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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. ENRIQUE GARCIA LOPEZ, Defendant and Appellant.	E039251 (Super.Ct.No. FSB051759) OPINION

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

Beatrice C. Tillman, under appointment by the Court of Appeal, and David K. Rankin 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.

Pursuant to a plea agreement, defendant pleaded guilty to unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)). In return, defendant was granted three years of supervised probation on various terms and conditions. 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 invalid. We agree and will modify that probation term.

1. Factual Background[1]

On August 25, 2005, police officers were conducting a "[b]ait car operation." A bait car was parked along a street while police officers in an unmarked vehicle were observing it about a block away. Defendant walked by the bait car a few times and then entered the car through the driver's door and drove the car away. Defendant was stopped about a mile away from the original location and arrested.

2. Discussion

At sentencing, the trial court granted defendant three years probation on various terms and conditions, including serving 180 days in local custody and condition No. 8, which provides: "Keep 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."

[1] The factual background is taken from the probation report.

Defense counsel objected to the inclusion of the term "pets" of this condition on the grounds that it was vague and overbroad. The court overruled the objection.

Defendant argues this condition should be modified or stricken as it is unreasonable, improper, overbroad, and vague. We agree.

"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, fn. omitted, abrogated by Proposition 8 on another ground as recognized in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-292.)

The probation condition here requiring defendant to keep his probation officer informed of any pets violates all three criteria set forth in *Lent*. Defendant's ownership or contact with a pet of any kind had 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.

The People argue the condition is directly related to the probation officer's ability to effectively and safely supervise defendant. The sole support on the point is that, "[k]nowledge of [defendant's] residence, of others living in the residence and of any pets in the residence, can be crucial to a probation officer in supervising [defendant], as such knowledge is particularly important in maintaining the safety of the probation officer during any unscheduled visits to [defendant's] residence."

The People never explain, however, how knowledge about defendant's pets, if any, could improve the probation officer's ability to supervise defendant. We can only infer that the concern apparently addressed is whether defendant might have a dangerous animal, such as a vicious attack dog, at his residence. It is already unlawful to keep vicious or dangerous animals, however, and defendant's probation conditions already require him to violate no law. (See Food & Agr. Code, § 31601 et seq.; Pen. Code, § 399.)

As noted, the offense of which defendant was convicted had nothing to do with any pets. He stole a car. The ownership of pets is a lawful activity; indeed, "the harboring of pets" has been recognized as "an important part of our way of life . . . ." (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 514; accord, *Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 163.)

Whether defendant owns a pet is not reasonably related to his future criminality. It is true, however, that if defendant were to acquire a vicious or dangerous animal like a pit bull, rottweiler or other dangerous animal, it would unduly hamper parole or probation supervision, the purpose of which is to prevent future criminality. A probation condition narrowly tailored to require notice of such animals is therefore appropriate.

3. Disposition

We remand the case to modify the probation condition No. 8 to strike the reference to pets in general but to add a new condition prohibiting defendant from

owning a rottweiler, pit bull, or similar dangerous animal. In all other respects, the judgment is affirmed.

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s/Gaut
J.

I concur:

s/Miller
J.

Richli, J.

I must respectfully dissent. While pet ownership is not, in itself, criminal, nor particularly related to possession of methamphetamine, it *is* reasonably related to the supervision of a probationer, and hence to his or her 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.[1]

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

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[1] 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 either defendant's argument or the majority's opinion.

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* (1995) 10 Cal.4th 1114, 1121, quoting *People v. Welch* (1993) 5 Cal.4th 228, 234, quoting *People v. Warner* (1978) 20 Cal.3d 678, 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 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. The majority even concedes that "[i]t is true, however, that if

defendant were to acquire a vicious or dangerous animal like a pit bull, rottweiler or other dangerous animal, it would unduly hamper parole or probation supervision, the purpose of which is to prevent future criminality." (Maj. opn., *ante*, at p. 4.) Thus, the majority concedes that defendant could be forbidden to keep a vicious dog. (*Ibid*.)

However, while some pets are so innocuous that they could not possibly interfere with a probation officer's performance of his or her duties (see, e.g., <http://www.cuteoverload.com>, as of September 12, 2006), 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.)

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.

But 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 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.

Significantly, defendant does not challenge the probation condition that required him to keep the probation officer informed of his cohabitants. The majority 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. (Maj. opn., *ante*, at pp. 3-4.) 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. All that is necessary is that the condition be reasonable under all the circumstances. This condition here meets this requirement.

"[A] probation condition also may be challenged as excessively vague." (*In re Byron B.*, *supra*, 119 Cal.App.4th at p. 1018.) Defendant may suggest that he could be found to have violated his parole by failing to give written notice 24 hours before the death of a pet. I refuse to believe that any court of this state would interpret the condition so as to require the impossible.

RICHLI
Acting P.J.