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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT ANTHONY LOPEZ,

Defendant and Appellant.

E057491, E057492

(Super.Ct.Nos. FVA1101776 &  
FVA1201393)

OPINION

APPEAL from the Superior Court of San Bernardino County. Arthur A. Harrison,  
Judge. Affirmed with directions.

Reed Webb, 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, William M. Wood and Heather F.  
Crawford, Deputy Attorneys General, for Plaintiff and Respondent.

Following his plea to attempted grand theft (Pen. Code, §§ 664/487, subd. (a))<sup>1</sup> and the granting of probation in one case (case No. E057491(491)) , and the subsequent revocation of that probation, and his plea to second degree commercial burglary (§ 459) in another case (case No. E057492 (492)), defendant, Victor Lopez, was sentenced to local time, followed by mandatory supervision upon certain terms, as will be described more fully below. Defendant here contests some of the terms of his mandatory supervision. We reject some of his contentions, agree with others and accept the People's agreement with defendant as to some and modify them accordingly. The facts concerning these crimes will be described below.

#### **ISSUES AND DISCUSSION**

##### *1. Justification for Gang Terms*

In case number 1101776, defendant was charged with vandalism, which caused damage in excess of \$400 (§ 594, subd. (b)(1), and attempted grand theft, both occurring on or about November 20, 2011. As stated before, defendant pled guilty to attempted grand theft and was granted probation. In 2012, that probation was revoked upon defendant's admission that he had violated one of its terms by having committed the crime for which he pled guilty in case number 1201393. In that case, defendant was charged with second degree commercial burglary and forgery (§ 470, subd. (d)), which occurred on or about September 20, 2012. As stated before, defendant pled guilty to

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

second degree commercial burglary. In the revocation of probation case, defendant was sentenced to county jail for 1 year, 6 months, with 6 months of the sentence being suspended, and mandatory supervision for 6 months, and in the other case for two years, with one year suspended, and one year of mandatory supervision, the sentences in both to be served concurrently. Amongst the terms of his mandatory supervision were, “Be inside your place of residence every evening by 10:00 p.m. and not leave said residence before 6:00 a.m. unless there is a verifiable family emergency or you are traveling to or from a place of employment or school . . . [¶] Not display any gang hand signs . . . [¶] You shall not be on any school campus or within a one block radius of any school campus unless enrolled there . . . [¶] Not wear, display or have in your possession any item associated with gang dress or any items prohibited by the probation officer . . . [, i]ncluding[,] but not limited to[,] any insignia, emblem, button, badge, cap, hat, scarf, bandanna, or any article of clothing, hand sign or paraphernalia associated with membership or affiliation in any gang . . . [¶] Do not possess or have under your control any aerosol paint containers, permanent markers or etching devices.”<sup>2</sup> We will hereafter refer to these as “gang terms.”

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<sup>2</sup> These were quoted from the minute orders of the sentencing. In the probation report for case number 1201393, the last condition was modified by adding, “except in [the] course [of] employment[.]” At the sentencing, the court below granted defense counsel’s request that “an exception . . . in terms of employment” be added to this condition. Therefore, the minutes of the sentencing hearing should be amended to note this change.

According to the Probation Report, defendant was 21 when he committed the attempted grand theft and 22 when he committed the burglary. According to defendant, both of his parents were documented gang members. Defendant anticipated, upon his release from custody, living with his grandmother, who would help support him, and, therefore, seeing his father, who “is around [the grandmother’s residence] on a daily basis . . . .” Additionally, the only employment defendant reported was working on and off with his father, installing patios, since the age of 10.

Defendant’s involvement in the criminal justice system began at the age of 18, when he was convicted of possessing a weapon at school. At the age of 20, he was convicted of possessing a controlled substance and obstructing a police officer in two separate cases. At the age of 21, he was convicted of possessing drug paraphernalia and receiving stolen property in two separate cases and he pled guilty to the instant attempted grand theft in a third case. At the age of 22, he pled guilty to the instant burglary, which he committed while in summary probation for the receiving stolen property conviction and on formal probation for the attempted grand theft. The sentencing court observed that defendant did not “have a good track record” of abiding by the terms of his prior grants of probation.

