenile court. And defense counsel may have reasonably wanted this option available to D.N. for precisely these reasons.[9]

Finally, as with other forms of diversion and informal probation, the juvenile court always retains ultimate jurisdiction over the matter. As the court explained at the hearing, D.N. may still be brought back to court for additional recommendations in the event of a "significant violation" of any term or condition of probation. (4RT 517.) Alternatively, the minor also has the

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[9] The juvenile court's order in this case did not explicitly include all of the details found in the analogous diversion statutes, such as the need for consent from the minor's parents or guardian. (See §§ 654, 654.2.) Whether the absence of a particular detail might render a minor's consent invalid in a particular case appears to be beyond the scope of the issue presented here. In any event, parental involvement is at least implicit in the court's order since D.N. was directed to reside in the home of a parent or guardian. And, to the extent there is any ambiguity, respondent would not be opposed to a modification requiring the probation officer to obtain the consent not only from the minor but also from the minor's parents or guardian to an offer of community service.

option of rejecting the probation officer's offer of community service, in which case the probation officer may consider whether the minor's alleged probation violation warrants a section 777 notice, and subsequent hearing in the juvenile court, to modify the original disposition order and seek the minor's placement in a more restrictive environment.

II. ANY DELEGATION WAS PERMISSIBLE BASED ON THE LIMITED NATURE OF THE COURT'S ORDER AND ITS INHERENT DUTY TO PROMOTE THE MINOR'S BEST INTERESTS

A juvenile court has broad discretion to impose reasonable probation conditions that further the minor's reform and rehabilitation. Lower appellate courts have held that a nonjudicial officer may perform quasi-judicial powers to determine facts and exercise discretion without violating the separation of powers doctrine so long as the court provides guidelines for the officer's exercise of discretion in implementing its orders, and the officer's authority is not unlimited or open-ended.

In this case, the juvenile court reasonably imposed a community service condition but stayed execution of the community service hours pending mutual consent between the probation officer and the minor. To the extent the juvenile court delegated any authority to the probation officer, such delegation is permissible and does not violate the separation of powers doctrine because the probation officer has limited discretion to administer a specific number of community service hours at the option of the minor in particular circumstances.

A. Legal standards regarding imposition of probation conditions

1. The juvenile court has broad discretion to select and impose probation conditions that are consistent with section 730, subdivision (b)

As previously discussed, when a juvenile court grants probation to a ward, "the court may impose '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.'" (*Victor L.*, *supra*, 182 Cal.App.4th at p. 910, quoting § 730, subd. (b).)

The juvenile court has wide discretion to select appropriate probation conditions. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889; see also *In re Greg F.*, *supra*, 55 Cal.4th at p. 411.) 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., supra*, 78 Cal.App.4th at p. 941; *In re Byron B., supra*, 119 Cal.App.4th at p. 1016.) The court may "impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile." (*In re Josh W.*, *supra*, 55 Cal.App.4th 1, 5; see also *Victor L.*, *supra*, 182 Cal.App.4th at p. 910.)

A juvenile court's imposition of a probation condition is reviewed for an abuse of discretion. (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1118.)

2. The separation of powers doctrine

Article III, section 3 of the California Constitution states: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." The separation of powers doctrine "limit[s] the authority of one of the three branches of government to arrogate to itself the core functions of another branch." (*Steen v. Appellate Division of Superior Court* (2014) 59 Cal.4th 1045, 1053.) "Although the doctrine does not prohibit one branch from taking action that might affect another, the doctrine is violated when the actions of one branch defeat or materially impair the inherent functions of another." (*Steen*, at p. 1053; see also *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 557 ["[T]he primary purpose of the separation of powers doctrine 'is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government'"]; *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1236 ["Separation of powers does not mean an entire or complete separation of powers or functions, which would be impracticable, if not impossible"].)

As pertinent here, juvenile probation officers occupy a dual role of both a peace officer (§ 283; Pen. Code, § 830.5, subd. (a)) and aid to the juvenile court (§§ 280, 281). "[T]he juvenile probation office is, in effect, an arm of the juvenile court." (*In re Arron* C. (1997) 59 Cal.App.4th 1365, 1371; see also *People v. Ferguson* (2003) 109 Cal.App.4th 367, 375 ["[E]xercise of the probation officer's authority is sometimes more consistent with a

judicial or educational role than a police role"].) A juvenile probation officer is a source of information for the court (see, e.g., § 706 [court shall consider social study of minor prepared by probation officer]) but also monitors the juvenile's compliance with the law (§ 283; Pen. Code, § 830.5, subd. (a)(1)).

