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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
JAMES KARIM MUHAMMAD,  
Defendant and Appellant.

A131842

(Alameda County  
Super. Ct. No. C164901)

A jury convicted defendant of three felony counts of perjury (Pen. Code, § 118),<sup>1</sup> and three felony counts involving fraudulent state election procedures. The court placed defendant on probation with various conditions, including that he not run for public office without obtaining the prior approval of his probation officer. On appeal, defendant contends that this probation condition adds a qualification not set forth in the Constitution should he decide to run for Congress and is therefore unconstitutional under *U.S. Term Limits, Inc. v. Thornton* (1995) 514 U.S. 779 (*Term Limits*). We agree and therefore this probation condition should be modified to strike the language requiring defendant to obtain the approval of his probation officer prior to running for public office.

<sup>1</sup> All further unspecified code sections refer to the Penal Code.

## **BACKGROUND**

A second amended information filed February 7, 2011, alleged that defendant committed three counts of perjury by declaration (§ 118), one count of registration of an ineligible voter in violation of Elections Code section 18100, subdivision (a), and two counts of fraudulent voting in violation of Elections Code section 18203. The information also alleged defendant had been convicted of second degree robbery (§ 211) on March 5, 1952.

The matter proceeded to trial. Since the only issue on appeal is defendant's probation condition, the facts are very briefly summarized.

In 2008, defendant applied to be a candidate for the Alameda County Transit Board of Directors for ward 2. Residing in ward 2, which was located entirely in Alameda County, was a requirement of the office. Defendant listed his address in multiple voter and application documents under penalty of perjury as in Emeryville, which is in Alameda County. Defendant, however, actually lived in Richmond, which is in Contra Costa County.

A jury found defendant guilty on all counts. Defendant's prior conviction was found to be true. Subsequently, the court denied defendant's motion for a new trial.

On March 28, 2011, the trial court struck defendant's prior strike conviction under section 1385. The court noted, among other factors, that defendant was 78 years old, committed the prior offense in 1952 when he was 19 years old, and had committed no felonies between the age of 19 and the current offense. The court suspended imposition of sentence and placed defendant on five years formal probation. The court set forth a number of conditions of probation, including the following: "Additionally, I am ordering, [defendant], that you are not to run for any public office unless, one, you comply with all laws regarding running for said public office; and two, unless you receive the prior approval of the probation officer to run for that public office."

Defendant filed a timely notice of appeal.

## DISCUSSION

Defendant's sole contention on appeal is that the court's imposition of a condition for probation that he not run for office without prior approval of his probation officer is unconstitutional. He asserts that this condition prohibits him from running for the United States House of Representatives or the United States Senate without the prior approval of his probation officer, and such a condition is unconstitutional under *Term Limits, supra*, 514 U.S. 779 (held that an Arkansas law prohibiting otherwise eligible congressional candidates from appearing on the general election ballot if they had already served two Senate terms or three House terms was an impermissible attempt to add qualifications to congressional office). (See also *Powell v. McCormack* (1969) 395 U.S. 486 [although Congress has the right to determine the qualifications of its members under article I, section 2 of the federal Constitution, it has no power to add an "ethics" qualification to constitutional requirements to be a member of the House of Representatives].)

Defendant did not object in the trial court to this probation condition on the basis urged on appeal. However, the People agree that the issue may be raised for the first time on appeal because it presents a question of law. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887-888.) The People also agree that this condition must be stricken.

The Qualifications Clause of the Constitution provides that "[n]o person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an [i]nhabitant of that State in which he shall be chosen." (U.S. Const., art. I, § 2, cl. 2.) Article I, section 3, clause 3, which applies to the Senate, provides: "No Person shall be a Senator who shall not have attained the age of thirty years, and been nine years a Citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he will be chosen."

The qualifications set forth in the Constitution are exclusive and fixed. (*Term Limits, supra*, 514 U.S. at p. 827.) "[N]either Congress nor the States

should possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.” (*Term Limits*, at p. 827.)

The People agree that the probation condition that requires defendant to receive approval from his probation officer prior to running for office constitutes an additional qualification for running for Congress and is therefore unconstitutional. We agree and therefore this probation condition should be stricken.

### **DISPOSITION**

We direct the trial court to strike the condition of probation that states defendant cannot run for any state public office unless he receives the prior approval of the probation officer to run for that state public office. The court is to modify this condition to state: “You are not to run for any state public office unless you comply with all laws regarding running for said public office.” All other probation conditions shall remain. As so modified, the judgment is affirmed.

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Lambden, J.

We concur:

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Kline, P.J.

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Richman, J.