

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ISMAEL VENCES,

Defendant and Appellant.

E040343

(Super.Ct.No. FSB052947)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. W. Robert Fawke, Judge. Affirmed in part and reversed in part with directions.

Carmela F. Simoncini, 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, Barry Carlton, Supervising Deputy Attorney General, and Marissa Bejarano, Deputy Attorney General, for Plaintiff and Respondent.

Appellant and defendant Ismael Vences pled guilty to unlawfully taking or driving a vehicle under Vehicle Code section 10851, subdivision (a). The trial court sentenced defendant to 180 days in jail, and placed him on three years' felony probation. On appeal, defendant contends that one of the probation conditions is invalid and unconstitutional. We agree.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

On November 4, 2005, a police officer saw defendant driving a vehicle which had been reported as stolen earlier that day. As the officer initiated a traffic stop, defendant pulled into a driveway and fled on foot. The officer contacted the owner, who confirmed that defendant did not have permission to drive the vehicle.

When defendant was arrested, he indicated that he fled because he knew the vehicle was stolen and because he did not have a driver's license. The officer found a methamphetamine pipe in his pants pocket.

Defendant was charged with unlawfully driving a motor vehicle without an owner's permission under Vehicle Code section 10851, subdivision (a) (count 1), receiving a stolen vehicle under Penal Code section 496d, subdivision (a) (count 2), and possessing an opium pipe under Health and Safety Code section 11364, subdivision (a) (count 3).

Defendant entered into a negotiated plea agreement. Defendant pled guilty to count 1. In exchange: (1) defendant would be placed on probation and ordered to serve

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

180 days in county jail; (2) the People agreed to dismiss the remaining charges; and (3) defendant was released from custody with a waiver under *People v. Cruz* (1988) 44 Cal.3d 1247.

On April 20, 2006, the trial court suspended imposition of judgment and placed defendant on three years' formal probation. Defendant was ordered to serve 180 days in local custody. Defendant was ordered to report to a drug rehabilitation center, his driving privileges were revoked, and he was ordered, among other things, 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 pet probation condition. The trial court overruled the objection. Defendant appeals.

II. ANALYSIS

The Pet Probation Condition is Overbroad

Defendant contends that probation condition No. 7, that required him to give 24-hour notification to any changes in ownership of pets, is invalid.

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).) "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.)

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.) A condition of probation must satisfy all three requirements before it may be declared invalid. (*People v. Wardlow* (1991) 227 Cal.App.3d 360, 365-366.)

The pet probation condition here violates all three criteria set forth in *Lent*.

First, defendant's ownership or contact with a pet of any kind has nothing to do with the crime of which he was convicted. Here, defendant pled guilty to unlawfully taking or driving a vehicle. There is no indication in the record that a pet was present at the time of the crime or had anything to do with defendant's actions.

Second, having a pet is not in itself criminal.

Third, pet ownership, of itself, is not indicative of or related to future criminality. Defendant did not commit any crime relating to ownership of or access to any animals and there is no basis upon which to anticipate that defendant would commit such a crime in the future.

The People argue that the condition is valid because "it is reasonably related to future criminality, the third *Lent* standard." The sole argument on the point is that "[t]he probation condition at issue helps insure that a probation officer can safely conduct his supervisory visits at [defendant's] residence. As a pet itself can be a 'weapon,' knowledge of any pets in [defendant's] residence can be crucial to insuring a probation

officer's safety in supervising [defendant's] compliance with the other conditions of probation.”

The concern, it appears, is whether defendant might have a dangerous animal at his residence. The People state that “knowing whether a defendant keeps snakes as pets . . . would assist an officer when conducting a search of a probationer's closet or under a bed for probation violations such as being in the possession of weapons or drugs.”

The purpose of officer safety, to permit the probation officer to reasonably supervise defendant so as to prevent future criminality, as by conducting visits to the residence or probation searches without interference from dangerous animals, is not met by the condition imposed. Stated another way, the pet probation condition here is overbroad and not reasonably tailored to meet the objective for which it has been imposed.

To the extent there exists a legitimate and justifiable concern as to the safety of individuals conducting a probation search, the condition must be narrowed to deal with dogs and/or animals which pose a foreseeable risk of injury to persons entering the premises.

The present condition relating to all pets without limitation, is overbroad.

III. DISPOSITION

The trial court is directed to strike the reference to “pets” in probation term No. 7. The trial court may, however, modify the terms of probation to include a condition narrowly tailored to address legitimate concerns about dogs and/or animals which pose a

foreseeable risk of injury to probation officers when they conduct home visits. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Miller
J.