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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY LEE KING,

Defendant and Appellant.

E040844

(Super.Ct.No. FSB056193)

OPINION

APPEAL from the Superior Court of San Bernardino County. Elva R. Soper, Judge. (Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

David L. Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer and Edmund G. Brown, Jr., Attorneys General, Mary Jo Graves, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Jeffrey J. Koch and Scott C. Taylor, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant pleaded guilty to one count of assault with a deadly weapon, to wit, a knife, in violation of Penal Code section 245, subdivision

(a)(1). In return, defendant was granted three years of formal probation on various terms and conditions, including serving 180 days in county jail. Defendant's sole contention on appeal is that the probation condition requiring him to keep the probation officer informed of whether he owns any pets is unreasonable. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND¹

On May 22, 2006, San Bernardino County Sheriff's deputies were on patrol when they were dispatched regarding an unknown problem. Upon arrival, the deputies contacted the victim, who reported that defendant is the ex-boyfriend of the victim's daughter. Defendant came to the victim's home and asked to see the victim's daughter and her baby, of whom defendant was the father. The victim told defendant that his daughter and the baby were not there. Defendant became upset and went to his car. He produced a knife and challenged the victim to a fight. The victim backed away and picked up a large rock with which to defend himself. Defendant threatened to harm the victim's wife and began to move in her direction. The wife retreated into the home and called the police.

Defendant returned to his car and began to drive away. However, before leaving, he drove up to the front door of the residence and again challenged the victim to a fight.

¹ The factual background is taken from the probation report.

When the victim did not respond, defendant left the location. Defendant was eventually located and placed under arrest without resistance.

II

DISCUSSION

At sentencing, defense counsel objected to the term “pets” in probation condition No. 7 as it was unconstitutional and overbroad as phrased. The court denied that request.

Condition No. 7 specifically provides that defendant “[k]eep the probation officer informed of place of residence, cohabitants and *pets*, and give written notice to the probation officer twenty-four (24) hours prior to any changes. Prior to any move, provide written authorization to the Post Office to forward mail to the new address.” (Italics added.)

Defendant contends the trial court abused its discretion in denying his request to strike the pet condition because the condition is not reasonably related to his crime or future criminality. We disagree.²

“‘The primary goal of probation is to ensure ‘[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.’ [Citation.] [C]onditions of probation ‘are routinely imposed when the sentencing court determines, in an exercise of its discretion, that a defendant who is statutorily eligible for probation is also suitable to receive it.’ [Citation.] In the granting of probation, the Legislature has declared the

² We note that this issue is currently pending before the Supreme Court. (*People v. Olguin* (Dec. 15, 2006, E039342) review granted Mar. 21, 2007, S149303; *People v. Lopez* (Nov. 30, 2006, E039251) review granted Mar. 21, 2007, S149364.)

primary considerations to be: ‘the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant.’

[Citation.] [¶] In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.

[Citations.] ‘The court may impose and require . . . [such] reasonable conditions[] as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer.’ [Citation.] The trial court’s discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute. In addition, . . . Penal Code section 1203.1 . . . require[s] that probation conditions which regulate conduct ‘not itself criminal’ be ‘reasonably related to the crime of which the defendant was convicted or to future criminality.’ [Citation.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121; see also Pen. Code, § 1203.1; *People v. Welch* (1993) 5 Cal.4th 228, 233; *People v. Warner* (1978) 20 Cal.3d 678, 682-683.)

While pet ownership is not, in itself, criminal, it *is* reasonably related to the supervision of a probationer, and hence to his future criminality.

“[C]onditions of probation that impinge on constitutional rights must be tailored carefully and “reasonably related to the compelling state interest in reformation and rehabilitation” [Citation.]’ [Citation.]” (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016 [Fourth Dist., Div. Two], quoting *People v. Delvalle* (1994) 26 Cal.App.4th

869, 879, quoting *People v. Mason* (1971) 5 Cal.3d 759, 768 (dis. opn. of Peters, J.).)

However, there is no constitutional right to keep a pet. (See *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 388.) A fortiori, there is no constitutional right to keep a pet without telling your probation officer.³

Absent any such constitutional concerns, “[a]n adult probation condition is unreasonable if ‘it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” [Citation.]’ [Citation.]” (*In re Byron B.*, *supra*, 119 Cal.App.4th at p. 1016, quoting *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. omitted, quoting *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ““exceeds the bounds of reason, all of the circumstances being considered.”” [Citations.]’ [Citation.]” (*People v. Carbajal*, *supra*, 10 Cal.4th at p. 1121, quoting *People v. Welch*, *supra*, 5 Cal.4th at p. 234, quoting *People v. Warner*, *supra*, 20 Cal.3d at p. 683, quoting *People v. Giminez* (1975) 14 Cal.3d 68, 72.)

