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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ADIEL JUAREZ-
VICTORIA,

Defendant and Appellant.

2d Crim. No. B326443
(Super. Ct. No. 22CR03660)
(Santa Barbara County)

Jose Adiel Juarez-Victoria was convicted, by jury, of assault with the intent to commit sexual penetration (Pen. Code, § 220)¹, misdemeanor battery (§ 242), and misdemeanor false imprisonment. (§ 236.) The trial court suspended execution of judgment and placed appellant on probation for four years. He challenges one probation condition as unconstitutionally overbroad, three conditions as unconstitutionally vague, and

¹ All statutory references are to the Penal Code unless otherwise stated.

another as impermissibly delegating discretion to the probation officer. We affirm.

Facts

In the early morning hours of May 19, 2022, Jane Doe, a college student, walked alone several blocks to her apartment. As she walked past an Amtrak station, appellant approached her and spoke to her in Spanish, which Jane Doe did not understand. Appellant used a translation application on his cell phone to tell Doe that she was beautiful and should come home with him. Appellant grabbed Doe's arm, shoulders and waist. She pushed him away and told him that she just wanted to go home.

Appellant prevented Doe from leaving and pushed her against a wall. He tried to kiss her and succeeded in touching her breasts and buttocks under her clothing. Doe told him to stop. He told her not to move and to be quiet. After moving Doe to another wall, appellant held her firmly and pressed her face first against the wall. Doe continued to say no and ask appellant to stop; she could not move. Appellant refused to stop touching her. He pushed her pants down and touched her vagina. Doe told him to stop, tried to push back against him and tried to move his hand away.

Doe was able to free herself at some point and pulled up her pants. At about the same time, she saw a white car pull into a nearby parking lot. The driver of that car was appellant's cousin. He saw the two arguing and stopped to ask what was going on. Doe stated that she wanted to go home alone. Appellant urged her to stay or to go home with him. Finally, he allowed Doe to leave, although he said that he wanted to

accompany her home. Doe walked home in a way that the men could not see where she was heading.

When Doe got back home, she called police. She gave a statement but did not want to submit to a sexual assault examination. Swabs taken by the police from her person were tested for DNA. Analysis of a DNA sample taken from Doe's right breast revealed appellant's DNA.

Appellant testified that their entire encounter was consensual. When she asked him to stop, he did. He did not try to stop her from walking away.

Procedural History

Appellant was charged with assault with intent to commit rape (§ 220), forcible sexual penetration with a foreign object (§ 289, subd. (a)(1)(A)), sexual battery by restraint (§ 243.4, subd. (a)), and false imprisonment by violence. (§ 236.) The jury acquitted appellant of the assault charge and found him guilty of three lesser included offenses: assault with the intent to commit sexual penetration (§ 220), misdemeanor battery (§ 242), and misdemeanor false imprisonment. (§ 236.)

The trial court suspended imposition of sentence and granted appellant probation on several conditions. Appellant received credit for 260 days in custody and 260 days of good conduct credit. He challenges six probation conditions on the grounds that they are overbroad, vague and delegate too much discretion to the probation officer.

Probation Condition 15 directs appellant to “[n]ot change place of residence . . . without the permission of the Probation Officer.” An addendum to the conditions of probation further instructs appellant, “Do not change your residence . . . without written approval of the Probation Officer.” Appellant

contends these conditions are overbroad in that they infringe on his right to travel and freedom of association.

Condition 11 in the addendum states, “Do not possess any sexually stimulating or sexually oriented material in any form, or receive or access any sexually oriented media, without the written approval of the probation officer, or patronize any adults-only establishment where such material or entertainment is available.” Appellant contends this condition is impermissibly vague.

Condition 17 requires appellant to “Maintain a standard of personal appearance that will not impede obtaining employment.” He contends this condition is also void for vagueness. Similarly, appellant contends that Condition 13 in the addendum is void for the same reason. This condition requires appellant to “Be responsible for your appearance, including the wearing of undergarments and appropriate clothing in public locations and when others are present.”

