

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION SIX

In re T.T., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B270178
(Super. Ct. Nos. 15JV-00320,
15JV-00320A, 15JV-00320C)
(San Luis Obispo County)

THE PEOPLE,

Plaintiff and Respondent,

v.

T.T.,

Defendant and Appellant.

T.T., a minor coming under the juvenile court law, appeals a probation condition imposing a warrantless search condition for his electronic devices following the juvenile court sustaining juvenile wardship petitions (Welf. & Inst. Code, § 602, subd. (a)) for petty theft (Pen. Code, § 484, subd. (a)), obstructing a peace officer (*id.*, § 148, subd. (a)), and battery (*id.*, § 242). We

conclude, among other things, that an electronic device probation search condition may reasonably deter future criminality by the minor, but the condition is overbroad. We strike the condition and remand to the trial court with instructions to replace the condition with a narrower one more tailored to the minor's rehabilitation.

FACTS

In December 2015, T.T. stole a DVD player from a store. In late December, police went to a motel where runaway juveniles were drinking alcohol. When a police officer attempted to "remove [T.T.] from the scene," T.T. resisted and "began to pull away" from the officer "and yell." In January 2016, while at a juvenile facility, T.T. struck another boy because the boy was "talking trash."

T.T. admitted that he "often makes arrangements with people to steal things for them so they can buy stolen merchandise at a reduced price." He said he "will fight anyone who disrespects his friends or his fellow gang members." He "admitted to" the "daily use of marijuana and occasional use of alcohol."

T.T.'s mother stated that T.T. "often invites" criminals to her home. T.T. "is completely out of control." The probation department determined that he is at "a high risk to recidivate."

In January 2016, T.T. admitted the allegations of three juvenile wardship petitions alleging theft, obstructing a peace officer, and battery. T.T. was declared a ward of the juvenile court and placed under the supervision of his probation officer.

The trial court scheduled a dispositional hearing. The probation department requested an electronic device probation search condition for T.T. Condition 23 provided, “Submit to search of any electronic device used to store or transmit digital information that you own, possess or control, at any time, with or without probable cause, by a Probation Officer or other law enforcement officer.”

T.T.’s counsel objected claiming: 1) condition 23 “is an extremely broad request to search the electronic digital devices,” and 2) there was a “lack of any nexus between the behavior that was at issue here versus the aim of the electronic search.”

The probation officer responded that there was a “nexus” because T.T. engaged in drug and “property” transactions “through electronic means.” The trial court found there was a valid justification to impose condition 23.

DISCUSSION

The Electronic Device Search Condition

T.T. contends the trial court abused its discretion by requiring him to submit to warrantless searches of his electronic devices as a condition of probation.

The People claim a probation condition authorizing an electronic device search is valid because it reasonably deters future criminality for a minor.

“Under [*People v. Lent* (1975) 15 Cal.3d 481], which applies to both juvenile and adult probationers, a condition is ‘invalid [if] 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.’” (*In re P.O.* (2016) 246 Cal.App.4th 288, 294.) “This test is conjunctive--all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*Ibid.*) “[A] probation condition that enables probation officers ‘to supervise [their] charges effectively is . . . “reasonably related to future criminality.’” (*Id.* at p. 295.)

In *In re P.O.*, the juvenile court imposed a probation condition requiring the ward to submit to a warrantless search by police and probation officers of “electronics including passwords under [his] control.” (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 292.) The court said, “[T]he condition reasonably relates to enabling the effective supervision of P.O.’s compliance with other

probation conditions. Specifically, the condition enables peace officers to review P.O.'s electronic activity for indications that P.O. has drugs or is otherwise engaged in activity in violation of his probation." (*Id.* at p. 295.)

Here the trial court ruled the electronic device search condition was appropriate. The probation officer said that "there was a nexus based off the minor's involvement--or alleged involvement in obtaining drugs, selling drugs, finding property, and *making those transactions through electronic means.*" (Italics added.) The court said, "I recall reading that from [T.T.'s] own statements about his activities, and I agree that that's a reason for the court to impose that additional term." An electronic device search condition may assist in the "effective supervision" of T.T.'s "compliance with" probation conditions. (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 295.) But the scope of such a search may not be unlimited.

An Overbroad Condition

T.T. claims condition 23 is overbroad. We agree. The court did not limit the scope or purpose of the search. Such an unrestricted general search may intrude on protected areas of privacy. "A probation condition imposed on a minor must be narrowly tailored to both the condition's purposes and the minor's needs" (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 297.) Because condition 23 "does not limit the types of data that may be searched," it "permits review of all sorts of private information

that is highly unlikely to shed any light on whether [the minor] is complying” with probation conditions. (*Id.* at p. 298.) “It is well established that individuals retain a constitutionally protected expectation of privacy in the contents of their own computers.” (*People v. Appleton* (2016) 245 Cal.App.4th 717, 724.) “[T]oday many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives.” (*Riley v. California* (2014) __U.S.__ [134 S.Ct. 2473, 2479].) Condition 23 may allow intrusions into “medical records, financial records, personal diaries, and intimate correspondence with family and friends.” (*Appleton*, at p. 725.)

An overly broad condition may be narrowed so it does not intrude on protected information and is closely tied to the areas that probation needs to target. For example, in *In re P.O.*, the court narrowed the broad unrestricted search condition for all “electronics including passwords under [his] control” to the following: “Submit all electronic devices under your control to a search of any medium of communication *reasonably likely to reveal whether you are boasting about your drug use or otherwise involved with drugs*, with or without a search warrant, at any time of the day or night, and provide the probation or peace officer with any passwords necessary to access the information specified. Such media of communication include text messages, voicemail messages, photographs, e-mail accounts, and social

media accounts.” (*In re P.O.*, *supra*, 246 Cal.App.4th at pp. 292, 300, italics added.)

The trial court has a variety of alternatives in narrowing overly broad search conditions. (*In re P.O.*, *supra*, 246 Cal.App.4th at p. 300; *People v. Appleton*, *supra*, 254 Cal.App.4th at p. 727.) It could, for example, limit the search to T.T.’s email accounts or text messages to reveal communications with drug dealers or gang members and criminals who buy or sell stolen property. Or it could expand the scope based on a showing for the need for additional specific data closely and reasonably related to T.T.’s rehabilitation and prevention of recidivism.

After determining a condition is overbroad, the appellate court may strike it and remand to the trial court to exercise its discretion in “fashioning an alternative” narrower condition. (*People v. Appleton*, *supra*, 245 Cal.App.4th at p. 729.)

DISPOSITION

We strike probation condition 23. We remand to the trial court with instructions to replace condition 23 with a narrower “alternative probation condition consistent with this opinion.” (*People v. Appleton*, *supra*, 245 Cal.App.4th at p. 729.)

NOT TO BE PUBLISHED.

We concur:

GILBERT, P. J.

YEGAN, J.

PERREN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, William N. Frank, Deputy Attorney General, for Plaintiff and Respondent.