

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

In re D.N., a Person Coming Under the
Juvenile Court Law

PEOPLE OF THE STATE OF CALIFORNIA,

S268437

Plaintiff and Respondent,

v.

D.N.,

Fresno County
Superior Court
No. 19CEJ600384

Defendant and Appellant.

Court of Appeal, Fifth Appellate District, No F080624
Fresno County Superior Court
No. 19CEJ600384

Hon. Gary Hoff, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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APPELLANT'S REPLY BRIEF ON THE MERITS

ARGUMENT

THE PROBATION CONDITION PERMITTING THE PROBATION OFFICER TO PUNISH APPELLANT FOR A VIOLATION OF PROBATION WITHOUT A JUDICIAL FINDING THAT APPELLANT ACTUALLY VIOLATED PROBATION IS AN UNLAWFUL DELEGATION OF JUDICIAL AUTHORITY AND VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE CALIFORNIA CONSTITUTION, AS WELL AS APPELLANT'S RIGHT TO DUE PROCESS OF LAW

As appellant argued at length in the opening brief on the merits, the juvenile court here exceeded its authority when it crafted a probation condition that empowered the probation department to adjudicate and punish probation violations on its own without direct court oversight. The contested order violates the separation of powers clause of the California Constitution and

further violates the guarantee of due process under the federal and state constitutions, by impermissibly delegating judicial authority to the probation officer. The manner of delegation is further virtually guaranteed to deprive appellant of due process, the right to counsel, the right to notice and a hearing, and the right to have any violation proven by a preponderance of the evidence. Appellant accordingly asked this Court to vacate the probation condition.

Respondent counters by arguing that the probation condition benefits appellant (Answer Brief on Merits, pp. 19 et seq.), that the delegation of authority was permissible due to its limited nature (Answer Brief, pp. 22 et seq.), and that the community service component does not violate due process (Answer Brief, pp. 31 et seq.)

On the whole, respondent's argument focuses on the nature of the punishment permitted by the court's delegation – community service, presumably in lieu of a more severe sanction – and whether that punishment is beneficial to appellant or would otherwise be allowed under the law. But the issue before this court is not whether a juvenile court may impose a sanction of community service, or whether community service is beneficial to a minor probationer. The issue is whether the juvenile court can delegate authority to the probation officer to adjudicate and punish probation violations. And the answer to that question is clearly no.

Appellant does not dispute the juvenile court's broad authority to set probation conditions, but that broad authority

does not include the authority to violate the separation of powers doctrine. The court alone may adjudicate probation violations and impose punishment. (See *In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1372; cf. *United States v. Stephens* (9th Cir. 2005) 424 F.3d 876, 880-881.)

Respondent cites language from this Court in *People v. Olguin* (2008) 45 Cal.4th 375 for the proposition that “[a] probation condition should be given ‘the meaning that would appear to a reasonable, objective reader.’ [Citation.]” (*People v. Olguin, supra*, 45 Cal.4th at p. 382; see Respondent’s Answer Brief on the Merits at p. 19.) But respondent goes on to read into the contested condition language and caveats that simply do not exist in the condition as imposed by the juvenile court.

The order reads, in its entirety:

[T]he Court is authorizing 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. That can also include the GPS system as a sanction, but he’d already be on that program.
[...]

I would anticipate 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.

(RT 517.) Nothing in the language of this order encompasses the various procedures and safeguards read into it by the Attorney General.

Respondent repeatedly emphasizes the supposed element of “consent” in the contested condition (see, e.g., Answer Brief at p. 20. Aside from the single word “offer,” the plain language of the court’s order contains no mention or hint of a consensual arrangement. An “offer” of punishment without due process or judicial adjudication of wrongdoing is not an exception to either constitutionally required divisions of government responsibility or to constitutional guarantees of due process.

Respondent likens this scheme to statutorily outlined diversion programs and argues that the procedure may work to the minor’s benefit. (Answer Brief at pp. 20-21.) Again, the issue is not whether a particular implementation of the court’s delegation might work to benefit the minor; the question is whether such delegation is constitutionally permitted at all. And the issue is not whether the legislature may enact a statutory scheme that embraces and defines such delegation: the issue is that here, the legislature has not done so. An ad hoc delegation of judicial authority by a juvenile court judge is a far cry from legislation setting out alternatives to formal probation.

For instance, Welfare and Institutions Code sections 654 and 654.2, both cited by the People, explicitly require the consent of both the minor and the minor’s parents. (Welf. & Inst. Code, §§ 654, subd. (a); 654.2, subd. (a); .) The court’s order here contains no such explicit prerequisite of consent, although the People opt to read that language into the order. The other statute cited by the People, Welfare and Institutions Code section 725, does not involve delegation of judicial authority at all, but merely specifies

a method by which a minor may receive services without being declared a ward of the court. (Welf. & Inst. Code, § 725, subd. (a).)