Before his arrest for the burglary, defendant was homeless and he admitted that he used methamphetamine every few days.<sup>3</sup> He admitted committing the offense, which occurred when he attempted to pass a stolen forged \$400 check on a closed back account, partially to support his drug habit. Defendant believed he did not need drug treatment because he had decided that he was no longer going to use drugs. According to the probation officer, defendant demonstrated no remorse for the burglary.

Defendant denied associating with gangs, although he had “L.A.” tattooed on his right forearm and torso and “ES” on his left middle finger. The prosecutor opined that this latter tattoo signified the East Side gang and the remaining tattoos were “typical gang tattoos.” The vandalism offense which was dismissed as part of the plea bargain in the attempted grand theft case involved defendant defacing an air conditioner with graffiti. Defendant, on the other hand, asserted below that none of his prior convictions were gang related and there was no mention of gangs in his rap sheet. Defense counsel candidly admitted, “We do not know the extent of [defendant’s] membership in the gang, however, he has asserted that he is not in a gang, has never been a part of the gang culture, despite his parents’ involvement in the gang culture. The sentencing court found, based on defendant’s tattoos, “The court has some concern of gang involvement in the past. I don’t know how current it is. However, the current crime [the burglary] is not a gang

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<sup>3</sup> Interestingly, when questioned about his drug usage after being arrested for the burglary, defendant denied that he used any street drugs, “such as . . . methamphetamine.”

crime, although that sort of crime is becoming more and more prevalent in gang-related circumstances.” As the People note, the sentencing court deemed inappropriate the conditions that defendant report to the gang detail of his local law enforcement office, not appear in any court building unless there on official business and not possess any electronic pager or radio scanner unless required by his employer in a verifiable business.

Defendant had an eleventh grade education and planned, upon release from incarceration, on getting his high school diploma.

“We review conditions of probation for abuse of discretion.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) The parties agree that the conditions at issue are improper if they require or forbid conduct which is not reasonably related to future criminality.

(*People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.)

Defendant cites *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1501, 1503, for the proposition that in juvenile cases,<sup>4</sup> whether the minor is currently connected with a gang is not critical to the determination that gang conditions can be said to be reasonably designed to prevent future criminal behavior. Defendant then asserts, “The problem with this slippery slope kind of reasoning is that the same condition could be applied to all probationers.” However, not all probationers have the gang connections that defendant does, including his parents, his tattoos, his extensive recent criminal record and the fact

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<sup>4</sup> *Laylah K.* was relied upon in an adult case, *People v. Lopez* (1998) 66 Cal.App.4th 615, 626.

that he had been charged with defacing valuable property with graffiti.<sup>5</sup> The sentencing court was free to accept or reject, based on its own experience, the prosecutor's opinion that defendant's tattoos were gang related. There is, in this jurisdiction, indeed, an East Side gang (see, e.g., *People v. Montez* (2014) 58 Cal.4th 809) and many gangs in the Inland Empire are off-shoots of Los Angeles gangs. As to defendant's assertion that his parents "did their best to keep [defendant] out [of the gang culture] which is part of the reason why he resides with his grandmother in an area that has a lower gang involvement than in the area where his parents . . . reside" we note that this representation, like defendant's conflicting statements about his drug use, is unsupported by the facts in the record before us. While defendant's mother resides in Los Angeles, and, according to defendant, he, therefore, sees her irregularly, he planned, upon his release from custody in these cases, to *live* at his grandmother's house, *where his father also lives*<sup>6</sup> and *working for his father was the only employment history he had*. Additionally, defendant was *born in San Bernardino* and while he planned to live with his grandmother *after he was released from custody*, because she was going to support him, before the burglary, he

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<sup>5</sup> Specifically, defendant was charged with vandalizing with graffiti an air conditioner belonging to a named victim on a specific date and he pled guilty to a second charge that he attempted to take air conditioner parts from the same victim on the same date.

