In re T. H.

2006 | Cited 0 times | California Court of Appeal | September 28, 2006

SUMMARY

Appellant challenges the decision of the juvenile court sustaining a Welfare and Institutions Code section 602 petition against her on the grounds the evidence was insufficient, a probation condition is vague, and the trial court erred by setting a maximum confinement term. We conclude substantial evidence supports the court's finding appellant committed a robbery. Although the juvenile court eliminated any vagueness problem by adding a knowledge element to the probation condition in question, the minute order should be modified to conform. The court was not required to set a maximum confinement term because appellant was not removed from the physical custody of her mother. Although the term has no legal effect and does not prejudice appellant, it should be deleted from the minute order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and four companions attacked a family that was walking home. They struck the mother, father and at least three daughters. During the attack, the mother dropped her purse, which was picked up and taken by one of the assailants.

The juvenile court sustained a Welfare and Institutions Code section 602 petition alleging second degree robbery, declared appellant a ward of the court, and ordered appellant placed home on probation. The court declared the offense to be a felony and set a maximum confinement term of five years.

DISCUSSION

1. Sufficient Evidence Established Appellant's Commission of a Robbery

Appellant contends the evidence was insufficient to support the juvenile court's finding that she committed robbery. She argues no evidence indicated she intended to take the victim's purse or

shared the intent of the man who took the purse.

To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable trier of fact could find guilt beyond a reasonable doubt. (People v. Ceja (1993) 4 Cal.4th 1134, 1138; In re Babak S. (1993) 18 Cal.App.4th 1077, 1088-1089.)

Robbery is defined as the taking of personal property of some value, however slight, from a person or the person's immediate presence by means of force or fear, with the intent to permanently deprive the person of the property. (Pen. Code, § 211; People v. Marshall (1997) 15 Cal.4th 1, 34.) The evidence must show that the intent to steal arose either before or during the commission of the act of force. If the intent to steal arose after the use of force against the victim, the taking at most constitutes theft. (Ibid.) However, a theft becomes robbery if force or fear is used during asportation, e.g., to prevent the owner from regaining his property, even though the original taking is accomplished without force or fear. (People v. Estes (1983) 147 Cal.App.3d 23, 28.)

A person who knows another's unlawful purpose and intentionally aids, promotes, encourages, or instigates the crime is guilty as an aider and abettor of both the offense he or she intended to facilitate or encourage (the target crime) and any other crime committed by the person he or she aids and abets that is the natural and probable consequence of the target crime. (People v. Prettyman (1996) 14 Cal.4th 248, 259, 261.) An aider and abettor need not have intended to encourage or facilitate the particular offense ultimately committed, and need not have the specific intent otherwise required for the offense committed. (Id. at p. 261.) A particular criminal act is a natural and probable consequence of another criminal act if, under all of the circumstances presented, a reasonable person in the defendant's position would or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant. (People v. Nguyen (1993) 21 Cal.App.4th 518, 531.) This is a question of fact. (People v. Durham (1969) 70 Cal.2d 171, 181.) Probative factors relative to aiding and abetting include presence at the scene of the crime and companionship and conduct before and after the offense, including flight. (People v. Mitchell (1986) 183 Cal.App.3d 325, 330.)

The record reveals that a group of five people consisting of appellant, two other women, and two men confronted Melvin and Rosa Ramirez and their four daughters as they walked from their car to their apartment. Someone threw a beer can at Melvin, striking him on the lower back. The three women, including appellant, then physically attacked Rosa and at least three of her daughters, while the two men struck Melvin in the face. Appellant punched daughter Lesly in the eye and hit Rosa. At some point while she was being beaten, Rosa's purse slipped off her arm. One of the men picked up and took the purse, while the women continued to beat her. After Melvin used his belt to strike the women, the Ramirez family escaped to their apartment. The group of assailants followed, kicked the door, taunted the family to come out, and threatened to harass them if they called the police.

Viewed in the light most favorable to the judgment, the evidence shows that the entire group, especially the women, quickly moved in to attack Rosa and her daughters after striking Melvin Ramirez with the beer can. They continued to attack in coordinated behavior after one of the men in their group picked up Rosa's purse, then followed the fleeing victims to their apartment, where they acted as a group to intimidate and threaten them. Their companionship at the scene of the crime during the offenses and their coordinated action support an inference of a shared intent to batter the family members. Appellant's active participation supports an inference she shared that intent. The juvenile court could also conclude that robbery was a reasonably foreseeable consequence of the intended battery. Even if appellant did not intend to take property from anyone in the group, she was criminally liable as an aider and abettor for the robbery committed by her accomplice. Moreover, although force was used prior to the taking, it also was applied during and after the taking, as the beating apparently caused Rosa to drop her purse, and appellant and the other women continued to beat Rosa and her daughters after the man picked up Rosa's purse. The juvenile court's conclusion that appellant committed a robbery was therefore supported by substantial evidence.

2. Probation Condition Number 15 must be Modified on the Minute Order to Include a Knowledge Element

Appellant contends the probation condition number 15, which prohibits her from associating with anyone of whom her parents or probation officer disapproves, is unconstitutional because it omits the element of her knowledge. In announcing this condition, the juvenile court stated appellant should "not associate knowingly with anyone that's disapproved of by your parents or the probation officer," but the court's minute order does not include the element of knowledge.

