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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.

OWEN JOHN HARDY,

Defendant and Appellant.

A132454

(Solano County
Super. Ct. No. FCR270501)

Owen John Hardy (appellant) pleaded no contest to possession of child pornography. On appeal, he contends that the trial court was unaware of its discretion not to order or to stay the residency restriction requirement for registered sexual offenders (Pen. Code, § 3003.5, subd. (b)),¹ and that the restriction applies only to parolees. He also argues that the restriction constitutes unconstitutional punishment. Respondent is in agreement that the residency requirement applies only to parolees. We agree with the parties that this residency requirement is inapplicable to probationers such as appellant, and shall therefore remand the matter to the trial court with directions to strike the order containing the residency restriction.

PROCEDURAL BACKGROUND

Appellant was charged by information with one count of possession of child pornography (§ 311.11, subd. (a)). He thereafter pleaded no contest to the charge.

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

On June 20, 2011, the trial court placed appellant on formal probation for three years. The court further ordered appellant to serve 90 days in county jail and to register as a sex offender, pursuant to section 290. Among the numerous additional conditions of probation, appellant was ordered, pursuant to section 3003.5, subdivision (b), “**not to reside** within 2000 feet of any public or private school, or park where children regularly gather.”

On June 23, 2011, appellant filed a notice of appeal.

*DISCUSSION*²

Appellant challenges the trial court’s order, made pursuant to section 3003.5, subdivision (b), that he not reside within 2000 feet of a school or park. Respondent agrees that the court abused its discretion when it made this order because section 3003.5, subdivision (b), applies only to parolees.³ (Cf. *In re E.J.* (2010) 47 Cal.4th 1258, 1277-1279 [affirming applicability of section 3003.5, subd. (b)’s residency restriction to four parolees on parole for subsequent, nonsexual offenses].)

The Sexual Predator Punishment and Control Act: Jessica’s Law (§ 3003.5, subd. (b)), was added by Proposition 83, as approved by voters on November 7, 2006. (See *People v. Picklesimer* (2010) 48 Cal.4th 330, 344.) Subdivision (b) was added to former section 3003.5 (now section 3003.5, subd. (a)), which contains another residency restriction for parolees. Although Jessica’s Law amended several sections of the Penal and Welfare and Institutions Codes, its drafters placed this provision restricting residency in the parole section of the Penal Code (pt. 3, tit. 1, ch. 8, § 3000 et seq.).

Amended section 3003.5 provides:

“(a) Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the

² Because the facts underlying appellant’s no contest plea are not necessary to the resolution of the issues raised on appeal, we will not recount them here.

³ This issue is currently pending before the California Supreme Court. (*People v. Mosley* (2010) 188 Cal.App.4th 1090, rev. granted Jan. 26, 2011, S187965.)

period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, ‘single family dwelling’ shall not include a residential facility which serves six or fewer persons.

“(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

“(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.”

Based on its language, subdivision (b) of section 3003.5 could be construed, in isolation, to apply literally to “any person,” and not just parolees. We find, however, that, looking at the statute as a whole and its location within the parole section of the Penal Code, the drafters’ intent to limit the residency restriction’s application to a “person” identified in subdivision (a), i.e., a parolee, is evident. (See *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [“The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible”].)⁴

Accordingly, since appellant is a probationer rather than a felony parolee, we conclude that he is not subject to the residency restriction contained in section 3003.5, subdivision (b). Because the trial court abused its discretion when it imposed the residency restriction as a condition of probation, that condition must be stricken.⁵

⁴ We also observe that section 3571 of the California Code of Regulations, which implements the residency restrictions of, inter alia, section 3003.5, provides in relevant part: “*Parolees* who are required to register as sex offenders pursuant to . . . sections 290 through 290.03, inclusive, are subject to residence restrictions as specified in this section.” (Cal. Code Regs., tit. 15 § 3571, italics added.)

⁵ Because we have found that section 3003.5, subdivision (b), is not applicable to probationers such as appellant, we need not address appellant’s constitutional challenge to the trial court’s residency restriction order.

DISPOSITION

The matter is remanded to the trial court with directions to strike the order containing the residency restriction, imposed pursuant to subdivision (b) of section 3003.5, and to correct the abstract of record, consistent with the views expressed herein. In all other respects, the judgment is affirmed.

Kline, P.J.

We concur:

Haerle, J.

Richman, J.