<sup>6</sup> The probation report lists his father's address in November 2012, as being in Fontana, therefore, we assume that is the grandmother's house. Additionally, at the sentencing hearing, defense counsel represented to the court that the father "is around on a daily basis at [the] grandmother's residence[.]"

was “*homeless [and] staying place to place[,]*” therefore, there is no evidence that defendant’s parents removed him from Los Angeles to his grandmother’s Inland Empire house to keep him away from the gang culture. Defendant fails to persuade us that in ordering these gang terms, the trial court exceeded the bounds of reason. (*People v. Welch* (1993) 5 Cal.4th 228, 233.)

## 2. *Incompleteness of Other Terms*

### a. *Not Leave the State Without Written Permission*

Defendant has no quarrel with the term that he obtain the written permission of his probation officer before leaving the state of California. However, he contends that his departure from the state must be knowing, citing the possibility that he may be fishing on Lake Tahoe and unknowingly cross into the state of Nevada. However, should this occur, defendant will have an opportunity at the revocation hearing to argue that the term exceeded the bounds of reason given these unique circumstances. (See *People v. Olguin, supra*, 45 Cal.4th 386, fn. 5.)

### b. *Not Leave the Country*

Using the same logic as he did with his “not leave California” term, defendant asserts that there should be a knowing requirement for the term that he not leave the country, citing the possibility that he may unwittingly “step into Mexicali” while on a trip to Calexico. As with the prior term, he will have an opportunity at any revocation hearing to make this argument.

c. *Permitting Visits and Searches of Residence*

This term requires defendant to “[p]ermit visits and searches of places of residence by agents of the Probation Dep[artmen]t and/or law enforcement for the purpose of ensuring compliance with the terms and conditions of probation; not do anything to interfere with this requirement, or deter officers from fulfilling this requirement, such as erecting any locked fences/gates that would deny access to probation officers, or have any animals on the premises that would reasonably deter, threaten the safety of, or interfere with, officers enforcing this term.” The People concede that the word, “knowingly” must be inserted before the words “have any animals” and that the word “your” could be inserted before the words “places of residence” to make the term more clear. Defendant also asserts that “not do anything to interfere with this requirement” should be changed to “not *knowingly* do anything *with the intention* to interfere with this requirement . . . .” We agree with defendant that the addition of the word “knowingly” would ensure that defendant not be sanctioned for unintentionally doing anything that results in interference, but defendant fails to persuade us that there is any basis for additionally requiring that law enforcement prove that defendant intend to interfere in order to sanction him when he knowingly does anything that results in interference.

d. *Possession of Dangerous/Deadly Weapons/Explosives/Materials to Make Explosives*

To the term that defendant “[n]either possess nor have under [his] control any dangerous or deadly weapons or explosive devices or materials to make explosive

devices” the People agree with defendant that the word “knowingly” should be inserted before the words “possess” and “have under [his] control.” As to defendant’s additional assertion that the words “object intended by you to be used as a” before the words “dangerous or deadly weapon” there are statutes that govern the possession of dangerous or deadly weapons (e.g., § 245, subd. (a)(1)) that do not carry such a requirement on their face, and neither should this term. Pointing to the fact that many common household items can be used to make bombs (hence the restriction on liquids in carry-on luggage in planes), defendant additionally asserts that the words, “the latter with the intent of making explosive devices” should be added to “materials to make explosive devices.” We agree.

*e. Use/Possession of Controlled Substances Without a Prescription*

This term provides, “Neither use nor possess any controlled substances without medical prescription. A physician’s written notice is to be given to the probation officer.” The People agree with defendant that this should be modified to, “Not knowingly use or possess any controlled substance without a medical prescription.” The People also assert that the term should end, thusly, “Notice of prescription medication and a copy of prescription written by a physician are to be given to the probation officer.” However, it is unclear to this court precisely what is meant by “notice of prescription medication” and we doubt that any doctor would know what it meant other than supplying a copy of the prescription or a note written on the doctor’s prescription pad or letterhead that the doctor is prescribing a particular controlled substance for defendant.

Therefore, a copy of the prescription, with a note from the doctor written on the doctor's prescription pad or letterhead to the effect that the defendant has been prescribed a particular controlled substance would be sufficient and would prevent any fraud in copying the prescription.