Respondent argues appellant forfeited her claim regarding these conditions by failing to object to them in the juvenile court. This issue is presently before the Supreme Court in In re Sheena K. (2004) 116 Cal.App.4th 436, review granted June 9, 2004, S123980. Among prior cases, there is a split of authority. (See, e.g., In re Justin S. (2001) 93 Cal.App.4th 811, 814-815 [not forfeited]; People v. Gardineer (2000) 79 Cal.App.4th 148, 151-152 [forfeited].) In People v. Welch (1993) 5 Cal.4th 228, 234-237, the Supreme Court held that failure to object to unreasonable probation conditions at the sentencing hearing forfeits such claims on appeal. However, the court expressly limited its forfeiture rule to challenges based upon "Bushman/Lent" grounds. (Id. at p. 237.) The grounds consist of claims that probation conditions bear no relationship to the crime of which the offender was convicted, relate to conduct which is not in itself criminal, and/or require or forbid conduct which is not reasonably related to future criminality. (People v. Lent (1975) 15 Cal.3d 481, 486; In re Bushman (1970) 1 Cal.3d 767, 777.) Appellant does not challenge her probation conditions on any of these grounds.

Appellant's contention raises only a question of law. The Supreme Court in People v. Welch, supra, 5 Cal.4th at p. 235, recognized an exception to the forfeiture rule for challenges to probation conditions that raise pure questions of law. Nonetheless, the court in People v. Gardineer, supra, 79 Cal.App.4th

148, applied the forfeiture rule to a purely legal challenge similar to that appellant raises.[1] We conclude, however, the correct view is exemplified by In re Justin S., supra, 93 Cal.App.4th at p. 815: failure to object to a probation condition in the trial court does not preclude a purely legal challenge to that condition on appeal. Accordingly, we address the merits of appellant's claim.

A juvenile court has significantly greater discretion in imposing conditions of probation than that exercised by an adult court when sentencing an adult to probation. (In re Tyrell J. (1994) 8 Cal.4th 68, 81.) Juvenile probation is not an act of leniency, but a disposition made in the minor's best interest. Accordingly, "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." (Ibid.) A minor's liberty interest is not co-extensive with that of an adult. (In re Frank V. (1991) 233 Cal.App.3d 1232, 1242.) A probation condition prohibiting a ward of the court from associating with certain people or groups, such as those of whom his parents or probation officer disapproves, is not constitutionally overbroad. (Id. at p. 1243.)

The conditions in issue are, however, vague. Their vagueness lies in the possibility appellant could be deemed to be in violation of her probation by associating with someone who, unbeknownst to her, is a person of whom her parents or probation officer disapproves. Just as due process requires that a criminal statute be sufficiently definite to provide a standard of conduct for those whose activities are proscribed, for police enforcement, and for ascertainment of guilt, probation conditions must be specific enough to allow the probationer to determine with reasonable certainty what conduct is prohibited. Appellant's vagueness contention is supported by In re Justin S., supra, 93 Cal.App.4th at p. 816 [probation condition prohibiting the appellant from associating with gang members]; People v. Lopez (1998) 66 Cal.App.4th 615, 628-629 [same]; and People v. Garcia (1993) 19 Cal.App.4th 97, 102 [probation condition prohibiting association with users and sellers of narcotics, felons and ex-felons]. The juvenile court clearly appreciated the necessity of avoiding vagueness by adding a knowledge requirement, as it added the knowledge element when announcing the conditions. In an abundance of caution, we direct modification of the minute order to conform to the court's oral pronouncement.

3. The Declared Maximum Confinement Term has no Legal Effect and Should be Deleted

When a minor is removed from the physical custody of a parent or custodian as a result of criminal violations sustained under Welfare and Institutions Code section 602, the juvenile court must specify the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense or offenses. (Welf. & Inst. Code, § 726, subd. (c).)

Although the juvenile court did not remove appellant from the physical custody of her mother, it set a maximum confinement term of five years. Appellant contends this was unauthorized and should be stricken.

The juvenile court was not required to set a maximum confinement term because appellant was not

removed from her mother's physical custody. (In re Ali A. (2006) 139 Cal.App.4th 569, 573.) The declared maximum confinement term has no legal effect and does not prejudice appellant. (Id. at p. 574.) Nonetheless, because we direct the court to modify its minute order regarding the probation conditions, we also direct it to delete the maximum confinement term from its amended minute order.

DISPOSITION

The juvenile court is directed to issue an amended minute order (1) reflecting that probation condition number 15 includes a knowledge element and (2) deleting all references to a maximum term of confinement. In all other respects, the judgment is affirmed.

We concur: COOPER, P. J., RUBIN, J.

1. In re Josue S. (1999) 72 Cal.App.4th 168, cited by respondent as additional support for its forfeiture argument, is factually distinguishable. There, the appellant argued that probation conditions restricting his travel and requiring him to maintain satisfactory grades and submit to warrantless searches had no reasonable relationship to the facts of the case or his personal history and improperly restricted his constitutional rights. (Id. at pp. 169-170.) The constitutionality and appropriateness of imposing such conditions could not be addressed without reference to the particular sentencing record, thus the contentions did not raise purely legal questions.