Finally, Condition No. 29 provides, “Enter and complete sex offender therapy as directed by the Probation Officer. Do not cease therapy until released by both the therapist and Probation Officer.”² Appellant contends this condition improperly delegates authority to the probation officer because it

² Appellant indicates he has no objection to the related Condition No. 5 in the addendum which requires him, “[a]t the direction of the probation officer and at your own expense, enroll in, actively participate in, and remain in sex offender treatment for a period [of] no less than one year. The length of the period in the program is to be determined by the certified sex offender management professional in consultation with the probation officer and as approved by the Court.”

excludes the trial court from any role in determining the duration of the therapy.

Respondent contends appellant has forfeited each contention because he did not object to the conditions in the trial court. Alternatively, respondent contends the conditions are not overbroad, void for vagueness or impermissibly delegating discretion to the Probation Officer.

Standard of Review

“Generally, trial courts are given broad discretion in fashioning terms of probation in order to foster the reformation and rehabilitation of the offender while protecting public safety. [Citation.] Therefore, we review the imposition of a particular condition of probation for abuse of that discretion. ‘As with any exercise of discretion, the court violates this standard when it imposes a condition of probation that is arbitrary, capricious or exceeds the bounds of reason under the circumstances. [Citation.]’ [Citation.]” (*People v. Arevalo* (2018) 19 Cal.App.5th 652, 656 (*Arevalo*).)

We review constitutional challenges under a different standard. “Whether a term of probation is unconstitutionally vague or overbroad presents a question of law, which we review de novo.” (*People v. Martinez* (2014) 226 Cal.App.4th 759, 765, disapproved on other grounds, *People v. Bryant* (2021) 11 Cal.5th 976, 988-989.)

Discussion

General Principles. Appellant challenges certain probation conditions on the ground that the conditions are overbroad, vague and delegate too much authority to the probation officer. A probation condition may be considered unconstitutionally overbroad “if it (1) “impinge[s] on

constitutional rights,” and (2) is not tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.” . . .” (*Arevalo, supra*, 19 Cal.App.5th at pp. 656-657.) A probation condition may curtail the exercise of constitutional rights, such as the right to travel or freedom of association, if the condition is carefully tailored and reasonably related to the probationer’s rehabilitation or to public safety. (*People v. Stapleton* (2017) 9 Cal.App.5th 989, 995-996 (*Stapleton*).) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights” (*Id.* at p. 993, quoting *In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

A probation condition may be unconstitutionally vague if it does not “give the probationer ‘fair warning’ of what is prohibited or required” to a reasonable degree of certainty. (*In re G.B.* (2018) 24 Cal.App.5th 464, 473.) The condition “‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated’” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890, quoting *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.) “[T]he relevant question is whether a person who wants to comply with the law can reasonably understand how to do so – not whether a person seeking to break the law can find some ambiguity in it.” (*People v. Holzmann* (2018) 18 Cal.App.5th 1241, 1245 (*Holzmann*).) We will not invalidate a condition as unconstitutionally vague “‘if any reasonable and practical construction can be given to its language.’” (*People v. Hall* (2017) 2 Cal.5th 494, 501 (*Hall*).)

A finding that a probationer has violated the conditions of his or her probation “typically requires proof that the probation violation was willful.” (*Hall, supra*, 2 Cal.5th at p. 498.) A probationer “who has possession, custody or control of contraband willfully violates probation where the probationer has knowledge of the contraband’s presence and its restricted nature, regardless of whether the item is criminal in itself, or merely related to criminality.” (*Id.* at p. 499.) This is true regardless of whether the probation condition includes an express knowledge or willfulness requirement. “California case law already articulates not only a general presumption that a violation of a probation condition must be willful, but also specifically provides that probation conditions barring possession of contraband should be construed to require knowledge of its presence and its restricted nature.” (*Id.* at p. 501.)

