Filed 10/27/05

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re WILLIAM R., a Person Coming Under the Juvenile Court Law.	B177152
THE PEOPLE, Plaintiff and Respondent, v. WILLIAM R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. FJ28427)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles Q. Clay, III, Judge. Modified and affirmed with directions.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, A. Scott Hayward, Deputy Attorney General, Susan D. Martynec and Marc E. Turchin, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Appellant challenges the decision of the juvenile court sustaining a Welfare and Institutions Code section 602 petition against him on the grounds the trial court improperly denied his suppression motion and imposed unconstitutionally vague and overbroad probation conditions. We conclude the juvenile court properly denied the suppression motion under controlling California Supreme Court authority. An element of knowledge must be added to several of appellant's probation conditions to eliminate vagueness.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles County Sheriff's Department received a call from a person who observed a young man painting graffiti on a wall on Figueroa Street. Sheriff's deputies responding to the call saw appellant walking on Figueroa and believed he matched the description of the graffiti suspect. They detained appellant and found a can of spray paint concealed inside a sweatshirt he was carrying.[1]

Appellant moved to suppress the can of paint and statements he made after the seizure of the can. The juvenile court denied the motion. Appellant then admitted an allegation of misdemeanor vandalism in an amended Welfare and Institutions Code section 602 petition. Appellant, who was already on probation, was placed in a camp community placement program for six months. The juvenile court determined that appellant's aggregate maximum confinement term was four years four months.

DISCUSSION

1. The trial court properly denied appellant's motion to suppress.

Appellant moved to suppress the physical evidence, his statements to the deputies, and the deputies' observations based on the theory he was illegally detained and searched. Although implicitly admitting he was on probation and subject to a search condition, appellant asserted that the detention and search were invalid because the deputies had no knowledge of his probationary status when they detained and searched

him. Appellant argued *In re Tyrell J.* (1994) 8 Cal.4th 68, was invalidated by *People v. Sanders* (2003) 31 Cal.4th 318.

No evidence was introduced at the hearing on appellant's motion. The trial court denied the motion on the ground that *In re Tyrell J.*, *supra*, 8 Cal.4th 68, had not been overruled, and the deputies' conduct was justified by appellant's probationary search condition, despite the deputies' ignorance of the condition at the time of their actions.

Appellant contends the juvenile court erred by denying his suppression motion. He again argues that *In re Tyrell J.*, *supra*, 8 Cal.4th 68, has implicitly been overruled by *People v. Robles* (2000) 23 Cal.4th 789 and *People v. Sanders*, *supra,* 31 Cal.4th 318.[2]

In *In re Tyrell J.*, *supra*, 8 Cal.4th 68, a police officer suspected the minor was a gang member carrying a weapon. The officer detained the minor and conducted a pat-down search, which revealed a bag of marijuana in the minor's pants. Although the officer was not aware of it at the time, the minor was on juvenile probation and subject to a condition requiring him to submit to "'a search of [his] person and property, with or without a warrant, by any law enforcement officer, probation officer or school official.'" (*Id.* at p. 74.) The Supreme Court found the search was not unconstitutional because "a juvenile probationer subject to a valid search condition does not have a *reasonable* expectation of privacy over his . . . person or property." (*Id.* at p. 86.) The Court reasoned that the search condition and other conditions of a minor's probation reduce the expectation of privacy over his or her conduct and person. (*Id.* at p. 85.) The minor must have been aware of the "limitation on his freedom, and that any police officer, probation officer, or school official could at any time stop him on the street, at school, or even enter his home, and ask that he submit to a warrantless search." (*Id.* at p. 86.) He therefore "certainly could not reasonably have believed Officer Villemin would *not* search him, for

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1 This factual statement was derived from the probation report.