For example, a probation officer decides whether to file a notice requesting a change in the minor's placement, custody, or commitment in those instances where the probation officer determines that a minor has violated a condition of probation that does not amount to a crime. (§ 777, subd. (a)(2).) Additionally, a probation officer may exercise significant control over the minor's health, education, and welfare after a juvenile court declares the minor a ward of the court. (See §§ 726-730.)

Neither the People nor D.N. have found any authority by this Court addressing the extent to which a juvenile court may delegate discretion to the probation department in enforcing probation conditions without violating the separation of powers doctrine. However, the doctrine does not appear to be so rigid that any power even mildly judicial in nature can never be exercised by a third party.

> "The correct principle deducible from the better-reasoned cases dealing with the separation of powers seem[s] to be that even the primary function of any of the three departments may be exercised by any other governmental department or agency so long as (1) the exercise thereof is incidental or subsidiary to a function or power otherwise properly exercised by such department or agency, and (2) the department to which the function so exercised is primary retains some sort of ultimate control over its exercise, as by court review in

> the case of the exercise of a power judicial in nature." [Citation.]

(*Danielle W.*, *supra*, 207 Cal.App.3d. at p. 1236.)

Thus, lower appellate courts have held that a nonjudicial officer "may be authorized to perform 'quasi-judicial' powers to determine facts and exercise discretion" without violating the separation of powers doctrine so long as the court provides guidelines for the officer's exercise of discretion in implementing its orders, and the officer's authority is not unlimited or open-ended. (*Danielle W.*, *supra*, 207 Cal.App.3d at p. 1236; see also *id.* at pp. 1236-1237 [excessive discretion was not vested in a social worker to control visitation]; accord, *Victor L.*, *supra*, 182 Cal.App.4th at pp. 918-919 [juvenile court does not violate separation of powers doctrine by dictating the basic policy of a probation condition while leaving specification of details to the probation officer]; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1377 [affirming order allowing social worker to administer details of court-ordered visits].) But it is improper for a juvenile court to delegate unlimited authority or discretion to a third party. (See *In re James R.* (2007) 153 Cal.App.4th 413, 417, 441-443 [court unlawfully delegated its judicial power over juvenile's family visitation when it effectively delegated all decisions to the private program placement]; *In re S.H.* (2003) 111 Cal.App.4th 310, 318-319 [juvenile court improperly delegates its judicial authority where it "abdicates its discretion . . . and permits a third party . . . to determine whether any visitation will occur"].)

Judicial delegations tend to be well received when they are made to entities that are statutorily bound to act as arms of the

court, such as probation officers or social workers, so long as the court's order does not grant unlimited authority or discretion. (See *Victor L.*, *supra*, 182 Cal.App.4th at p. 919; *James R.*, *supra*, 153 Cal.App.4th at p. 440; *Moriah T.*, *supra*, 23 Cal.App.4th at p. 1373; *Danielle W.*, *supra*, 207 Cal.App.3d at pp. 1234, 1237; see also Gov. Code, § 27771, subd. (a)(1) [chief probation officer is bound to "discharge the obligations imposed on the office by law or by order of the superior court," including "[c]ommunity supervision of offenders subject to the jurisdiction of the juvenile court pursuant to section 602"].) Such delegations significantly aid judicial function because courts typically are not well positioned to manage the minutiae of their orders and cannot exercise day-to-day supervision over their wards. (See *Victor L.*, at pp. 917-919; *Moriah T.*, at pp. 1373-1377; *Danielle W.*, at pp. 1234-1235, 1237; see also *People v. Penoli* (1996) 46 Cal.App.4th 298, 308.)

