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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.

RAFAEL EPIFANIO SALAS,

Defendant and Appellant.

E040791

(Super.Ct.No. FSB054282)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith,
Judge. Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Appellant and defendant Rafael Epifanio Salas pled guilty to one count of possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) The court granted probation for a period of three years, subject to certain terms and conditions. On appeal, defendant argues that some of the probation conditions are invalid and unconstitutional as applied to him. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Police officers observed defendant in an area known for drug trafficking. They were familiar with him, so they made contact with him. An officer asked him if he had anything illegal on him, and defendant said no. Defendant gave the officer permission to search him. The officer found six bindles of methamphetamine and \$40 in defendant's pocket. Defendant admitted he was selling the methamphetamine to pay for a motel room.

Defendant was charged with possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) He entered a plea agreement and agreed to plead guilty in exchange for a grant of probation for three years under certain conditions. At the sentencing hearing, defense counsel objected to some of the probation conditions recommended in the probation report. Probation condition No. 7 (the pet probation condition) 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.” Defense counsel objected to the term “pets” as unconstitutional, overbroad,

¹ The facts are taken from the probation officer's report.

and vague. He argued that the term was vague because it included pets like goldfish, and it required defendant to give the probation officer 24-hour advanced notice of the death of a pet, which would be impossible. The court replied, "I think there is an element of reasonableness. I think knowledge of any pets on the residence is important for the protection of probation officers as well as the defendant and the pets." The court imposed the condition unmodified.

Defense counsel also asked the court to strike standard gang-related probation conditions because, although defendant admitted he was a gang member, the current offense was unrelated to his gang membership. The court struck four of the terms, but imposed the following conditions:

"21) Be inside your place of residence every evening by 11:00 pm and not leave said residence before 6:00 am unless there is a verifiable family emergency or you are traveling to or from a place of employment or school.

"22) Report to the local police agency gang detail with a copy of your terms and conditions and show proof to the probation officer within fourteen (14) days from today[']s date or release from custody.

"23) You shall not be on any school campus or within a one block radius of any school campus unless enrolled there, or with prior administrative permission from school authorities.

"24) Do not possess or have under your control any aerosol paint containers, permanent markers or etching devices."

ANALYSIS

I. The Pet Probation Condition is Valid

Defendant argues that the pet probation condition is invalid because it is overbroad. We disagree.²

Trial courts have broad discretion to set conditions of probation in order to “foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see Pen. Code, § 1203.1, subd. (j).)³ “If it serves these dual purposes, a probation condition may impinge upon a constitutional right otherwise enjoyed by the probationer, who is ‘not entitled to the same degree of constitutional protection as other citizens.’ [Citation.]” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624 (*Lopez*).) However, the trial court’s discretion in setting the conditions of probation is not unbounded. “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*).) A probation condition 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.)

² The issue is presently pending before the Supreme Court. (*People v. Olguin*, review granted Mar. 21, 2007, S149303; *People v. Lopez*, review granted Mar. 21, 2007, S149364.)

³ All further statutory references are to the Penal Code unless otherwise indicated.

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 is reasonably related to future criminality. We agree.

Defendant's probation conditions required him to "[s]ubmit to a search . . . of [his] . . . residence . . . at any time of the day or night" A pet can enable defendant to conceal 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.

Significantly, defendant does not challenge the portion of the same probation condition that required him to keep the probation officer informed of his cohabitants. Notification of cohabitants is imposed in order to ascertain whether the probationer is associating with people who would negatively affect his rehabilitation. (See *Lopez, supra*, 66 Cal.App.4th at pp. 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. Defendant does not seem to think this condition had to be more narrowly drawn so as to

require defendant to report only cohabitants who were drug users or dealers. 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.

Defendant suggests that he could be found to have violated his probation by failing to give notice 24 hours before the death of a pet. However, as stated by the trial court, a probation term should be given “the meaning that would appear to a reasonable, objective reader.” (*People v. Bravo* (1987) 43 Cal.3d 600, 606-607.) No reasonable court of this state would interpret the condition so as to require the impossible, such as reporting the death of a pet 24 hours in advance.

