

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

STEVEN GURROLA,

Defendant and Appellant.

E041043

(Super.Ct.No. FSB056588)

OPINION

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

Gregory Marshall, under appointment by the Court of Appeal, for Plaintiff and
Respondent.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, 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.

Defendant pled guilty to one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and was granted three years of supervised probation on the condition, inter alia, that he keep his probation officer informed of his household pets and “give written notice twenty-four (24) hours prior to any changes.” He here contends that this condition is invalid.¹

FACTS

Defendant threatened his sister and father with something like a police officer’s baton and threatened to destroy his sister’s computer and other items in the home. Defendant said he was on methamphetamine at the time.

ISSUE AND DISCUSSION

A term of probation is invalid 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.” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624, internal quotation marks omitted.) All three factors must be present in order for the condition to be invalid. (*People v. Wardlow* (1991) 227 Cal.App.3d. 360, 365-366.) While we agree with defendant that this condition was not related to the crime for which he was convicted and it involves conduct which is not itself criminal, we disagree with him that it is not reasonably related to future criminality. In fact, it is reasonably related to his supervision by his probation

¹ We note that this issue is currently pending before the Supreme Court. (*People v. Olguin* (Dec. 15, 2006, E039342) review granted Mar. 21, 2007, S149303; *People v. Lopez* (Nov. 30, 2006, E039251) review granted Mar. 21, 2007, S149364.)

officer, and, therefore, to his future criminality. Recent research suggests that more intensive supervision can reduce recidivism. (*Griffin v. Wisconsin* (1987) 483 U.S. 868.) 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.)

Defendant’s probation officer or other law enforcement officers may need to visit his home unannounced. Another of defendant’s probation conditions requires him to “[s]ubmit to a search . . . of [his] . . . residence . . . at any time of the day or night” Awareness of what animals are in the defendant’s home is reasonably related to officer safety. Animals can be unpredictable, particularly when confronted by a stranger in what they consider to be their own territory and the searchers are entitled to some protection against undue surprise. Searchers may be needlessly surprised by the presence of even so-called “nondangerous pets.”²

In his reply brief, defendant, for the first time in his appeal, contends that the condition is overbroad because it limits his constitutional rights and the limitation is not closely related to the purpose of the condition. (*See People v. Harrison* (2005) 134 Cal.App.4th 637, 641.)³ He asserts that the constitutional rights involved in having a pet

² We cannot fathom a sentencing court attempting to define, when fashioning a probation condition, what constitutes a “dangerous pet.” (*See People v. Knoller* (May 31, 2007, S134542)___Cal.App.4th___[2007 D.A.R. 7781].)

³ Of course, there is no constitutional right to keep a pet. (*See Nahrstedt v. Lakeside Village Condominium Assoc.* (1994) 8 Cal.4th 361, 388.)

without notifying his probation officer are the rights to liberty, privacy and association. We fail to see how defendant, who has, as further conditions of his probation, agreed not to associate with criminals and drug users, to have his home and person searched at any time and be drug tested and to notify his probation officer of co-habitants, has any independent rights of liberty, privacy and association in keeping pets *without informing his probation officer*.

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. (See *People v Carbajal* (1995) 10 Cal.4th 1114, 1121.) It is not unreasonable to put the burden on the defendant to inform his probation officer what animals are in his home. The probation officer or other law enforcement officers can then decide what precautions to take if they need to enter the home. The challenged condition does not prevent defendant 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 within the bounds of reason.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P.J.

I concur:

RICHLI

J.

KING, J., Dissenting.

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 assault with a deadly weapon. 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 contend the condition is valid because it is reasonably related to future criminality. The argument on the point is that the 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. Knowing whether a defendant keeps dangerous animals as pets would assist an officer when conducting a search of a probationer's residence 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 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.

Two cases mention a condition of parole (not probation) involving pets, where the condition is related to officer safety. *United States v. Crew* (D.Utah 2004) 345 F.Supp.2d 1264 refers to a defendant's release on parole, including as a parole condition: "4. HOME VISITS: I will permit visits to my place of residence by agents of Adult Probation and Parole for the purpose of ensuring compliance with the conditions of my parole. I will not interfere with [this] requirement, *i.e.* having vicious dogs, perimeter security doors, refusing to open the door, etc." *United States v. Pyeatt* (D.Utah, June 15, 2006, 2:05-CR-890 TC) 2006 U.S.Dist. Lexis 40337 referred to an identical parole condition.

The genuine concern to be addressed by the probation condition, as suggested by the parole conditions in *Crew* and *Pyeatt*, is whether a probation officer making a home visit or conducting a probation search will be able to do so without being at risk from a dangerous animal, such as a vicious dog. The probation condition here is not tailored to meet that objective, or the objective of allowing the officer to approach the residence unannounced. "A probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition." (*People v. Harrison* (2005) 134 Cal.App.4th 637, 641, citing *In re White* (1979) 97 Cal.App.3d 141, 146 ["... The Constitution, the statute, all case law, demand and authorize only "reasonable" conditions, not just conditions "reasonably related" to the crime committed." [Citation.] [¶] Careful scrutiny of an unusual and severe

probation condition is appropriate [citation].”) “[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.]” (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.) To the extent that the generic “pets” condition here is not tailored to meet that legitimate objective, it is not related to defendant’s offense or to his future criminality. It therefore fails to meet the test of reasonableness under *Lent* and is invalid.

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

I would therefore remand the case to modify probation condition No. 7 to strike the reference to pets in general but to add a new condition narrowed to deal with dogs and/or animals which pose a foreseeable risk of injury to persons entering the premises.

KING

J.