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

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIL MARTYNOVICH,

Defendant and Appellant.

C069073

(Super. Ct. No.
10F05560)

Defendant Danil Martynovich was convicted of willfully discharging a laser pointer at an aircraft (Pen. Code, § 247.5).¹ Imposition of sentence was suspended and defendant was granted probation on specified terms and conditions, one of which ordered defendant to comply with all general and special conditions of probation contained in the order of probation "or

¹ Further unspecified statutory references are to the Penal Code.

which may subsequently be ordered by the Court or the Probation Officer."² (Italics added.)

Defendant contends, and the People concede, the trial court erred in including the phrase italicized above in the conditions of probation, because it improperly allows defendant's probation officer, a nonjudicial officer, to establish conditions of probation.

We agree that the italicized language must be stricken. It is well-settled that courts may not delegate the exercise of their discretion to probation officers. Although probation officers have wide discretion in enforcing court-ordered conditions, "they may not create conditions not expressly authorized by the court." (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358; *In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1372-1373; see also *People v. Leon* (2010) 181 Cal.App.4th 943, 953-954.) The condition of probation, as ordered by the trial court, would allow defendant's probation officer to create conditions of probation not expressly authorized by the court.

² In full, the condition of probation at issue states: "It is the further Order of the Court that you shall, during your term of probation, comply in all respects with the following General Conditions of probation as authorized by the provisions of the Probation Statutes of the State of California. Further, that you shall comply in all respects with any Special Conditions of Probation contained in your Order of Probation or which may subsequently be ordered by the Court or the Probation Officer."

DISPOSITION

The trial court is ordered to modify the condition of probation at issue to read as follows: "It is the further order of the court that you shall, during your term of probation, comply in all respects with the following general conditions of probation as authorized by the provisions of the probation statutes of the State of California. Further, that you shall comply in all respects with any special conditions of probation contained in your order of probation or which may subsequently be ordered by the court."

As so modified, the judgment is affirmed.

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

BUTZ, J.