2 The identical issue is now pending before the California Supreme Court in *In re Jaime P.*, review granted August 31, 2005, S135263.

he did not know whether Villemin was aware of the search condition. Thus, any expectation [of privacy] the minor may have had concerning the privacy of his bag of marijuana was manifestly unreasonable." (*Ibid.*) The Court believed that "imposing a strict requirement that the searching officer must always have advance knowledge of the search condition would be inconsistent with the special needs of the juvenile probation scheme. That scheme embraces a goal of rehabilitating youngsters who have transgressed the law, a goal that is arguably stronger than in the adult context. [Citations omitted.] To better effectuate the rehabilitation of the juvenile, the condition of probation permitting police (and others) to conduct warrantless searches is imposed by the juvenile court to serve the important goal of deterring future misconduct. A juvenile probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the minor tempted to return to his antisocial ways. [Citations omitted.] This important deterrent effect would be severely eroded if police officers were required to learn the names and memorize the faces of the dozens and perhaps hundreds of juvenile probationers in their jurisdiction." (*Id.* at pp. 86-87.) Finally, although it did not find the search was invalid, the Court noted that permitting such a search without advance knowledge of the search condition was consistent with the purposes of the exclusionary rule. (*Id.* at p. 89.)

In *People v. Robles*, *supra*, 23 Cal.4th 789, police conducted a warrantless search of a residential garage. They subsequently discovered that the defendant's brother lived with him and was on probation and subject to a search condition. (*Id.* at pp. 793-794.) The Supreme Court found the search unconstitutional. It noted that while "a person subject to a search condition has a severely diminished expectation of privacy over his or her person and property," a probationer's cohabitants retain valid expectations of privacy over their persons and portions of their residence over which the cohabitant retains exclusive control, "so long as there is no basis for officers to reasonably believe the probationer has authority over those areas." (*Id.* at p. 798.) The cohabitants of a person subject to a search condition "need not anticipate that officers with no knowledge of the

probationer's existence or search condition may freely invade their residence in the absence of a warrant or exigent circumstances." (*Id.* at p. 799.)

In *People v. Sanders*, *supra*, 31 Cal.4th 318, police responding to a domestic disturbance call entered the defendants' apartment and, after handcuffing both defendants, performed a "protective sweep" search of the apartment, during which they discovered cocaine base. The officers then learned that one of the defendants was on parole and subject to a search term. (*Id.* at pp. 322-323.) The court of appeal found the search was unjustified either as a protective sweep or a parole search. (*Id.* at p. 323.) The Supreme Court did not address the protective sweep issue, but found the search could not be justified as a parole search because the officers were ignorant of the defendant's parole status and search term. "[P]olice cannot justify an otherwise unlawful search of a residence because, unbeknownst to the police, a resident of the dwelling was on parole and subject to a search condition. . . . [T]his result flows from the rule that whether a search is reasonable must be determined based upon the circumstances known to the officer when the search is conducted and is consistent with the primary purpose of the exclusionary rule – to deter police misconduct." (*Id.* at p. 332.) A parolee has a diminished, but not extinguished, expectation of privacy. (*Ibid.*) A parole search may be reasonable even absent particularized suspicion, but the reasonableness of the search must be determined based upon the circumstances known to the officer at the time of the search. (*Id.* at pp. 333-334.) Therefore, in order to justify an otherwise unlawful search of a parolee's residence as a parole search, the officer conducting the search must be aware that the suspect is on parole and subject to a search condition. (*Id.* at p. 335.) This rule protects the reasonable expectations of privacy of a parolee's cohabitants and guests. (*Ibid*.)

Neither *Robles* nor *Sanders* expressly or necessarily overruled *Tyrell J.* In *Robles*, the Supreme Court distinguished *Tyrell J.* (*People v. Robles*, *supra*, 23 Cal.4th at pp. 797-798), and in *Sanders*, it expressly declined to address the continuing validity of *Tyrell J.* (*People v. Sanders*, *supra*, 31 Cal.4th at p. 335, fn. 5). Although *Tyrell J.*

