

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

VERONICA CRYSTAL RAMOS,

Defendant and Appellant.

E056760

(Super.Ct.No. FVI1201373)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama, Judge. Affirmed.

Lewis A. Wenzell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Veronica Crystal Ramos appeals from an order granting probation (Pen. Code, § 1237)¹ following her plea of no contest to a charge of petty theft with three priors (§ 666) and admission of a prior prison term enhancement (§ 667.5). We find the challenged condition of probation to be unexceptionable and affirm the judgment.²

STATEMENT OF FACTS

At the time defendant entered her plea, the parties stipulated that the police report could be used to establish a factual basis for the plea, and we will therefore briefly summarize the information from that document.

Defendant was in a Kohl's department store in Victorville when store personnel, via closed circuit television, observed her select two pairs of earrings³ and remove them from the display cards to which they were attached. She eventually left the store without paying for the earrings. When stopped by store security, she did not have the earrings but said she had dropped them in an aisle. Defendant later told police that she had decided to steal the earrings after entering the store but had changed her mind.

After accepting defendant's change of plea, the trial court suspended imposition of sentence and placed her on three years' probation. One of the terms of probation was that

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

² The People agree that defendant's failure to object at the time the order was made does not bar her from challenging the condition now. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885.) However, we must stress yet again that these proceedings would have been unnecessary (and the public expense spared) if either attorney below had been diligent in screening the probation conditions for potential ambiguities, which could have been readily eliminated by the trial court rather than being left as fodder for appeal.

³ The report sometimes refers to the items taken as rings.

defendant “STAY AWAY FROM KOHLS AT 14305 BEAR VALLEY RD IN VICTORVILLE CA.” Defendant argues that this was an improper condition of probation because it is “unconstitutionally vague and overbroad.” She asks us to modify the condition to read “do not enter.” Applying well-settled rules of statutory construction, we find this action unnecessary and, therefore, we affirm the judgment.

DISCUSSION

Because violation of the probation condition carries the potential for revocation and even incarceration, we think it is appropriate to construe it in the same manner as a criminal statute. That is, we look for a construction that is constitutional and is consistent with the apparent purpose of the condition. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 513; *Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294; cf. *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 670-671 [confirming power of courts to reform statutes to preserve constitutionality, but declining to do so because the proposed reformation would be counter to the intent of the electorate that enacted the statute].)

A challenge based on alleged “vagueness” essentially argues that the challenged requirement does not give fair warning of the prohibited conduct, and this applies to probation conditions. (*In re Sheena K., supra*, 40 Cal.4th at p. 890.)

Defendant asserts that “stay away from” is impermissibly vague as it provides no specific distance limitation by which she can guide her conduct. She also points out that

a broad construction of the term would arguably prevent her from visiting other retail establishments, restaurants, or amusements located in the vicinity of Kohl's.⁴

In response, the People argue that “stay away from” may be, and should be, interpreted as only forbidding defendant from entering the Kohl's store premises, and we agree. Such a construction amply serves the obvious intent of the probation condition—to prevent recidivism—and it can hardly be argued that this is not a valid basis for a probation condition. (See *People v. Lent* (1975) 15 Cal.3d 481, 486.) As there is no risk of repeated crime unless defendant enters the Kohl's, the term “stay away from” simply prohibits defendant from going into the store. Even if the address is common to the entire shopping center, the specification of the Kohl's store clarifies that it is the focus of the “stay away from” order and constitutes the only prohibited premises.⁵

⁴ Defendant requests that we take judicial notice of the “Google map” showing the specified address. (See *United States v. Perea-Rey* (9th Cir. 2012) 680 F.3d 1179, 1182, fn. 1 [finding “Google map” to be a source “whose accuracy cannot reasonably be questioned”]; Evid. Code, 452, subds. (g), (h).) The People do not object and in fact expressly appear to agree that the Kohl's is located in a “shopping center.” Accordingly, we will grant the request for judicial notice and accept that other consumer businesses are part of the same general premises as Kohl's.

⁵ The People's reliance on *People v. Delvalle* (1994) 26 Cal.App.4th 869 is not entirely helpful. In that case, the defendant had been convicted of attempting to buy a person (a child) and was ordered to “stay away” from places where children congregated, “elementary schools, day care, parks.” (*Id.* at p. 878.) Although the appellate court briefly held that “no overbreadth or ambiguity appears” (*Id.* at p. 879), it is far less clear that the defendant was only prohibited from *entering* buildings where children congregate, as any nefarious intent related to his offense might just as well be put into effect *near* such places as children (and their parents) came and went. In this case, however, as we have noted, only by entering the Kohl's could defendant potentially commit a similar offense.

We therefore agree with defendant that the trial court could reasonably only have intended to prohibit her from entering the Kohl's and not from stopping by the shopping center "to get a hamburger and fries." But, we agree with the People that the order in fact can only reasonably be construed to have that limited effect. Accordingly, no modification is required and the judgment (order for probation) is affirmed.⁶

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P.J.

We concur:

KING
J.

CODRINGTON
J.

⁶ As the People also point out, we assume that the probation condition will not be arbitrarily applied or enforced. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Defendant can always carry a copy of this opinion with her when she goes to the mall.