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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.

MICHAEL THEODORE YOUNG,

Defendant and Appellant.

E040521

(Super.Ct.No. FSB053901)

OPINION

APPEAL from the Superior Court of San Bernardino County. Roberta McPeters,  
Judge. Affirmed with directions.

Anita P. Jog, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Bill Lockyer and Edmund G. Brown, Jr., Attorneys General, Mary Jo Graves,  
Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General,  
Barry Carlton, Supervising Deputy Attorney General, Marissa Bejarano and Christopher  
Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

In this appeal, defendant Michael Theodore Young challenges the condition of his probation that he keep his probation officer informed of any pets and give 24 hours written notice of any changes in pets. We agree and we order that probation term stricken. This is without prejudice, however, to modification of the terms of probation to include a term narrowly tailored to address the appropriate concern.

#### FACTS AND PROCEDURE

On January 11, 2006, defendant sold cocaine to an undercover officer. Defendant pled guilty to possession of cocaine on March 29, 2006. (Health & Saf. Code, § 11377.) On May 12, 2006, pursuant to a plea agreement, the trial court gave defendant a three-year suspended sentence and placed him on felony probation for three years. One of the conditions of probation was that defendant keep his probation officer informed of his place of residence, cohabitants and pets, and that he give 24 hours written notice of any changes. Defendant objected to this condition, but the trial court overruled his objection. This appeal followed.

#### DISCUSSION

Defendant argues that the trial court abused its discretion when it overruled his objection to probation condition No. 7: “Keep 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.” Specifically, defendant contends the “pets” portion of the condition is not related to his crime, relates to conduct which is not in itself criminal, and is not related to future criminality. Defendant also contends the condition is unconstitutionally vague and overbroad.

“The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions. [Citations.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) The courts “have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.” (*Ibid.*) That broad discretion “nevertheless is not without limits.” (*Id.* at p. 1121.) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ““exceeds the bounds of reason, all of the circumstances being considered.” [Citations.]’ [Citation.]” (*Ibid.*)

The seminal case on invalid probation conditions is *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). There, the California Supreme Court stated: “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.]” (*Id.* at p. 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 probation condition here does violate all three criteria set forth in *Lent*.

First, defendant’s ownership or contact with a pet of any kind had nothing to do with the crime of which he was convicted. He sold cocaine to an undercover officer. 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 selling cocaine.

Second, having a pet is not in itself criminal. Indeed, “the harboring of pets” has been recognized as “an important part of our way of life.” (Cf. *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 514; see also *Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 163.)

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 whatsoever, 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 related to future criminality in that it helps insure that a probation officer can safely conduct supervisory visits at defendant’s residence. The concern is whether there might be a dangerous animal, such as a vicious attack dog, at defendant’s residence.

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 not reasonably tailored to meet the objective for which it has been imposed.

First, whether defendant or any other person living at his residence had unquestionably harmless animals, such as a goldfish or a hamster, has nothing to do with officer safety. Second, as written, the probation condition impinges on defendant’s liberty, privacy, and associational interests. He could be imprisoned for violation of his probation if he fails to inform the probation officer of the presence of any pet, including,

again, such innocuous animals as a goldfish or a hamster. Defendant's probation could be violated if he fails to give written notice 24 hours in advance of "any changes." Defendant could thus be subjected to violation proceedings for such conduct as failing to predict a pet's death. His probation could be violated if he were unaware that a resident had a pet.

Third, assuming that a dangerous animal was present in the residence, the probation condition requiring defendant to inform the officer of pets and to give 24 hours written notice of any changes regarding pets would not do anything to enhance officer safety. Rather, something further is implied: i.e., the probation officer's ability to order defendant to confine the animal, or the ability to direct him not to possess, or not to live with anyone who possesses, such a dangerous animal.

We have conducted a thorough search of hundreds of cases concerning probation conditions related to pets. Virtually all the cases of pet probation conditions involve convictions of animal cruelty, harboring a vicious pet, or some other offense in which an animal was actually involved. (See, e.g., *Stephens v. State* (2001) 247 Ga.App. 719 [545 S.E.2d 325] [conviction of cruelty to animals (pit bull dogs used for fighting, kept in unsafe and unhealthy conditions), probation condition forbade the defendant from owning any dogs or to live at a residence where dogs were present]; *State v. Choate* (Mo.App. 1998) 976 S.W.2d 45 [one count of animal neglect, the defendant was ordered as conditions of probation to pay for care of the dog while it was in protective custody and not to return the dog to the county]; *State v. Sheets* (1996) 112 Ohio App.3d 1 [677 N.E.2d 818] and *State v. Barker* (1998) 128 Ohio App.3d 233 [714 N.E.2d 447] [animal

owner convicted of animal cruelty may be required as a condition of probation to forfeit all the animals (horses), even those not specifically the subject of the charges]; *State v. Bodoh* (1999) 226 Wis.2d 718 [595 N.W.2d 330] [defendant convicted of injury by negligent handling of dangerous weapons (rottweiler dogs attacking cyclist) and ordered as a condition of probation not to have any dogs at his residence unless approved by the probation officer]; *Scott v. Jackson County* (D.Or. 2005) 403 F.Supp.2d 999 [defendant guilty of animal neglect (rabbits), ordered as a condition of probation not to possess any animals]; *Mahan v. State* (Alaska App. 2002) 51 P.3d 962 [defendant convicted of animal neglect for multiple kinds of animals, ordered as a condition of probation not to own or be the primary caretaker of more than one animal, and not to own or care for any horse]; *Hurst v. State* (Ind.App. 1999) 717 N.E.2d 883 [probation condition of suspension of hunting license for violation of fish and game and wild animal laws]; cf. *People v. Torres* (1997) 52 Cal.App.4th 771, 778 [commenting in passing that “[p]ersons convicted of cruelty to animals could be ordered not to own or possess pets”].)

We have found two cases that 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.” (*Id.* at p. 1264.) *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 *United States v. Crew* and *United States v. 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. “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.”].) “[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.

That is not to say that a valid probation condition could not be imposed to meet the concern for officer safety identified here. As already observed, a similar parole condition has been imposed in Utah.

Here, however, no one had any reason to think that defendant here owned a pit bull or a tiger, or for that matter a goldfish, a golden retriever, a tadpole, or a tabby cat. If facts could have been brought to show that a defendant is likely to have, or to live on premises that have, a dangerous animal, then there might be some justification for a probation condition narrowly tailored to avoiding the anticipated danger. But the condition imposed, which related to all pets without limitation, was overbroad and unreasonable.

We direct the trial court to strike the reference to “pets” in probation condition No. 7. The trial court may then, at its option, modify condition No. 7 to include a condition narrowly tailored to address concerns about dangerous animals when probation officers conduct home visits.

DISPOSITION

The trial court is directed to strike the reference to “pets” in probation condition No. 7. The trial court may, however, modify the terms of probation to include a condition narrowly tailored to address concerns about dangerous animals when probation officers conduct home visits. In all other respects, the judgment is affirmed.

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/s/ McKinster  
Acting P.J.

We concur:

/s/ King  
J.

/s/ Miller  
J.