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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NOEL MARIE SAULS,

Defendant and Appellant.

G045955

(Super. Ct. No. 11HF2459)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Michael A. Leversen, Judge. Affirmed.

Marta I. Stanton, 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 Marvin Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Noel Marie Sauls pled guilty to count one of unlawfully possessing methamphetamine. She now challenges a condition of her probation which requires her to maintain a residence as approved by her probation officer, claiming it is unconstitutionally vague and overbroad. We disagree, concluding the provision does not violate defendant's constitutional rights.

She also argues, and we concur, that she was wrongly sentenced to 15 days in custody as a condition of probation, and will order the probation conditions modified accordingly.

I

FACTS

In September 2011, the Orange County District Attorney's Office filed a complaint charging defendant with unlawful possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a) (count one), and that she possessed controlled substance paraphernalia in violation of Health and Safety Code 11364 (count two).

On October 6, defendant waived her rights and pled guilty to count one. The People dismissed count two. The court determined she was eligible for the Penal Code section 1210 (also known as Prop. 36) drug treatment program. The court stayed imposition of sentence and placed defendant on three years' formal probation. She was ordered to serve 15 days in county jail with credit for time served (defendant had 15 days of credit).

Defendant signed a Superior Court Terms of Probation and Conditions of Felony Probation and Mandatory Supervision Report, which stated, "I have read and agree to all the terms and conditions I have initialed on pages 6 and 7 of this form." Page seven included condition No. 17, which was initialed by defendant and stated: "Cooperate with your probation or mandatory supervision officer in any plan for psychological, psychiatric, alcohol, and/or drug treatment. Seek training, schooling, or

employment, and maintain residence as approved by your probation or mandatory supervision officer. Do not associate with persons known to you to be parolees, on post-release community supervision, convicted felons, users or sellers of illegal drugs, or otherwise disapproved of by probation or mandatory supervision.” No objections were entered on the record regarding any probation term.

Defendant now appeals.

II

DISCUSSION

Residence Condition

Defendant first claims the probation condition requiring her to “maintain residence as approved by your probation or mandatory supervision officer” (the residence condition) is unconstitutionally vague and overbroad, and unconstitutionally impinges on her First, Fourth, Fifth and Fourteenth Amendment rights to travel, freedom of association, and privacy.

We focus only on the constitutionality of the probation conditions, not whether they are reasonable as applied to defendant. By failing to object below, defendant has forfeited all claims except a challenge “based on the ground the condition is vague or overbroad and thus *facially* unconstitutional.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 878, italics added.)

“[T]he void for vagueness doctrine applies to conditions of probation. [Citations.] An order must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated. [Citation.]” (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.) We find no vagueness problem here — the condition clearly states that defendant is to “maintain residence as approved by your probation or mandatory supervision officer.” There is simply nothing vague about the provision — defendant must have a residence, and the residence must be approved.

With regard to overbreadth, a probation condition may be overbroad if it unduly restricts the exercise of a constitutional right. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016.) Probation conditions are valid even though they restrict a probationer's exercise of constitutional rights, if they are narrowly drawn to serve the important interests of public safety and rehabilitation and are specifically tailored to the individual probationer. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084.)

“A probation condition should be given ‘the meaning that would appear to a reasonable, objective reader.’ [Citation.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 382.) In *People v. Schaeffer* (2012) 208 Cal.App.4th 1, the court interpreted a similar residence provision in light of *Olguin* and “presume[d] a probation officer will not withhold approval for irrational or capricious reasons. [Citation.]” (*Id.* at p. 5.)

When read in that light, the residence condition gives the probation officer a fairly narrow ability to approve defendant's housing in a manner that will serve the purposes of defendant's rehabilitation. Where she lives is an important component of her recovery efforts. Without any limits, for example, she might choose to live near a location known for drug distribution. When viewed in this manner, the residence condition is narrowly tailored to support defendant in her rehabilitation efforts.

Therefore, given such a reading, the residence provision does not, on its face, unconstitutionally impinge on defendant's right to travel or to freely associate. Her association rights are already limited by her unchallenged agreement to the probation condition that prohibits her from associating with known felons or drug users. Further, with regard to the right to privacy, we cannot envision how the residence provision would impinge on her rights any further than the unchallenged probation provision requiring defendant to submit herself, her residence, her property, and any container or vehicle to a search by any law enforcement officer with or without cause at any time. On its face, the residence condition does not violate defendant's constitutional rights.

Incarceration

Defendant argues, and the Attorney General agrees, that the trial court improperly imposed 15 days of county jail time as a condition of probation. Under Penal Code section 1210.1, subdivision (a), this was improper [“A court may not impose incarceration as an additional condition of probation.”]. The condition shall be stricken.

III

DISPOSITION

The court’s order is affirmed, with the exception of the order imposing 15 days of incarceration, which is stricken.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.