

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ZACHARY A. HINTON,

Defendant and Appellant.

A140468

(Del Norte County  
Super. Ct. No. CRF12-9444-3)

Defendant Zachary Hinton appealed after the imposition of his sentence for an animal-cruelty conviction was suspended, and he was placed on formal probation for three years. He challenges four probation conditions that all generally address substance abuse, arguing they do not relate to his conviction for animal cruelty and that three of them were not imposed by the trial court in any event. Respondent concedes, and we agree, that three of the four challenged conditions were not imposed by the trial court and therefore should be stricken. As for the fourth challenged condition (which forbids the possession, use, or cultivation of marijuana), we reject Hinton's argument that it was improperly imposed and decline to strike it.

I.

FACTUAL AND PROCEDURAL  
BACKGROUND

In August 2012, one of Hinton's roommates reported he had seen Hinton physically abuse a pit bull puppy by repeatedly slamming it into the ground until it was unable to move. The puppy was examined and found to have multiple fractures in both

front legs, which eventually had to be amputated. Hinton at first denied abusing the dog, claiming the animal's injuries occurred when it jumped from his vehicle on two separate occasions.

Hinton ultimately pleaded no contest under a plea agreement to one count of cruelty to animals. (Pen. Code, § 597, subd. (a).<sup>1</sup>) As part of the agreement, one misdemeanor marijuana charge and four felony marijuana charges pending against Hinton in a separate case were dismissed. After Hinton entered his plea, the probation department was directed to prepare a sentencing report.

The sentencing report included a form listing standard probation terms and conditions, and boxes were checked by numbered conditions recommended by the probation department. As relevant to this appeal, the department recommended the following four conditions: the first required Hinton to submit to "blood, breath, urine, and or field sobriety tests" and chemical testing for drugs or alcohol on demand (No. 10); the second required him to undergo an alcohol-and-drug assessment (AOD assessment) and to comply with any recommended treatment program (No. 12); the third prohibited him from using alcohol to excess (No. 13); and the fourth mandated that Hinton "not use, possess, or cultivate marijuana pursuant to Section 11362.795 of the California Health and Safety code" (No. 19).

At the sentencing hearing, the trial court said it planned to follow some, but not all, of the recommendations in the sentencing report. The court said it would decline to impose the condition that Hinton undergo an AOD assessment and follow a treatment program (apparently a reference to condition No. 12), because there was no connection between the condition and the underlying conviction. Defendant argued the trial court should go further and decline to impose all four of the conditions listed in the foregoing paragraph, objecting that *none* of them was related to Hinton's conviction. When reciting the probation conditions imposed, it is clear that the trial court agreed with Hinton as to three of those conditions. The court used the same standard form that the probation

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

department used as the order of the court imposing probation conditions. As it read the conditions imposed in the order they appear on the standard form, the trial court omitted the three conditions relating to testing for alcohol and substances, undergoing a treatment analysis and program, and not consuming excessive amounts of alcohol (condition Nos. 10, 12, and 13). The court did, however, impose the condition prohibiting Hinton from possessing, using, or growing marijuana (No. 19), stating, “I’m making [this] order because that’s a standard order made for persons on formal probation.” A box was checked next to this probation condition on the court’s written order following the hearing, as were boxes next to the three conditions the court did *not* impose. Hinton timely appealed.

## II. DISCUSSION

### *A. The Trial Court’s Written Order Shall Be Corrected to Conform to the Court’s Oral Pronouncement.*

Hinton argues, respondent concedes, and we agree that the three conditions addressing drug-and-sobriety testing, substance-abuse treatment, and alcohol use (Nos. 10, 12, and 13) should be stricken from the probation order because it is clear from the reporter’s transcript of the sentencing hearing that the trial court did not impose them. (*People v. Mesa* (1975) 14 Cal.3d 466, 471-472 [when there is a deviation between the court’s oral pronouncement and the recorded minutes, the oral pronouncement prevails]; *People v. Price* (2004) 120 Cal.App.4th 224, 242 [“Any discrepancy between the minutes and the oral pronouncements of a sentence is presumed to be the result of a clerical error [in the minutes]”]; *People v. Rowland* (1988) 206 Cal.App.3d 119, 123 [if judgment entered in minutes fails to reflect judgment pronounced by trial court, record can be corrected at any time].) In light of this conclusion, we need not address Hinton’s alternate argument, that the three conditions were improper because they have no connection to the underlying offense.