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

II. The Gang-Related Probation Conditions Were Properly Imposed

Defendant contends that the gang-related conditions must be stricken because they violate all three of the *Lent* criteria. The People concede that the gang-related conditions do not meet the first two *Lent* criteria, but argue that the conditions are valid because they are reasonably related to future criminality. We agree.

“Prohibitions against a variety of gang-related activities have been upheld when imposed upon juvenile offenders. [Citations.]” (*Lopez, supra*, 66 Cal.App.4th at p. 624.) “[P]robation terms have been approved which bar minors from being present at gang gathering areas, associating with gang members, and wearing gang clothing. [Citation.]” (*Ibid.*) “Because ‘[a]ssociation with gang members is the first step to involvement in gang activity,’ such conditions have been found to be ‘reasonably designed to prevent

future criminal behavior.’ [Citation.]” (*Ibid.*) Furthermore, “probationary proscriptions against gang-related conduct are equally proper when imposed upon adult offenders The path from gang associations to criminal gang activity is open to adults as well as to minors.” (*Id.* at p. 625.) Moreover, the federal courts “have found curtailments of an adult probationer’s associations with specified groups to be proper where such restrictions serve a rehabilitative purpose, even where the crime in issue was not shown to have been group related.” (*Ibid.*)

Defendant’s probation report disclosed that he admitted membership in the “First Street” gang. Furthermore, although the present conviction is defendant’s first adult felony, he has a history of juvenile offenses. He has sustained convictions for possession of a deadly weapon (§ 12020, subd. (a)(1)), battery (§ 242), possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), disorderly conduct (§ 647, subd. (f)), and vandalism (§ 594, subd. (b)(2)(a)). Although defendant is an adult, he was only 21 at the time of sentencing. Even though the current crime was apparently not gang-related, defendant’s age, gang affiliation, and consistent pattern of criminal behavior warranted a conclusion by the court that his “disassociation from gang-connected activities was an essential element of any probationary effort at rehabilitation because it would insulate him from a source of temptation to continue to pursue a criminal lifestyle. [Citations.]” (*Lopez, supra*, 66 Cal.App.4th at p. 626.)

Specifically, condition No. 21 requires defendant to be inside his residence between 11:00 p.m. and 6:00 a.m. unless he has a family emergency, school, or work. It

is reasonable to assume that crimes occur between these hours. Thus, requiring defendant to be home during these hours is reasonably related to his future criminality.

Condition No. 22 requires defendant to report to the local police agency gang unit and provide them with a copy of his probation conditions. This requirement would allow the local police to be aware of defendant's probation status and help his probation officer ensure his compliance with his probation conditions. Thus, this condition is reasonably related to future criminality.

Condition No. 23 prohibits defendant from being on or near a school campus without being enrolled or having permission from school authorities. Schools contain young persons of an age that typically engage in gang activity. Therefore, restricting defendant from schools is reasonably related to deterring future crime. Defendant argues that this condition restrains his freedom of movement.

However, "the right of free movement is not absolute and may be reasonably restricted in the public interest." (*In re White* (1979) 97 Cal.App.3d 141, 149.) Moreover, "a probation condition which infringes a constitutional right is permissible where it is "necessary to serve the dual purpose of rehabilitation and public safety." [Citations.]" (*People v. Peck* (1996) 52 Cal.App.4th 351, 362.) This condition serves both purposes.

Condition No. 24 prohibits defendant from possessing aerosol paint, markers, or etching devices—materials used by gang members to mark their territory or vandalize property. This condition is reasonably related to future criminality since it helps defendant to disassociate himself from gang-related activities.

In sum, defendant's admitted membership in a gang and his criminal history support the court's implied finding that his gang association may deter him from successfully completing probation. The gang-related conditions promote the goals of rehabilitation and public safety by forbidding conduct reasonably related to future criminality, and are thus valid. (*Lopez, supra*, 66 Cal.App.4th at p. 626.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P.J.

RICHLI
J.