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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.

MATTHEW DANIEL HEYDEN,

Defendant and Appellant.

E041047

(Super.Ct.No. FSB056195)

OPINION

APPEAL from the Superior Court of San Bernardino County. John N. Martin,
Judge. Affirmed.

Larry L. Dixon, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Appellant and defendant Matthew Daniel Heyden pled guilty to second degree burglary (Pen. Code, § 459)¹ and identity theft. (§ 530.5, subd. (a).) The court granted probation for a period of three years, subject to certain terms and conditions. On appeal, defendant argues that one of the probation conditions is unconstitutional. He also argues that he is entitled to additional good conduct credits. The People concede that he should have been awarded more good conduct credits. Otherwise, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

On May 6, 2006, defendant was arrested, and he admitted to burglarizing two cars earlier that evening. Defendant said that he was the driver of a car, while his codefendant committed the vehicle burglaries. His codefendant claimed that while *he* (the codefendant) was driving, defendant got out of the car, smashed a car window, and stole two jackets from the car. The codefendant further stated that defendant later instructed him to pull over. Defendant got out of the car again, and, a few minutes later, returned with a stolen purse with checks and credit cards. Defendant and his codefendant attempted to purchase a few items with a stolen credit card. When the police arrested them, they had an Arizona driver's license, two credit cards, and traveler's checks totaling \$300.

Defendant was charged with two counts of second degree burglary of a vehicle (§ 459, counts 1 & 2), identity theft (§ 530.5, subd. (a), count 3), and theft. (§484e, subd.

¹ All further statutory references are to the Penal Code unless indicated.

² The facts are taken from the probation report.

(d.) Defendant entered a plea agreement and agreed to plead guilty to counts 1 and 3, in exchange for a grant of probation for three years under certain conditions and the dismissal of the remaining charges. 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 this condition as unrelated to the offense. The court imposed the condition.

ANALYSIS

I. The Court Properly Imposed the Pet Probation Condition

Defendant argues that the court abused its discretion in imposing the pet probation condition because it was overbroad and invalid under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*).³ We conclude that the pet probation condition is valid.

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 § 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

³ We note that the issue of the validity of the standard pet probation condition 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.)

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.]” (*Lent, supra*, 15 Cal.3d at p. 486.) 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.) If the defendant believes the conditions of probation are harsher than the potential sentence, he may refuse probation and choose to undergo the sentence. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 68-69 (*Balestra*).

In *Balestra, supra*, 76 Cal.App.4th 57, the defendant pled guilty to elder abuse and was granted probation on certain conditions, including that she submit her person and property to search with or without probable cause, and that she undergo drug and alcohol testing if so directed. (*Id.* at p. 62.) The court rejected the defendant’s claim that the trial court abused its discretion in imposing the search condition and the drug and alcohol testing condition. (*Id.* at p. 68.) The court stated that a probation condition which serves the statutory purpose of reformation and rehabilitation of the probationer is necessarily reasonably related to future criminality. (*Id.* at p. 65.) Further, the court stated that a warrantless search condition serves the valid rehabilitative purpose of ensuring that the probationer is obeying all laws. (*Id.* at p. 67.)

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.

One of defendant's probation conditions required him to "[s]ubmit to a search . . . of [his] . . . residence . . . at any time of the day or night" The pet probation condition, along with the search condition, is intended to facilitate the supervision of defendant and to help ascertain whether he is complying with his other probation conditions. 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.

Furthermore, 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.) Under the pet probation condition, defendant simply has to notify his probation officer of what pets may be present. The challenged condition does not prevent defendant from owning a pet or authorize a probation officer to irrationally or capriciously exclude a pet. (See *People v. Kwizera, supra*, 78 Cal.App.4th at pp. 1240-1241 [holding that a trial court empowering a probation department with the authority to supervise probation conditions

does not conflict with the standards set in *Lent, supra*, 15 Cal.3d at p. 486, and does not authorize irrational directives by the probation officer].)

In sum, the court properly imposed the pet probation condition, as it protects the probation officer and is reasonably related to defendant's future criminality.

II. Defendant Is Entitled to Additional Good Conduct Credits

Defendant contends he was not awarded sufficient credits under section 4019. He claims he should have been awarded 39 days in custody, plus 18 days of good conduct credit, for a total number of 57 days of credit. The People correctly concede.

The probation officer's report reflected that defendant had been in custody for 39 days, from the time he was arrested to the day of sentencing. The probation officer recommended that defendant be required to serve 120 days in county jail with 39 days of credit for time served, plus conduct credit, pursuant to section 4019. At sentencing, the court simply stated that defendant was to "[s]erve 120[,] credit for 49."

Section 2900.5, subdivision (d) requires the sentencing court "to determine the number of days of custody and any conduct credits earned pursuant to [Penal Code] section 4019." (*People v. Daniels* (2003) 106 Cal.App.4th 736, 740.) We note that defendant made a motion for correction of the record to the trial court, but the trial court declined to correct the error.

"The conduct credit statute, section 4019, subdivisions (b) and (c), state for each six-day period in which a prisoner is confined, one day shall be deducted from his period of confinement for satisfactorily performing labor, and one day shall be deducted for compliance with the rules and regulations of the facility. 'If all days are earned under

this section, a term of six days will be deemed to have been served for every four days spent in actual custody.’ (§ 4019, subd. (f).)” (*People v. King* (1992) 3 Cal.App.4th 882, 885.) Thus, the proper way to calculate conduct credit is to divide the actual custody time into four-day units and provide two days of credit for each four-day unit. (*People v. Browning* (1991) 233 Cal.App.3d 1410, 1413.) Where the actual time cannot be evenly divided into four-day units, the remaining days are ignored. (*Ibid.*) Defendant’s 39 days of actual custody divided by 4 equals 9, with 3 days left over. For these 9 sets of 4 days, defendant is entitled to 2 days of credit per set, or 18 days. Accordingly, the abstract of judgment must be corrected.

DISPOSITION

The trial court is ordered to correct the abstract of judgment to reflect 57 days of presentence custody credit. The court is further ordered to forward the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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/s/ HOLLENHORST

Acting P.J.

We concur:

/s/ MCKINSTER

J.

/s/ RICHLI

J.