Thus, a probation officer may be given "wide discretion to enforce court-ordered conditions" but may not impose conditions not expressly authorized by the court. (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1371-1373; accord, *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358.) Nor can a court's delegation of authority "be entirely open ended. It is for the court to determine the nature of the prohibition placed on a defendant as a condition of probation," and the probation officer cannot wield unfettered policymaking authority. (*O'Neil*, at p. 1359.) The juvenile court must likewise ensure that conditions are tailored to the needs of the minor. (*Pedro Q.*, at p. 1372.)

On appeal, the court reviews de novo whether the juvenile court's order amounts to an unlawful delegation of its authority in violation of the separation of powers doctrine. (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314.).

B. The juvenile court's order is tailored to the minor's needs and rehabilitation

As a threshold matter, the juvenile court's imposition of community service hours as a condition of probation is reasonably tailored to the minor's specific circumstances, given that he committed a serious criminal offense and his school records showed "an extensive history of intervention for disciplinary reasons related to disrespectful behavior." (CT 132; see *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241 [upholding a condition requiring probationer to "follow such course of conduct as the probation officer prescribes" as "reasonable and necessary to enable the department to supervise compliance with the specific conditions of probation"].)

Additionally, the probation officer noted that the minor had exhibited negative behavior in settings outside his home. (CT 133.) This conduct included the circumstances of the current offense, in which he induced the victim to commit sexual acts on several occasions at her home, as well as his failure to observe rules regarding communication with others during his post-arrest detention period. (CT 133.) The probation officer also expressed concern about whether the minor had an "ability to recognize and modify his behavior, even in the process of facing punitive action for an adjudicated offense" as well as his "ability to accept responsibility for his actions." (CT 133.) Given these concerns,

the juvenile court's community service condition was reasonable and tailored to the minor's needs and rehabilitation under section 730, subdivision (b).

C. The juvenile court's order comports with the separation of powers doctrine

1. The juvenile court imposed a community service condition but left the probation officer with limited discretion to implement the condition

A juvenile court may delegate to the probation officer the authority to supervise a minor's behavior, including the authority to discharge the obligations imposed by the court's probation order to further the minor's rehabilitation. (*Victor L.*, *supra*, 182 Cal.App.4th at pp. 918-919.) "'Because the probation . . . officer's function is not so much to compel conformance to a strict code of behavior as to supervise a course of rehabilitation, [the officer] has been entrusted traditionally with broad discretion to judge the progress of rehabilitation in individual cases,'" and to recommend revocation of probation when appropriate. (*Cabell v. Chavez-Salido* (1982) 454 U.S. 432, 446-447.)

Inherent in the juvenile court's disposition order in this case is that the probation officer, as an officer of the court, will ask the minor if he wants to complete the community service hours only when he fails to comply with the terms of probation, terms that the court has already determined promote his reformation and rehabilitation. The juvenile court authorized a specific number of community service hours as a condition of the minor's probation but left the probation department discretion over when (if ever)

to offer them to the minor. The condition is less severe, in effect, than if the juvenile court had ordered the minor to complete community service, up to 50 hours, or up to a cumulative total of 10 days, as required by the probation officer.

2. The juvenile court's order is not open-ended or unlimited

The juvenile court's delegation is also proper because the probation officer has not been given unfettered discretion. (See *People v. O'Neil*, *supra*, 165 Cal.App.4th at p. 1359.) Instead, the court's order sets a specific amount of community service hours and leaves it to the probation officer's discretion to determine whether to offer the community service hours based on the minor's performance and compliance with the other terms and conditions of probation.

To the extent the minor argues that the juvenile court has improperly "delegate[d] the authority to the probation officer to determine if the minor has violated probation, and to impose sanctions for alleged violations without a judicial finding or any semblance of due process" (OBM 21), the minor reads the court's order too broadly. Instead, the court's order reserves to the probation officer the authority to administer the completion of a specific number of community service hours as necessary to ensure adequate supervision of the minor's rehabilitation. (*Victor L.*, *supra*, 182 Cal.App.4th at p. 919.) At the same time, it limits that authority by giving the minor the option of completing those community service hours in lieu of formal proceedings to modify the minor's placement.

For the foregoing reasons, the juvenile court properly delegated authority to the probation officer by imposing a specific condition (community service) while giving the probation officer limited discretion to implement the condition to ensure minor's rehabilitation and accountability for nonconforming behavior.

