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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROLAND WILLIAM DIECK,

Defendant and Appellant.

C052606

(Super. Ct. No.  
05F169)

After defendant Roland William Dieck pled no contest to receiving stolen property and possession of marijuana, the trial court granted him probation with 365 days in county jail. On appeal, defendant contends: (1) the trial court erred when it did not award him conduct credit under Penal Code section 4019<sup>1</sup> for five days he served in jail prior to sentencing and (2) the probation condition that requires defendant not to be in any

place where illegal substances are present should be amended to include a knowledge element.

We reject defendant's first argument because section 4019, subdivision (e) precludes awards of conduct credit when a defendant has served less than six days in jail. As to defendant's second argument, we modify the probation condition to include a knowledge element.

#### PROCEDURE

Defendant was charged with the following counts:

(1) receiving stolen property in violation of section 496, subdivision (a); (2) cultivation of marijuana in violation of Health and Safety Code section 11358; and (3) felon in possession of a firearm in violation of section 12021 subdivision (a)(1).

Defendant pled no contest to receiving stolen property and possession of marijuana (Health & Saf. Code, § 11357, subd. (a)), a lesser included offense of cultivation of marijuana. In return, defendant was to receive probation with county jail time.

After hearing sentencing recommendations from the district attorney and probation officer, the court imposed the middle

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

term of two years for receiving stolen property and imposed a consecutive one-third of the middle term for possession of marijuana, for a total prison term of two years eight months. The court then suspended that sentence and placed defendant on formal probation for five years, with a condition that he serve 365 days in county jail. Also as a condition of probation, the court required that defendant not be "in any place where any illegal substance is present." Defendant was in jail for five days prior to sentencing, and the court granted him credit for those five days, with no conduct credit.

#### STATEMENT OF FACTS

Pursuant to a search warrant, sheriff deputies found in defendant's residence a set of Bavarian china, porcelain dolls, and other figurines, all of which matched the description of property stolen from defendant's neighbor's house. Police also discovered in defendant's residence a "grow room" containing 46 marijuana plants.

#### DISCUSSION

##### I

##### *Conduct Credit*

Defendant claims that the trial court should have granted him an additional two days of conduct credit generated by his five days in actual custody. He bases this claim on section 4019, subdivision (f). That provision states, "a term of six

days will be deemed to have been served for every four days spent in actual custody." (§ 4019, subd. (f).)

However, defendant ignores subdivision (e) of the same section. Subdivision (e) states, "No deduction may be made under this section unless the person is committed for a period of six days or longer." (§ 4019, subd. (e).) The specific provision that a defendant will not receive conduct credit for presentence time less than six days prevails over the general provision that a defendant will receive six days of credit for each four actual days served. (See *People v. Betts* (2005) 34 Cal.4th 1039, 1058 [specific provision prevails over general].)

"If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls. [Citation.]' [Citation.]" (*Templeton Development Corp. v. Superior Court* (2006) 144 Cal.App.4th 1073, 1081.) Here, the applicable language is not ambiguous, and defendant does not argue otherwise; therefore, the plain meaning of section 4019 subdivision (e) controls.

Defendant was in county jail for five days, a period of time shorter than six days. Thus, defendant was not entitled to any conduct credit. The trial court did not err when it did not grant defendant conduct credit for serving only five days in jail.

## II

### *Knowledge Element*

A condition of defendant's probation states that "[d]efendant shall not be in any place where any illegal substance is present." Defendant argues that as written, this condition is unconstitutionally vague and overbroad. He claims that it would subject him to a probation violation for being in a place where illegal substances are present, even if he does not know about the illegal substances. Defendant thus requests that the probation condition be modified to include a knowledge element. The Attorney General concedes the condition must be modified. We agree.

When a probation condition affects constitutional rights, it must be narrowly drawn to reasonably relate to a compelling state interest. (*People v. Garcia* (1993) 19 Cal.App.4th 97, 101-102.) In *Garcia*, the court held that a probation condition prohibiting the defendant from associating with felons and drug dealers was not narrowly drawn because it included persons not known to the defendant to be felons or drug users. (*Id.* at p. 102.) The court stated, "A condition of probation that prohibits appellant from associating with persons who, unbeknownst to him, have criminal records or use narcotics, is "overbroad [and therefore] is not reasonably related to a compelling state interest in reformation and rehabilitation and

is an unconstitutional restriction on the exercise of fundamental constitutional rights.”’ [Citation].” (*Id.* at p. 102.) For a probation condition prohibiting association with drug users to be valid, it must preclude the probationer from associating with *known* users. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629, 638.)

Similarly, the validity of a condition forbidding a probationer from being anywhere that illegal substances are present depends on the probationer knowing that the forbidden substances are present. Here, because the probation condition restricts defendant from being in a place where illegal substances are present, even if he is unaware of the illegal substances, we must modify the condition to include a knowledge element.

#### DISPOSITION

The probation condition is modified to read as follows: “Defendant shall not be in any place where he knows any illegal substance is present.” As it appears the trial court listed defendant’s first name as “Ronald” instead of “Roland” in its order, the trial court is directed to correct defendant’s name in the order of probation. The trial court is also directed to

send a copy of the amended order of probation to the probation department. As modified, the judgment is affirmed.

NICHOLSON, Acting P.J.

We concur:

MORRISON, J.

CANTIL-SAKAUYE, J.