Respondent focuses on the word “offer” in the contested condition without acknowledgment of the absence of actual language in the order requiring consent or due process, even though consent and due process are explicitly required and defined in the statutory schemes to which respondent compares this ad hoc delegation. The absence of either explicit requirements of due process and consent, or an authorizing statute, highlights the fundamental impropriety of the order at issue here. At no point does the Attorney General address the denial of due process inherent in allowing a probation officer to adjudicate and punish probation violations.

The Attorney General emphasizes that the contested condition does not empower the probation officer to set new probation conditions “not expressly authorized by the court.” (Answer Brief, p. 20.) Appellant does not disagree. But the contested condition does give the probation officer the authority to adjudicate and punish violations of probation, subject only to the minor’s ability to file his own petition under Welfare and Institutions Code section 778 if he disagrees with the probation officer’s actions and determinations. (See slip opn., pp. 7-8.)

As discussed in the opening brief, appellant’s constitutional and statutory due process rights attach prior to a determination that he has violated his probation. (See Opening Brief on the Merits, pp. 14 et seq.) Respondent waves aside these rights by pointing out that the ultimate outcome of the contested condition

may be beneficial to the minor. (See, e.g., Answer Brief pp. 19 et seq.) But while there may be many dispositions that could be beneficial to a minor, juvenile courts of this state, even with their broad authority, are bound to follow the guarantees of due process, the directives of the Legislature, and the constitutional division of labor between the three branches of government.

Respondent reframes the court's order as a mere delegation of how best to implement an order already imposed by the juvenile court. Respondent claims that "[i]nherent 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." (Answer Brief at p. 29.) Respondent further argues that "[t]he 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." (Answer Brief at pp. 29-30.)

The problem inherent in this reframing of the juvenile court order is that it indicates that the juvenile court had already determined that the sanction of community service was appropriate for the initial offense. In fact the juvenile court did not impose that sanction; it left that sanction available for future probation violations – which it then delegated to the probation officer to adjudicate and punish. The cumulative total of ten days or fifty hours of community service was not to be imposed unless the minor violated probation – a determination that the court delegated to the probation officer. (RT 517.) Similarly, the minor

was ordered to remain in the GPS monitoring program for at least three months, but the probation officer was empowered to add up to thirty additional days in the GPS program. (RT 517.)

This is the crux of the problem with the court's order: it delegates to the probation officer the determination of whether a probation violation has occurred, and authorizes the probation department to impose a predetermined sanction for such a violation. This is not a minor or incidental delegation of authority; it is a complete undermining of the statutory and constitutional scheme for adjudication of probation violations.

Finally, the Attorney General suggests that the minor and his family have "consented" to the probation condition in question and speculates that this was because they found it to be beneficial. (Answer Brief, p. 21.) The silence of the minor and his family in the face of the court's order should not be interpreted as a voluntary and informed waiver of the procedural protections afforded to him under the law. (See *People v. Mosby* (2004) 33 Cal.4th 353, 362 [reviewing court should infer from silent record that a defendant knowingly and intelligently waived constitutional rights]; see also *In re Eddie M.* (2003) 31 Cal.4th 480, 486, 501, 506 [describing due process rights of minor alleged to have violated probation].) Further, the Court of Appeal correctly concluded that the question here involves a pure question of law that can be reached on its merits in spite of the absence of an objection. (See slip opn., pp. 7-8; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 888-889.)

By delegating judicial authority to the probation officer to adjudicate and punish probation violations without direct court oversight, the juvenile court violated the separation of powers clause of the California Constitution and further violated the guarantee of due process under the federal and state constitutions. Appellant asks this court to strike the contested probation condition.

CONCLUSION

For the foregoing reasons, and for reasons previously stated in the opening brief on the merits, appellant asks this Court to strike the probation condition delegating authority to probation officer to adjudicate and punish probation violations.

Dated: February 9, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

As required by California Rules of Court, Rule 8.360(b), I certify that this brief contains 2,274 words, as determined by the word processing program used to create it.

/s/Elizabeth M. Campbell

Elizabeth M. Campbell

Attorney at Law

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a member of the State Bar of California and a citizen of the United States. I am over the age of 18 years and not a party to the within-entitled cause; my business address is PMB 334, 3104 O Street, Sacramento, California, 95816.

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Appellant's Reply Brief on the Merits

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D.N. Appellant [address confidential]	Fresno County Superior Court 1100 Van Ness Avenue Fresno, CA 93724
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Executed on February 9, 2022, in Sacramento, California.

/s/Elizabeth M. Campbell
DECLARANT

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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