III. AN OPTION TO PERFORM COMMUNITY SERVICE IN LIEU OF THE FILING OF A SECTION 777 NOTICE DOES NOT VIOLATE DUE PROCESS

The minor contends that the juvenile court has violated his due process rights because it gave the probation officer "the authority to determine whether [he has violated probation], and in turn to impose sanctions for those alleged violations without a noticed hearing or finding by a judicial officer as required by the relevant rules and statutes." (OBM 26; see also OBM 17-18, citing sections 777 and 778 and Cal. Rules of Court, rule 5.570.) To the contrary, the court's disposition order and community service condition do not implicate section 777, which governs the removal of the minor from his home or other current placement, because the alleged "sanction" is only an offer for the minor to perform community service.

As a matter of due process, a probationer is entitled to "written notice of the claimed violations of his probation; disclosure of the evidence against him; an opportunity to be heard in person and to present witnesses and documentary evidence; a neutral hearing body; and a written statement by the factfinder as to the evidence relied on and the reasons for revoking probation. [Citation.]" (*Black v. Romano* (1985) 471 U.S. 606, 611-612.) "Juvenile court proceedings are controlled by

the same concerns and rules as adult criminal proceedings with respect to the due process right to notice of specific charges or factual allegations." (*In re Alberto S.* (1991) 226 Cal.App.3d 1459, 1464, citing *In re Robert G.* (1982) 31 Cal.3d 437, 441-443.) The section 777 notice must identify the specific probation violation the minor is alleged to have committed. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1086).

The disposition order at issue in this case does not implicate the due process concerns that require a section 777 notice because it (a) directs the minor to reside in the home of a parent or guardian as a condition of probation and (b) directs the probation officer to offer the minor up to 50 hours of community service, or up to 10 cumulative days on a community service work program, as an option to work off alleged probation violations. (4RT 519; Supp. CT 7.) The disposition order does not allow the probation officer: (1) to modify the court's disposition order without notice or court involvement; or (2) to decide, wholly outside the statutory framework of section 777, whether the minor's failure to adhere to the court's conduct rules and behavioral requirements warrants removal from his home and placement in a more restricted environment. Instead, the order gives the probation officer limited discretion to informally handle insignificant conduct by the minor that violates the terms of probation directly with the minor and, implicitly, his parent or guardian, through an offer and acceptance to perform a limited number of community service hours, in lieu of filing a section 777 notice to initiate formal revocation and removal proceedings.

To the extent the minor suggests that his probation officer might unfairly evaluate his performance and "impose sanctions" for alleged violations without a noticed hearing or finding by a judicial officer (OBM 26-27), he misconstrues the court's order. The order at issue merely allows the probation officer to offer community service hours to the minor in lieu of initiating formal proceedings to remove the minor from his home under section 777. Community service hours may not be imposed unilaterally without the minor's agreement.

Finally, the probation officer's implementation of the court's order is subject to judicial review because the minor always retains the option of rejecting the offer of community service to informally resolve any alleged probation violation. In such circumstance, the probation officer's next course of action is the same as it would be without the community service order at issue in this case: the probation officer may consider whether to file a section 777 notice to initiate removal proceedings, at which point the minor would receive a hearing in the juvenile court on the alleged misconduct that triggered the probation officer's offer of community service hours in the first place.

Accordingly, because the court's order does not allow the probation officer to unilaterally modify the court's conduct and behavioral rules or seek a more restrictive placement without notice or judicial oversight, the court's order does not violate due process.

CONCLUSION

For the foregoing reasons, the minor has failed to demonstrate any error in this case, and the judgment should be affirmed.

Respectfully submitted,

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January 20, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 5,709 words.

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January 20, 2022

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DECLARATION OF ELECTRONIC SERVICE
AND SERVICE BY U.S. MAIL

Case Name: **In re D.N.**
No.: **S268437**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 20, 2022, I electronically served the attached by **ANSWER BRIEF ON THE MERITS** transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 20, 2022, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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California Court of Appeal
Fifth Appellate District
[*Served electronically via TrueFiling*]

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 20, 2022, at Sacramento, California.

M. Latimer	/s/ *M. Latimer*
Declarant	Signature

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE D.N.**
Case Number: **S268437**
Lower Court Case Number: **F080624**

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/s/Michelle Latimer
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