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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.

THOMAS MICHAEL LAWYER,

Defendant and Appellant.

E039316

(Super.Ct.No. FSB051107)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael M. Dest,  
Judge. Affirmed.

Carmela F. Simoncini, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Gary W. Schons, Senior Assistant Attorney General, and Scott C. Taylor,  
Supervising Deputy Attorney General, for Plaintiff and Respondent.

Appellant and defendant Thomas Michael Lawyer pled guilty to one count of vandalism with over \$400 in damage. The court granted probation. On appeal, defendant argues that one of the terms of probation is invalid. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On July 21, 2005, a police officer responded to a call and found defendant standing at an open coin-operated soda machine. Defendant took an item out of the machine and then noticed the officer. Defendant immediately ran away. The officer chased him and had to use pepper spray and a “pain compliance technique” to subdue him. The officer searched defendant and found a flathead screwdriver with a bent tip in his pocket. Defendant stated he needed money and was checking the machine for change.

Defendant was charged with vandalism with over \$400 in damage (Pen. Code, § 594, subd. (b)(1), count 1),<sup>2</sup> attempted petty theft (§§ 664/484, subd. (a), count 2), and resisting a peace officer (§ 148, subd. (a)(1), count 3). It was also alleged that defendant had served one prior prison term. (§ 667.5, subd. (b).) Defendant agreed to a plea bargain, which was later modified. Pursuant to the modified plea agreement, defendant pled guilty to count 1, in exchange for three years probation, 150 days in county jail, and restitution in the amount of \$1,184. The modified agreement also provided for the dismissal of certain misdemeanor and traffic cases.

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<sup>1</sup> The factual background is taken from the probation report.

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

On November 10, 2005, the trial court granted probation. One of the probation conditions required defendant to “[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” (condition No. 7 or the pet probation condition). Defense counsel specifically objected to the pet probation condition, arguing that it was unconstitutional and overbroad. The trial court overruled the objection “based on [a] safety issue.”

## ANALYSIS

### The Pet Probation Condition Is Valid

Defendant argues that the pet probation condition is invalid. We disagree.

The goals of probation are that 1) justice be done, 2) amends be made to society and 3) the probationer be rehabilitated and reformed. (§ 1203.1, subd. (j).) Any condition of probation “that restrict[s] constitutional rights must be carefully tailored and ‘reasonably related to the compelling state interest’ in reforming and rehabilitating the defendant. [Citation.]” (*People v. Jungers* (2005) 127 Cal.App.4th 698, 704.) If the defendant believes the conditions of probation are harsher than the potential sentence, he may refuse probation and choose to undergo the sentence. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 69 (*Balestra*)). Furthermore, “[a] condition of probation will not be held invalid unless 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.]” (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*)).

The People concede that the pet probation condition does not meet the first two *Lent* criteria, but argue that the condition is valid because “it forbids conduct which is *reasonably related* to future criminality.” The People argue that the condition facilitates supervision and detection of future criminal acts. We agree. A pet can enable defendant to conceal alcohol or drugs by either distracting or preventing a probation officer from entering or searching defendant’s residence. Also, without prior knowledge of a pet, a probation officer may endanger his own life or the life of the pet by visiting defendant’s residence unannounced. While certain pets are not dangerous and would not inhibit the duties of a probation officer, to require a trial court to outline the type, nature, temperament, and treatment of a pet that would fall within the probation term is unreasonable and impractical. Many animals are unpredictable and may attack a stranger who attempts to enter a defendant’s residence; thus, it is inadequate to limit the term only to dangerous or vicious animals.

Furthermore, a probation term should be given “the meaning that would appear to a reasonable, objective reader.” (*People v. Bravo* (1987) 43 Cal.3d 600, 606 (*Bravo*).) Under the pet probation condition, defendant simply has to notify his probation officer of what pets may be present. The challenged condition does not prevent defendant from owning a pet or authorize a probation officer to irrationally or capriciously exclude a pet. (See *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241 [holding that a trial court empowering a probation department with the authority to supervise probation conditions does not conflict with the standards set in *Lent, supra*, 15 Cal.3d at p. 486, and does not authorize irrational directives by the probation officer].)

If there *is* any ambiguity about a probation term, “[o]ral advice at the time of sentencing . . . afford[s] defendants the opportunity to clarify any conditions they may not understand and intelligently to exercise the right to reject probation granted on conditions deemed too onerous.” (*Bravo, supra*, 43 Cal.3d at p. 610, fn. 7.)

We further note that 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 the pet probation condition. 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, 622-625 [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 further note that defendant’s probation conditions required him to submit to a search of his residence at any time. We believe knowledge of pets is a prerequisite to the search condition, which allows a probation officer to make sure that defendant is complying with his probation conditions and is not reoffending. (See *Bravo, supra*, 43 Cal.3d at p. 610 [holding that probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers].) Notification of pets implies a probation officer’s authority to exclude certain pets or direct the care of the pet

(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.

In sum, the pet probation condition is valid, as it protects the probation officer and is reasonably related to defendant's future criminality.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

I concur:

RICHLI  
J.

MILLER, J., Concurring and dissenting.

I respectfully dissent from the majority's conclusion that the imposed pet probation condition is valid.

“A condition of probation will not be held invalid unless 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 . . . conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*People v. Lent* (1975) 15 Cal.3d 481, 486, fn. omitted.)

Probation condition No. 7 states that defendant must keep his probation officer informed of ownership of pets. This probation condition violates all three criteria set forth in *Lent*. The defendant's ownership of a pet has nothing to do with the crime of which he was convicted. Having a pet is not in itself criminal. Pet ownership is not indicative of or related to future criminality.

I clearly understand the majority's concern about the safety of probation officers. However, the probation condition in its current language is both unreasonable and overbroad. Does the pet condition encompass all pets or only certain pets that may pose a danger to a visiting probation officer? Could a defendant's probation be violated by failing to notify his or her probation officer of a new goldfish or hamster? Clearly, it would not, and if that is true, then, why not define the exact terms and limitations that are “really” being imposed by the probation condition. When violation of a probation term can lead to incarceration in state prison the defendant needs to be provided with proper notice of what conduct would constitute a violation.

Therefore, the trial court should have been ordered to modify probation condition No. 7 to include language that addresses concerns related to ownership of dangerous animals.

MILLER  
J.