*B. The Trial Court Did Not Abuse Its Discretion When It Prohibited Hinton from Possessing, Using, or Growing Marijuana as a Condition of Probation.*

Our analysis is different with respect to the condition that Hinton not possess, use, or cultivate marijuana (No. 19). In his opening brief, Hinton argues the trial court did not order this condition. But this is clearly not the case because the court explained it was imposing the condition as a “standard order made for persons on formal probation.” He argues in the alternative that the condition violates the reasonableness test set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), but he focuses exclusively on why conditions related to *alcohol* use are unreasonable, without specifically addressing why a condition related to *marijuana* use is unreasonable. For the first time in his reply brief, Hinton contends that the marijuana condition is unreasonable under *Lent*, an argument that was arguably forfeited for failure to raise it before his reply brief. (*People v. Tully* (2012) 54 Cal.4th 952, 1075.) We conclude the contention lacks merit even assuming it was not forfeited.

“The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A sentencing court may impose reasonable terms that it considers “fitting and proper to the end that justice may be done . . . and generally and specifically for the reformation and rehabilitation of the probationer.” (§ 1203.1 subd. (j).) A trial court abuses its discretion only if its determination is arbitrary or capricious, or exceeds all bounds of reason under the totality of the circumstances. (*Carbajal*, at p. 1121.)

While trial courts have broad discretion to set the terms and conditions of probation, their discretion is not unlimited. (§ 1203.1; *People v. Carbajal*, *supra*, 10 Cal.4th at p. 1121.) In *Lent*, *supra*, 15 Cal.3d at page 486, the California Supreme Court held that a condition of probation is valid 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 . . . .’ ” To invalidate a probation condition under the *Lent* test, all three

elements must be present. (*People v. Hughes* (2012) 202 Cal.App.4th 1473, 1479.) The party attacking the sentence carries the burden “ ‘to clearly show that the sentencing decision [is] irrational or arbitrary.’ ” (*People v. Balestra* (1999) 76 Cal.App.4th 57, 63.)

In applying the *Lent* test to the present case, the parties agree that a condition prohibiting marijuana-related activities has no relationship to Hinton’s underlying conviction for animal cruelty (the first prong of the *Lent* test). But the condition is nonetheless valid because it is aimed at conduct that *is itself criminal*. (Cf. *Lent, supra*, 15 Cal.3d at p. 486 [probation condition might be unreasonable if aimed at behavior that is otherwise *not* criminal; see also *People v. Hughes, supra*, 202 Cal.App.4th at p. 1479 [challenged probation condition invalid only if all three prongs of *Lent* test are met].) Possession of marijuana without a medical marijuana card is criminal conduct.<sup>2</sup> (*People v. Peck* (1996) 52 Cal.App.4th 351, 362; see also *People v. Moret* (2009) 180 Cal.App.4th 839, 856 [“[N]otwithstanding the CUA [Compassionate Use Act], under California law possession of marijuana is still illegal”].) Although Hinton is correct that under Health and Safety Code section 11357, persons found with less than 28.5 grams of marijuana are guilty only of an infraction, we note that an infraction is still a crime. (§ 16 [“Crimes and public offenses include [¶] . . . [¶] [i]nfractions”].) Hinton compares marijuana infractions to traffic infractions in an attempt to downplay the criminality of the offense, but, “[i]n California . . . traffic infractions have not been decriminalized.” (*People v. McKay* (2002) 27 Cal.4th 601, 615, fn. 16.)

We also reject Hinton’s argument that in imposing the marijuana condition because it was a “standard” condition, the court actually failed to exercise its discretion. He relies on cases where courts held it was improper to require the waiver of custody credits in exchange for probation as a standard practice, without examining whether the

---

<sup>2</sup> The trial court noted that Hinton could apply for permission to obtain a medical marijuana card if necessary. “[I]t is settled that medical use of marijuana as authorized by the CUA . . . is not conduct that is itself criminal for purposes of the *Lent* test.” (*People v. Leal* (2012) 210 Cal.App.4th 829, 840-841.)

waiver was appropriate in a given case. (*People v. Juarez* (2004) 114 Cal.App.4th 1095, 1103; *People v. Penoli* (1996) 46 Cal.App.4th 298, 303-304.) Here, by contrast, the challenged probation condition is directed at criminal conduct. It arguably would *always* be appropriate, since it is a more specific way of ordering a criminal defendant to obey the law. Under the totality of the circumstances, the trial court did not abuse its discretion in imposing probation condition No. 19.

III.  
DISPOSITION

Probation condition Nos. 10, 12, and 13 are stricken from the order of probation. The trial court's order is otherwise affirmed.

---

Humes, P.J.

We concur:

---

Margulies, J.

---

Banke, J.