*f. Possession of Drug Paraphernalia*

The parties agree that the word, "knowingly" should be inserted in front of the word, "possess" in the following term, "Not possess any type of drug paraphernalia, as defined in H&S11364.5(d)."

*g. Associate With Convicted Felons/Actively Engaged in Criminal Conduct*

Here, defendant strikes one for the prosecution by suggesting that the term, "Not associate with persons known to defendant to be convicted felons or anyone actively engaged in criminal activity . . . except Anthony Lopez (father) & Julia Ramirez (mother)" to "Not associate with persons known to defendant to be convicted felons, with the exception of Anthony Lopez (father) & Julie Ramirez (mother), or anyone actively engaged in criminal activity." Otherwise, the parties agree that the words, "known to the defendant to be" should be inserted before the words, "actively engaged in criminal activity."

*h. Associate with Gang Members/Visit Areas of Gang Activity*

The parties agree, and the People provide the solution for defendant's seemingly unsolvable remaining objection to this term, by amending it to read as follows, "Not associate with persons known to defendant to be gang members except Anthony Lopez

(father) & Julie Ramirez (mother) or visit places known to defendant to be areas of gang activity. For purposes of this term, the word “gang” means a “criminal street gang” as defined in Penal Code section 186.22(e) & (f).”

i. *Curfew*

The curfew term should be modified to include an amendment the sentencing court pronounced, which is not reflected in the minutes, as follows, “If . . . defendant needs an exception, he can approach the probation department about that.”

j. *Gang Hand Signs*

The parties agree that this term should read, “Not display hand signs known by defendant to be used by criminal street gangs” and we would add, “as defined in Penal Code section 186.22(e) & (f).”

k. *Not Being on School Campus*

The parties agree that this term should be modified as follows, “You shall not knowingly be on any school campus or knowingly be within a one block radius of any school campus unless enrolled there.”<sup>7</sup>

l. *Gang Symbols*

The parties agree that this term should read, “Not knowingly possess, wear or display, any item associated with criminal street gangs, including, but not limited to, any

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<sup>7</sup> As to defendant’s assertion that this term, aside from being a typical anti-gang term, had no additional application here because defendant had not caused any “disruption at a school in the past” we remind defendant that, as stated before, his first adult conviction was for possessing a weapon at school.

insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing that you know, or are informed by your probation officer, is associated with membership or affiliation in any criminal street gang.” We add, “Criminal street gang is defined in Penal Code section 186.22(e) & (f).”

m. *Possession of Aerosol Paint/Permanent Markers/Etching Devices*

The parties agree that this term should be modified to require defendant’s knowing possession or control of these items, and with the exception orally stated by the trial court, as previously discussed.

n. *Contact with Victims/Property*

The terms prohibiting defendant from having contact with the victims of the burglary, i.e., the owner of the check and the bank, and from entering their property should be modified as follows, “Not knowingly have any contact with Michael M. or knowingly be within 100 yards of his property, and not enter any branch of Bank of America.”

**DISPOSITION**

The trial court is directed to amend the probation terms in both cases. In case number E057491 the amendments are as follows:

1. “8) Permits visits and searches of your places of residence by agents of the Probation Dept and/or law enforcement for the purpose of ensuring compliance with the terms and conditions of probation; not knowingly do anything to interfere with this requirement, or deter officers from fulfilling this requirement, such as erecting any locked

fences/gates that would deny access to probation officers, or knowingly have any animals on the premises that would reasonably deter, threaten the safety of, or interfere with, officers enforcing this term.”

2. “9) Neither knowingly possess nor knowingly have under your control any dangerous or deadly weapons or explosive devices or materials to make explosive devices, the latter with the intent of making explosive devices.”

3. “11) Not knowingly use or possess any controlled substance without a medical prescription. A copy of the prescription written by a physician for a controlled substances and a note from the same physician written on that physician’s prescription pad or letterhead to the effect that the defendant has been prescribed a particular controlled substance by the doctor are to be given to the probation officer.”

4. “13) Not knowingly possess any type of drug paraphernalia, as defined in H&S11364.5(d).”

5. “15) Not associate with persons known to defendant to be convicted felons, with the exception of Anthony Lopez (father) & Julie Ramirez (mother), or anyone known to the defendant to be actively engaged in criminal activity.”

