

No. 1-18-1681

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> Rayshaun C., a Minor,)	Appeal from the
(The People of the State of Illinois,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	No. 18 JD 759
v.)	
)	
Rayshaun C.,)	Honorable
)	Lana Charise Johnson,
Respondent-Appellant).)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the respondent's gang-related probation conditions over his contentions that (1) the trial court abused its discretion in imposing the conditions when his crime was not gang-related and (2) the conditions were unconstitutionally overbroad and vague.

¶ 2 The respondent, Rayshaun C., appeals from the trial court's judgment adjudicating him a delinquent minor for committing the offense of armed robbery and the resulting sentence of 3

years' probation and 20 hours' community service. The respondent argues that the conditions of his probation relating to in-person and online gang contact were improper because the record did not connect the respondent or his crime to anything gang-related. He also contends that the gang-related conditions are unconstitutional insofar as they (1) lack exceptions for legitimate purposes and (2) inadequately identify what constitutes a violation of probation. For the reasons that follow, we affirm.

¶ 3 In the petition for adjudication of wardship, the State alleged that, on or about April 7, 2018, the respondent committed, *inter alia*, armed robbery in violation of section 5/18-2(a)(2) of the Criminal Code of 2012 (720 ILCS 5/18-2(a)(2) (West 2016)).

¶ 4 The matter proceeded to a bench trial, where the following evidence was adduced. At about 3 a.m. on April 7, 2018, the victim, Blake Morris, stood in front of his place of employment while waiting for his Uber vehicle to arrive. While he waited, another vehicle arrived and stopped in front of him. The respondent, whom Morris identified in court, and another individual exited the vehicle and approached Morris. The respondent drew a gun and told Morris not to move. The other individual took Morris's belongings. After the offenders fled, Morris's Uber vehicle arrived and the driver contacted the police. Subsequently, Morris identified the respondent from a photo array. Based upon this evidence, the trial court found the respondent guilty of armed robbery.

¶ 5 At the sentencing hearing, the trial court received a social investigation report. According to the report, the Chicago Police Department (CPD) lists the respondent as a member of the O-Block faction of the Black Disciples. Both the respondent and his mother denied that he belonged to a gang when asked by the respondent's probation officer. The respondent's mother,

however, stated that “others” view him as a member of the “Parkway O-Block” due to where he grew up. The respondent agreed with his mother’s assessment. The report further revealed that the respondent had been arrested on five prior occasions but no charges were filed. Two of the respondent’s arrests occurred while he was in the company of his 17-year-old cousin. The report thus concluded that the respondent’s “biggest criminogenic factor is his delinquent peers.”

¶ 6 The trial court sentenced the respondent to 3 years’ probation and 20 hours’ community service. In setting forth the conditions of his probation, the trial court stated:

“You got to go to school every day, no contact with gangs, guns, or drugs.

This means that you cannot participate in any activity that furthers or promotes the function of a street gang. You cannot post, and must clear from social media, any photos or videos of yourself holding, displaying any guns—real or replicas—or any other weapons, any photos, videos or messages promoting street gang activity, acts of violence, criminal activity, illegal drugs or money that was illegal [*sic*] obtained.

This includes the display of any street gang hand signs or insignias ***.”

¶ 7 The sentencing order form includes a checkmark next to the words “no gang contact or activity.” The probation order includes handwritten additions stating “no posting on social media of videos [*sic*] gang activity” and “no gangs, guns, or drugs.” The respondent signed the probation order, which states “[b]y signing, * * * you are indicating that you have read and fully understand all of the conditions of your Probation.” The respondent neither objected to the

probation conditions at the dispositional hearing nor filed a post-adjudication motion. This appeal followed.

¶ 8 On appeal, the respondent first argues that the trial court abused its discretion in imposing the gang-related conditions on his probation when his crime had nothing to do with gangs, and therefore the probation conditions were not reasonably related to his offense. In the alternative, the respondent contends that the gang-related conditions are unconstitutionally overbroad and vague.