appears to be inconsistent with *Robles* and *Sanders* with respect to whether law enforcement officers must know of an applicable parole or probation search term before searching, neither of the later cases arose in the context of juvenile probation, and neither case invalidated the foundation of *Tyrell J.*, i.e., that a juvenile on probation and subject to a valid search condition has no reasonable expectation of privacy over his person or property. (*In re Tyrell J.*, *supra*, 8 Cal.4th at p. 86.) The Court found support for this conclusion in the "special needs of the juvenile probation scheme" and the "goal of rehabilitating youngsters who have transgressed the law, a goal that is arguably stronger than in the adult context." (*Id.* at p. 87.) Because different goals and needs apply to juvenile probationers and neither *Robles* nor *Sanders* concerned juvenile probationers, we cannot conclude *Tyrell J.* was overruled or otherwise invalidated. Accordingly, we must follow *Tyrell J.* and apply it to appellant's case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)[3]

Because it is undisputed that appellant was on probation and subject to a condition that he submit to a search, with or without a warrant, by any law enforcement officer, the search of appellant's sweat shirt by sheriff's deputies was constitutionally justified, despite their lack of knowledge of his probation or the search condition. The trial court properly denied appellant's motion to suppress.

2. Several of appellant's probation conditions are inherently vague and require modification.

Appellant contends three probation conditions imposed by the juvenile court are constitutionally vague and overbroad. The conditions are that he not associate with anyone of whom his parents or probation officer disapprove, not remain in the presence

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[3] The Fifth District recently reached a contrary conclusion in *In re Joshua J.* (2005) 129 Cal.App.4th 359, which concluded that *Sanders* "dismantled the foundation and cornerstones of *Tyrell J.*" so that "there is no presently binding Supreme Court authority" on the issue. (*Id.* at pp. 363-364.) Because *Sanders* did not involve the same special concerns regarding the juvenile probation scheme expressed by the Court in *Tyrell J.*, we respectfully disagree with our colleagues in the Fifth District.

of any unlawfully armed person, and stay away from places where narcotics users congregate. He argues the conditions are invalid because they each omit the element of his knowledge.

Respondent argues appellant forfeited his 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, a split of authority exists. (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 the failure to object to unreasonable probation conditions at the sentencing hearing forfeits the claims on appeal. However, the Court expressly limited its forfeiture rule to challenges based upon *Bushman*/*Lent* grounds. (*Id.* at p. 237.) Those grounds consist of claims that the 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 his 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 of appeal in *People v. Gardineer*, *supra*, 79 Cal.App.4th 148, applied the forfeiture rule to a purely legal challenge similar to that appellant raises.[4] We conclude, however,

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[4] *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

the correct view is exemplified by *In re Justin S.*, *supra*, 93 Cal.App.4th at p. 815, which stated that 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 an adult court when sentencing an adult to probation. (*In re Tyrell J.*, *supra*, 8 Cal.4th at p. 81.) This is because 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 people of whom his parents or probation officer disapproves is not constitutionally overbroad. (*Id.* at p. 1243.)

The conditions in issue are, however, vague, and this vagueness appears to be the defect appellant actually challenges. Their vagueness lies in the possibility appellant could be deemed to be in violation of his probation by (1) associating with someone who, unbeknownst to him, is a person of whom his parents or probation officer disapproves, (2) remaining in the presence of a person who, unbeknownst to him, is unlawfully armed, or (3) going to a place where, unbeknownst to him, narcotics users congregate. Just as due process requires that a criminal statute is 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

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conditions could not be addressed without reference to the particular sentencing record, thus the contentions did not raise purely legal questions.

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]. Accordingly, we will narrow the probation conditions in controversy by adding a knowledge requirement to each.

DISPOSITION

The trial court is directed to modify the minute order as follows: probation condition 15 is modified to read, "Do not associate with anyone known to you to be disapproved of by parents or probation officer"; probation condition 16 is modified to read, "Do not have any dangerous or deadly weapon in your possession, nor remain in the presence of any person known to you to be unlawfully armed"; and probation condition 21 is modified to read, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where you know users congregate." As modified, the judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P. J.

RUBIN, J.