Forfeiture. As an initial matter, we reject respondent’s contention that appellant forfeited review of his claims by failing to object in the trial court. Where a challenge to a probation condition on the ground of unconstitutional overbreadth or vagueness presents a “pure question of law,” the forfeiture rule does not apply because that error “is capable of correction without reference to the particular sentencing record developed in the trial court” (*In re Sheena K., supra*, 40 Cal.4th at p. 887; see also *People v. Smith* (2022) 79 Cal.App.5th 897, 901 (*Smith*) [facial constitutional challenge to probation condition “may be considered for the first time on appeal because it does not depend on the underlying factual record”].)

Residency. Appellant challenges as overbroad two conditions that require him to obtain the written approval of his probation officer before changing his place of residence. He

contends the residency condition infringes on his right to travel and on his freedom of association. We disagree.

Appellant's sexual assault of Jane Doe occurred within walking distance of her home. The residency condition is reasonably related to enforcement of another probation condition that requires appellant to avoid any contact with Jane Doe. It will also help to protect Jane Doe's safety by making it less likely that appellant moves even closer to her residence. (*Stapleton, supra*, 9 Cal.App.5th at p. 996.) In addition, the condition provides information that is useful for effective supervision by ensuring that appellant's probation officer is always apprised of where he lives. (*People v. Moran* (2016) 1 Cal.5th 398, 406 ["probation officers' awareness of probationers' whereabouts facilitates supervision and rehabilitation and helps ensure probationers are complying with the terms of their conditional release"].) Because the residency conditions are carefully tailored to public safety, they are not unconstitutionally overbroad. (*Stapleton, supra*, at pp. 995-996.)

Sexually Oriented Material. Condition 11 of the addendum provides that appellant may not "possess any sexually stimulating or sexually oriented material in any form, or receive or access any sexually oriented media, without the written approval of the probation officer, or patronize any adults-only establishment where such material or entertainment is available." Appellant contends the condition is unconstitutionally vague because it fails to give him sufficient notice as to what is prohibited and does not require knowing possession of prohibited material.

Probation conditions are not expected to achieve "absolute clarity" in describing conduct that is prohibited or

required. (*Hall, supra*, 2 Cal.5th at p. 503.) Instead, the vagueness doctrine “demands “no more than a reasonable degree of certainty.”” (*Ibid.*)

People v. Pirali (2013) 217 Cal.App.4th 1341, considered a probation condition forbidding the probationer from purchasing or possessing “pornographic or sexually explicit materials as defined by the probation officer.” (*Id.* at p. 1352.) The Court of Appeal held this condition “does not sufficiently provide defendant with advance knowledge of what is required of him. The fact that the probation officer may deem material sexually explicit or pornographic after defendant already possesses the material would produce a situation where defendant could violation his probation without adequate notice.” (*Ibid.*) It concluded, however, that the condition would pass constitutional muster if modified to include a knowledge requirement. (*Ibid.*) The court modified the condition to state, “You’re ordered not to purchase or possess any pornographic or sexually explicit material, having been informed by the probation officer that such items are pornographic or sexually explicit.” (*Id.* at p. 1353.)

Similarly, *People v. Turner* (2007) 155 Cal.App.4th 1432, held impermissibly vague a probation condition that the probationer not “possess any sexually stimulating/oriented material deemed inappropriate by the probation officer and/or patronize any places where such material or entertainment is available.” (*Id.* at p. 1435.) The court concluded that the phrase “deemed inappropriate by the probation officer” was an “inherently imprecise and subjective standard.” (*Id.* at p. 1436.) To address this shortcoming, the court modified the condition to prohibit the probationer from possessing, “any sexually

stimulating/oriented material having been informed by the probation officer that such material is inappropriate and/or patroniz[ing] any places where such material or entertainment in the style of said material are known to be available.” (*Ibid.*) As modified, the court concluded, the condition was not unconstitutionally vague. (*Id.* at pp. 1436-1437.)

The probation condition at issue here does not depend on a probation officer’s judgment that material is “sexually stimulating or sexually oriented.” Instead, it prohibits the possession of sexually stimulating or sexually oriented material “without the written approval of the probation officer.” In that regard it is distinguishable from the conditions at issue in *Pirali* and *Turner*. In our view, the terms “sexually stimulating” and “sexually oriented” are sufficiently clear to provide appellant with fair warning of the type of material he may not access or possess.

