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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Tehama)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CHRISTOPHER LEE POEHLER,  
  
Defendant and Appellant.

C067654  
  
(Super. Ct. No.  
NCR67384)

After defendant Christopher Lee Poehler admitted violating his probation by viewing pornography, the trial court revoked probation and sentenced him to six years in state prison for lewd conduct on a child (Pen. Code, § 288, subd. (a).) Defendant contends on appeal the court abused its discretion because the violation did not involve him "hurting anyone or

even touching anyone inappropriately." We find no abuse of discretion and shall affirm the judgment.

#### **BACKGROUND<sup>1</sup>**

Defendant was 18 in 2005 when he sexually molested a nine-year-old girl who was a member of his extended family and lived in the same house. After family members reported his conduct, defendant admitted to police that on several occasions he rubbed the victim's vagina and buttocks, and directed the victim to touch his bare penis. To the probation officer preparing his presentence report, defendant also admitted he had twice penetrated the victim's anus with his finger, and sometimes masturbated after he finished touching her.

In exchange for the dismissal of a charge of continuous sexual abuse of a minor, defendant pled guilty to committing lewd conduct with a child. The trial court suspended imposition of sentence and placed defendant on formal probation for five years. As conditions of probation, defendant was ordered to refrain from associating with any minor female (term 17);<sup>2</sup> participate in and successfully complete an approved sex

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<sup>1</sup> We summarize the facts of the offense from the police report defendant agreed established the factual basis for his no contest plea.

<sup>2</sup> Defendant's conditions of probation were subsequently amended to allow contact with his teen-aged sister, in the presence of a responsible adult only.

offender treatment program (term 18), and not to view any pornography (term 19).

In 2010, petitions were filed alleging defendant had violated the terms of his probation requiring him to (1) participate in and successfully complete a sex offender program, because he "continues to receive unsuccessful progress reports" in his sex offender program (term 18), he had been "voyeurism on his sister," and he had relapsed into pornography and deviant fantasies; and (2) avoid pornography (term 19). Defendant admitted he watched pornography on an available computer without permission and, while staying with his sister, he listened at her door and masturbated when he heard her having sex with her boyfriend.

The court accepted defendant's admission. The allegation he violated probation by failing in his sex offender program was stricken.

At the sentencing hearing, defense counsel asked the court to refer defendant for evaluation to determine if he has Asberger's syndrome, and urged it to reinstate probation, and extend the probationary term. He argued defendant needs a structured environment, and could perhaps be placed in a sexual offender group home.

Defense counsel called as a witness the psychotherapist leader of the sex offender program in which defendant had been participating for four years. Ms. Horwitz-Person testified that, while defendant sometimes participated actively, he

completed no homework assignments for the first year, and still often goes months without attempting to complete an assignment. Homework assignments help participants understand how not to violate sexual boundaries, and they are assessed chiefly on the degree to which some effort is expended. Defendant has continued to engage in risky behaviors, including use of pornography, "kept problematic things secretive" and was failing the treatment program. Horwitz-Person testified defendant is an "opportunist" in terms of sexual conduct, who presents a "medium to medium-high" risk for reoffense.

The presentence report states that "defendant put himself in risky situations and was then untruthful about them to his therapist, group, and probation officer. He received a failing mark in the homework category on all but two of his quarterly progress reports over the past four and a half years. The quarterly progress reports for the past year and a half have all been unsuccessful overall. The second quarterly report for 2010 indicates the defendant is at high risk to relapse. A letter from his therapist dated August 19, 2010, indicated a concern about his level of safety in the community."

In determining whether to reinstate and extend probation, the court reasoned, it "cannot close its eyes" to defendant's poor performance on probation, even if his failure to successfully complete the sex offender program is no longer an alleged violation of probation. In light of the express warning defendant received when probation was granted that he must

"comply with every single term and condition of probation," the court concluded probation should not be reinstated.

#### **DISCUSSION**

We reject defendant's contention that the trial court abused its discretion in terminating his probation and sentencing him to prison.

Probation is a matter of clemency, not of right. (*People v. Covington* (2000) 82 Cal.App.4th 1263, 1267.) Penal Code section 1203.2, subdivision (a) authorizes the court to revoke probation after proper notice and a hearing "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . ." Once a court had determined that a violation of probation has occurred, it must "decide whether under all of the circumstances the violation of probation warrants revocation." (*People v. Avery* (1986) 179 Cal.App.3d 1198, 1204.) The trial court is vested with broad discretion in determining whether to reinstate probation following revocation of probation (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1315), and the trial court's decision to revoke probation is reviewed for an abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443 (*Rodriguez*); *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) "[O]nly in a very extreme case should an appellate court interfere with the discretion

of the trial court in the matter of denying or revoking probation. . . ." (*Rodriguez*, at p. 443.)

Here, defendant does not contest the sufficiency of the evidence to support the finding he violated probation; he admitted the violation. Rather, he claims the court abused its discretion in revoking probation, because in viewing pornography, defendant hurt no one.

In considering whether to revoke probation, however, the court's inquiry is broader than the mere circumstances of the violation; it is directed, generally, to the probationer's performance on probation. (*People v. Beaudrie* (1983) 147 Cal.App.3d 686, 691.) "Thus the focus is (1) did the probationer violate the conditions of his probation and, if so, (2) what does such an action portend for future conduct?" (*Ibid.*; *People v. Johnson* (1993) 20 Cal.App.4th 106, 111.)

Here, the trial court carefully did not rely solely on the fault of defendant's admitted probation violation. It focused on his overall performance on probation, and weighed all of the evidence concerning defendant's performance on probation before rejecting his request to be reinstated on probation. The record indicated defendant was consistently unable to be successful in his sex offender program (his lack of success apparently attributable to his unwillingness or inability to complete the

homework assignments<sup>3</sup>), and was unwilling to be truthful about his risky behavior. Defendant's therapist concluded he poses a high or medium-high risk for relapse. All these facts strongly support the trial court's conclusion that defendant would be unlikely to succeed on an extended probation, and justified the trial court's revoking probation.

While the trial court did not base its decision to revoke probation wholly upon defendant's admitted use of pornography, it also did not err in treating that behavior as a serious breach of probation. Some studies have concluded that there is a "causal link between pornography and sex crimes." (*Amatel v. Reno* (D.C. Cir. 1998) 156 F.3d 192, 199-200, fn. omitted [discussing studies and upholding federal statute restricting distribution of pornography in prison and finding it was rationally related to rehabilitation and prevention of recidivism].) The United States Supreme Court has explicitly recognized a possible link between child pornography and pedophilia. (*Osborne v. Ohio* (1990) 495 U.S. 103, 111 & fn. 7 [109 L.Ed.2d 98, 110].) Trial courts may impose conditions of probation that impinge on a defendant's constitutional rights if they are narrowly drawn and reasonably related to a compelling state interest in reformation and rehabilitation. (*People v. Bianco* (2001) 93 Cal.App.4th 748, 754-755; *People v. Hackler*

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<sup>3</sup> Defendant admitted to the probation officer he sometimes failed to do his homework assignments because he was playing video games instead.

(1993) 13 Cal.App.4th 1049, 1058.) Here, the condition served the interests of reformation and rehabilitation by removing defendant from an influence that may be a contributing factor in the commission of sex offenses. Defendant did not object to the imposition of a condition requiring him to avoid pornography, and does not now contend it was wrongfully imposed.

**DISPOSITION**

The judgment is affirmed.

BLEASE, J.

We concur:

RAYE, P. J.

BUTZ, J.