6. “17) Not associate with persons known to defendant to be gang members except Anthony Lopez (father) & Julie Ramirez (mother) or visit places known to defendant to be areas of gang activity. For purposes of this term, the word, “gang” means a “criminal street gang” as defined in Penal Code section 186.22 (e) & (f).”

8. “23) Be inside your place of residence every evening by 10:00 p.m. and not leave said residence before 6:00 a.m. unless there is a verifiable family emergency or you are traveling to or from a place of employment or school. If defendant needs an exception to this term, he can approach the probation department about it.”

9. “24) Not display hand signs known by defendant to be used by criminal street gangs as defined in Penal Code section 186.22(e) & (f).”

10. “25) You shall not knowingly be on any school campus or knowingly be within a one block radius of any school campus unless enrolled there.”

11. “26) Not knowingly possess, wear or display, any item associated with criminal street gangs, including, but not limited to, any insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing that you know, or are informed by your probation officer, is associated with membership or affiliation in any criminal street gang, as defined in Penal Code section 186.22(e) & (f).”

12. “27) Do not knowingly possess or knowingly have under your control any aerosol paint containers, permanent markers, or etching devices except in course of employment.”

13. “29) Not knowingly have any contact with Michael M. or knowingly be within 100 yards of his property, and not enter any branch of Bank of America.”

In case number E057492, the amendments to the probation conditions are as follows:

1. “8) Permits visits and searches of your places of residence by agents of the Probation Dept and/or law enforcement for the purpose of ensuring compliance with the terms and conditions of probation; not knowingly do anything to interfere with this requirement, or deter officers from fulfilling this requirement, such as erecting any locked fences/gates that would deny access to probation officers, or knowingly have any animals on the premises that would reasonably deter, threaten the safety of, or interfere with, officers enforcing this term.”

2. “9) Neither knowingly possess nor knowingly have under your control any dangerous or deadly weapons or explosive devices or materials to make explosive devices, the latter with the intent of making explosive devices.”

3. “11) Not knowingly use or possess any controlled substance without a medical prescription. A copy of the prescription written by a physician for a controlled substances and a note from the same physician written on that physician’s prescription pad or letterhead to the effect that the defendant has been prescribed a particular controlled substance by the doctor are to be given to the probation officer.”

4. “13) Not knowingly possess any type of drug paraphernalia, as defined in H&S11364.5(d).”

5. “15) Not associate with persons known to defendant to be convicted felons, with the exception of Anthony Lopez (father) & Julie Ramirez (mother), or anyone known to the defendant to be actively engaged in criminal activity.”

6. “16) Not associate with persons known to defendant to be illegal users or sellers of controlled substances, except for those involved in your recovery.”

7. “17) Not associate with persons known to defendant to be gang members except Anthony Lopez (father) & Julie Ramirez (mother) or visit places known to defendant to be areas of gang activity. For purposes of this term, the word, “gang” means a “criminal street gang” as defined in Penal Code section 186.22 (e) & (f).”

8. “23) Be inside your place of residence every evening by 10:00 p.m. and not leave said residence before 6:00 a.m. unless there is a verifiable family emergency or you are traveling to or from a place of employment or school. If defendant needs an exception to this term, he can approach the probation department about it.”

9. “25) Not display hand signs known by defendant to be used by criminal street gangs as defined in Penal Code section 186.22(e) & (f).”

10. “26) You shall not knowingly be on any school campus or knowingly be within a one block radius of any school campus unless enrolled there.”

11. “27) Not knowingly possess, wear or display, any item associated with criminal street gangs, including, but not limited to, any insignia, emblem, button, badge, cap, hat, scarf, bandana, or any article of clothing that you know, or are informed by your probation officer, is associated with membership or affiliation in any criminal street gang, as defined in Penal Code section 186.22(e) & (f).”

12. “30) Do not knowingly possess or knowingly have under your control any aerosol paint containers, permanent markers, or etching devices except in course of employment.”

13. “32) Not knowingly have any contact with Michael M. or knowingly be within 100 yards of his property, and not enter any branch of Bank of America.”

In all other respects, the judgments are affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.