The condition also does not include an express knowledge requirement. However, as our Supreme Court held in *Hall, supra*, 2 Cal.5th 494, this circumstance does not necessarily render it unconstitutionally vague. As a general rule, “knowledge of the contraband’s presence and of its restricted nature is implicit in probation conditions restricting [contraband]” (*Id.* at p. 502.) A condition restricting the possession of sexually stimulating or sexually oriented material should be construed no differently. It is properly read as prohibiting appellant from knowingly possessing any prohibited materials without the written approval of his probation officer. (*Id.* at p. 503.) As the court held in *Hall*, “Because no change to the substance of [the] condition would be wrought by adding the word ‘knowingly,’ we

decline [appellant's] invitation to modify those conditions simply to make explicit what the law already makes implicit.” (*Ibid.*)

Appearance Standards. Probation Condition 17 requires appellant to “Maintain a standard of personal appearance that will not impede obtaining employment.” Similarly, Condition 13 in the addendum requires appellant to “Be responsible for your appearance, including the wearing of undergarments and appropriate clothing in public locations and when others are present.” Appellant contends these conditions are vague because they do not define the sort of appearance that would impede employment nor do they specify the aspects of his appearance to which they apply. He argues it is not clear whether the conditions apply to jewelry, body piercings, tattoos, hairstyles or clothing. We are not persuaded.

As we have noted, a probation condition will not be found unconstitutionally vague if it is “sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated’” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) A probation condition may limit freedoms enjoyed by law-abiding citizens, such as the freedom to control one’s physical appearance or to dress as one pleases, so long as the limitations are related to criminal conduct or future criminality. (*People v Olguin* (2008) 45 Cal.4th 375, 379-380.) The Constitution demands only a reasonable degree of certainty in the language of the probation condition. (*Hall*, *supra*, 2 Cal.5th at p. 500.) “A probation condition ‘should not be invalidated as unconstitutionally vague ““if any reasonable and practical construction can be given to its language””’ or if its terms may be made reasonably certain by reference to ““other

definable sources.””” (*People v. Rhinehart* (2018) 20 Cal.App.5th 1123, 1129 (*Rhinehart*).)

We conclude the conditions are not unconstitutionally vague because a reasonable person who is interested in complying with the law can be expected to understand how to dress to avoid public indecency. (*Holzmann, supra*, 18 Cal.App.5th at p. 1245; *Rhinehart, supra*, 20 Cal.App.5th at p. 1129.) Similarly, a person who wants to comply with the conditions can reasonably be expected to understand the types of clothing, tattoos and body modifications that would impede a person from obtaining employment. Further specificity is not required.

Sex Offender Treatment. The conditions of appellant’s probation require him to “enter and complete sex offender therapy as directed by the Probation Officer,” and to continue in therapy “until released by the therapist and Probation Officer.” He contends this condition violates separation of powers because it excludes the trial court from any role in determining the propriety and duration of that therapy.

“Under the separation of powers doctrine [citation], judicial powers may not be delegated to nonjudicial officers. [Citation.] While the probation officer may properly specify the details necessary to effectuate the court’s probation conditions, it is the court’s duty to determine the nature of the requirements imposed on the probationer.” (*Smith, supra*, 79 Cal.App.5th at p. 902.) “Given the significant liberty interests at stake, a court – not a probation officer – must make the decision to require a defendant to attend residential treatment.” (*Id.* at p. 903.)

Here, the trial court itself ordered appellant to participate in therapy. The probation conditions leave the details

and duration of that therapy to the discretion of the probation officer. Under *Smith*, this condition does not violate separation of powers. (*Smith, supra*, 79 Cal.App.5th at p. 902; see also *In re Victor L.* (2010) 182 Cal.App.4th 902, 919.)

Conclusion

We conclude that each of the challenged conditions must be read to include a knowledge or willfulness requirement. Accordingly, the judgment is affirmed.

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YEGAN, Acting P. J.

We concur:

BALTODANO, J.

CODY, J.

Brian E. Hill, Judge

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