¶ 9 The respondent acknowledges that he did not object to the conditions of his probation in the trial court, but maintains that this court should review his claim of error under the first or second prong of the plain-error doctrine. The first inquiry before determining whether there was a plain error is to determine whether there was a clear and obvious error. *People v. Eppinger*, 2013 IL 114121, ¶ 19. Absent an error, there can be no plain error and the respondent's forfeiture will be honored. *Id.*

¶ 10 Turning to the merits, we begin by noting that delinquency proceedings are protective in nature and are intended to correct and rehabilitate, not to punish. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 94. To this end, section 5-715(2)(s) of the Juvenile Court Act of 1987 (705 ILCS 405/5-715(2)(s) (West 2016)), sets forth terms that the court may impose as conditions of juvenile probation, including that a minor "refrain from having any contact, directly or indirectly, with certain specified persons or particular types of persons, including but not limited to members of street gangs." The court may also order probation conditions not enumerated in the Act in order to "achieve the goals of fostering rehabilitation and protecting the public." *In re J.W.*, 204 Ill. 2d 50, 77 (2003); 705 ILCS 405/5-715(2)(u) (West 2016). The disposition of a

minor rests within the sound discretion of the trial court (*In re J.C.*, 260 Ill. App. 3d 872, 884 (1994)) and its decision will not be reversed absent an abuse of discretion (*In re T.L.B.*, 184 Ill. App. 3d 213, 215 (1989)).

¶ 11 Although the trial court has “wide latitude” in imposing probation conditions, its “discretion is limited by constitutional safeguards and must be exercised in a reasonable manner.” *J.W.*, 204 Ill. 2d at 77. When assessing the reasonableness of a probation condition, “it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the probationer.” *Id.* at 79.

¶ 12 For his first assignment of error, the respondent argues that the trial court abused its discretion in imposing gang-related conditions on his probation when his crime had nothing to do with gangs, and, therefore, the probation conditions were not reasonably related to his offense. We disagree.

¶ 13 According to the social investigation report, the CPD identified the respondent as a gang member. Although the respondent denied this, he acknowledged that others might view him as a member of a certain gang due to where he grew up. The probation officer further concluded that the respondent’s “biggest criminogenic factor is his delinquent peers,” such as his 17-year old cousin with whom he has twice been arrested. As previously mentioned, when assessing the reasonableness of a probation condition, “it is appropriate to consider whether the restriction is related to the nature of the offense *or the rehabilitation of the probationer.*” *J.W.*, 204 Ill. 2d at 79 (emphasis added). Given this evidence, along with the trial court’s responsibility as *parens patriae*, we conclude that the court’s attempt “to limit [the respondent’s] contact (real or virtual)

with gang members was a valid condition of probation.” *In re Omar F.*, 2017 IL App (1st) 171073, ¶ 62.

¶ 14 Having found a valid connection between the respondent’s probation conditions and his rehabilitation, we next consider his alternative argument that those conditions were so overbroad and vague so as to be unreasonable.

¶ 15 In imposing probation conditions, the trial court’s “discretion is limited by constitutional safeguards and must be exercised in a reasonable manner.” *J.W.*, 204 Ill. 2d at 77. “To be reasonable, a condition of probation must not be overly broad when viewed in the light of the desired goal or the means to that end.” *J.W.*, 204 Ill. 2d at 78. Thus, “[w]here a condition of probation requires a waiver of precious constitutional rights, the condition must be narrowly drawn; to the extent it is overbroad it is not reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights.” (Internal quotation marks omitted.) *Id.* at 78-79.

¶ 16 As mentioned, when assessing the reasonableness of a probation condition, “it is appropriate to consider whether the restriction is related to the nature of the offense or the rehabilitation of the probationer.” *Id.* at 79. Other considerations include (1) whether the probation condition reasonably relates to the rehabilitative purpose of the legislation; (2) whether the public value in imposing the probation condition “manifestly outweighs the impairment to the probationer’s constitutional rights;” and (3) “whether there are any alternative means that are less subversive to the probationer’s constitutional rights, but still comport with the purposes of conferring the benefit of probation.” *Id.* Whether a condition of probation violates a probationer’s constitutional rights is a question of law and our review is, therefore, *de novo*. See

People v. Burns, 209 Ill. 2d 551, 560 (2004) (“The standard of review for determining whether an individual’s constitutional rights have been violated is *de novo*.”).