“[Probation conditions] are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer’s being at large. [Citation.] These same goals require and justify the exercise of supervision to

³ Arguably, if keeping the pet was, in itself, a crime, such a requirement might violate the right against self-incrimination. This, however, is not the thrust of defendant’s argument.

assure that the restrictions are in fact observed. Recent research suggests that more intensive supervision can reduce recidivism, [citation], and the importance of supervision has grown as probation has become an increasingly common sentence for those convicted of serious crimes, [citation].” (*Griffin v. Wisconsin* (1987) 483 U.S. 868, 875 [97 L.Ed.2d 709, 107 S.Ct. 3164].) A probation condition therefore may be deemed reasonable if it “enable[s] the [probation] department to supervise compliance with the specific conditions of probation.” (*People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240.)

A probation officer may need to visit a probationer’s home unannounced. Here, for example, defendant’s probation conditions required him to “[s]ubmit to a search . . . of your . . . residence . . . at any time of the day or night” Knowing, in advance, what animals are in the probationer’s home is reasonably related to the safety of the probation officer.

However, while some pets are so innocuous that they could not possibly interfere with a probation officer’s performance of his or her duties, it is perfectly reasonable for the trial court not to be more specific as to species, breed, or temperament. Animals can be unpredictable, particularly when confronted by a stranger in what they consider to be their own territory. Ask any letter carrier. Or ask any professional animal trainer -- they have a saying: “[A]nything with a mouth bites.” (*Sutherland, Kicked, Bitten and Scratched* (2006) p. 63.) Furthermore, implicit in almost every probation condition, including the subject condition, is reasonableness.

It can hardly be questioned that certain pets, especially dogs, can pose a great hazard and/or life-threatening danger to others. In fact, both statutory law and case law routinely address the notable problems presented by dogs, dog bites, and poor dog-owner/handler control. (See, e.g., *People v. Henderson* (1999) 76 Cal.App.4th 453, 461; Pen. Code, § 399 [mischievous animal causing death or serious bodily injury]; Pen. Code, § 597.5 [felonious possession of fighting dogs]; Civ. Code, § 3342 [dog bites; strict liability of owner].) Dangerous pets can also include venomous reptiles or spiders, pigs, and/or potentially any animal faced with a stranger in its territory.

Moreover, a probation officer is entitled to some protection against undue surprise. A trial court drafting probation conditions in the abstract might not think to include a parrot among the pets that must be disclosed; presumably, however, a probation officer would appreciate being warned that that voice in another room may just be a bird. Likewise, any probation officer who has to open a closet or reach under a bed during a search would no doubt like to know ahead of time whether the probationer keeps snakes -- regardless of whether the snakes are venomous.

Even assuming the challenged condition could have been more narrowly tailored, that does not render it invalid; rather, it simply must not exceed the bounds of reason. It is not unreasonable to put the burden on the probationer to tell the probation officer what animals may be present. The probation officer can then decide what precautions to take. The challenged condition does not prevent the probationer from owning a pet of any kind. It does not even require approval of the pet! It simply requires notice to the probation officer. This is amply within the bounds of reason.

The interpretation of “pets” is a case of first impression but should be analyzed using the same standards as that used to approve notification of “cohabitants,” which is also included in condition No. 8. Notification of “cohabitants” is imposed in order to ascertain whether the probationer is associating with people who would negatively affect his rehabilitation. (See *People v. Lopez* (1998) 66 Cal.App.4th 615, 622-626 [holding that a condition forbidding contact with gang members was necessary to rehabilitation and future criminality].) For example, a defendant convicted of drug possession should not live with drug users or dealers. The purpose of notification about pets is similar: 1) to assure proper rehabilitation of defendant, and 2) to protect the probation officer. We believe knowledge of pets is a prerequisite to the search condition, which ensures that defendant is complying with his sentence and is not reoffending. (See *People v. Bravo* (1987) 43 Cal.3d 600, 610 [holding that probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers].) The implied power of the probation officer regarding both cohabitants and pets is also the same: notification of pets implies a probation officer’s authorization to exclude certain pets or direct the care of the pets (i.e. keeping them contained) in order to allow searches. Again, this does not authorize capricious exclusions but allows directives that further the rehabilitation of defendant.

Significantly, defendant does not challenge the portion of the probation condition that required him to keep the probation officer informed of his cohabitants. This condition serves the salutary, rehabilitative purpose of preventing defendant from associating with those who might lead him into criminal behavior. Defendant does not

seem to think this condition had to be more narrowly drawn so as to require defendant to report only cohabitants who are gang members, drug users or known felons. It is just as reasonable to require defendant to report all of his pets as it is to require him to report all of his cohabitants. Condition No. 7 is valid, as it protects the probation officer and allows him or her to oversee defendant for future criminality.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P.J.

McKINSTER
J.