¶ 17 The respondent contends that the gang-related probation conditions imposed by the trial court constitute overbroad impairments on his right to freedom of speech and association under the first amendment of the United States Constitution (U.S. Const., amend. I). Specifically, he argues that the restrictions lack “commonsense exceptions,” such as contact with family members or classmates who might be gang members, and provide “no explanation” as to what kind of conduct would violate the order.

¶ 18 The State, in response, first contends that the respondent fails to acknowledge the trial court’s “clear, precise, and narrowly tailored” explanation of his probation conditions made during oral pronouncements. The State further contends that the respondent’s argument regarding his probation conditions amounts to an as-applied constitutional challenge, which fails because the record does not establish that his personal circumstances warrant any exceptions to the trial court’s order. According to the State, the record is also devoid of facts signifying that the respondent “was confused about the scope of [the] probation order” or that he has been accused of violating his probation by engaging in “innocent or innocuous” conduct. Consequently, the State submits that the respondent’s as-applied constitutional challenge relies on “hypothetical examples” and, based on the record, is not justiciable.

¶ 19 We first decline the State’s invitation to view this issue as an as-applied constitutional challenge because “our supreme court has explained that the relevant inquiry is whether the [probation] conditions are reasonable.” *In re J’Lavon T.*, 2018 IL App (1st) 180228, ¶ 13 (citing *J.W.*, 204 Ill. 2d at 78); see also *In re Omar F.*, 2017 IL App (1st) 171073, ¶¶ 56-58. In

determining whether the gang-related probation conditions were overbroad or vague and thus unreasonable, we find *In re J'Lavon T.*, 2018 IL App (1st) 180228, instructive.

¶ 20 In *In re J'Lavon T.*, 2018 IL App (1st) 180228, the trial court orally pronounced the following probation conditions: “No gangs, guns or drugs * * * you can’t post anything on social media related to gangs or any money that might have been attained. * * * No illegally attained funds can be shown on Facebook or any social media and anything related to a gang * * *.” On appeal, this court held that the probation conditions “constitute[d] overbroad impairments” to the respondent’s constitutional rights and were thus unreasonable. *Id.* ¶¶ 6, 14-15. In support of our finding, we explained:

“These conditions allow no exceptions for contact or social media postings related to a legitimate purpose, such as communication with family, classmates, or coworkers. And, although the trial court specified that the respondent could not post about money ‘attained’ through gang activity, it offered no guidance as to whether and under what circumstances a social media ‘posting’ could constitute prohibited ‘contact’ for purposes of a probation violation.” *Id.* ¶ 15.

¶ 21 After reviewing the record, we agree with the State that the trial court orally pronounced a “more specific, and narrow,” set of probation conditions than those at issue in *J'Lavon T.* In the instant case, the trial court prohibited the respondent from “participat[ing] in any activity that furthers or promotes the function of a street gang” as well as posting “videos or messages promoting street gang activity.” The trial court further clarified that the prohibition included the display of gang hand signs or insignia. The trial court’s more detailed restrictions thus avoid the problems we found with the blanket prohibition in *J'Lavon T.* because there is simply no risk

that the respondent could engage in contact or social media postings “related to a legitimate purpose” that would run afoul of a prohibition against activity that “furthers or promotes the function of a street gang.” See *In re Jawan S.*, 2018 IL App (1st) 172955, ¶ 32 (finding that a probation condition that the respondent “refrain from illegal gang, gun and drug activity” was not overbroad because it did “not prohibit the kinds of innocent, incidental contact that respondent is likely to have with gang members during the course of his ordinary daily activities”). Likewise, the trial court’s pronouncement cannot be considered vague because it makes clear the type of conduct that would violate the order, *i.e.*, “activity that further or promotes the function of a street gang.” We thus conclude that the trial court did not err in imposing narrow gang-related probation conditions and decline the respondent’s request to engage in a plain-error analysis as no error exists for our review.

¶ 22 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 23 Affirmed.