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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.

CHINH VINH TRAN,

Defendant and Appellant.

G045968

(Super. Ct. No. 07WF0577)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Reversed in part and affirmed in part.

John F. Schuck, 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, A. Natasha Cortina and Ronald A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Chinh Vinh Tran challenges a protective order, issued at sentencing, that bars him from contacting his victim. The Attorney General concedes the court lacked authority to issue the order. We reverse it.

## FACTS

Defendant was hired in 2006 to care for a 17-year-old boy with autism. The boy's mother caught defendant in bed with her son, under the comforter. She told defendant to leave. The boy later told a classmate defendant "tickle[d]" and "touche[d] his groin area." The classmate told the principal, and the school contacted the police. Working with the police, the boy's mother called defendant. Defendant admitted touching the boy's penis twice.

A jury convicted defendant of two counts of committing a lewd act upon a dependent person by a caretaker. (Pen. Code, § 288, subd. (c)(2).)<sup>1</sup> The court sentenced defendant to two years in state prison.

At the sentencing hearing, the court "ask[ed] the People to prepare a post trial protective order." The court stated it would "give [defendant] the circumstances of the protective order right now. [¶] Mr. Tran, you are to have no contact or communication whatsoever in any form whatsoever with the victim in this case. . . . You are to stay at least 300 yards away from the victim in this case. And away means where he lives, where he works, where he plays, where he goes to school, if he is in a vehicle, where that vehicle might be; you are not to have communication with him. No communication means no mail, no e-mail, you cannot have a third person contact him for you."

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<sup>1</sup>

All further statutory references are to the Penal Code.

The court later issued a written order using Judicial Council form CR-161, entitled “CRIMINAL PROTECTIVE ORDER — OTHER THAN DOMESTIC VIOLENCE.” A check mark indicated the court issued a “PROBATION CONDITION ORDER” pursuant to “Pen[al] Code, § 136.2.”

## DISCUSSION

Defendant contends the court lacked authority to issue the protective order. The Attorney General agrees. So do we.

This is a recurring issue. Trial courts issue no-contact protective orders at sentencing without invoking any applicable statute or requiring any evidentiary showing — and appellate courts strike or reverse the orders. (See *People v. Robertson* (2012) 208 Cal.App.4th 965, 997 (*Robertson*); *People v. Ponce* (2009) 173 Cal.App.4th 378, 386 (*Ponce*); *People v. Stone* (2004) 123 Cal.App.4th 153, 161 (*Stone*).

The order here is not authorized by the statute cited on the form. Section 136.2 “authorizes any court with jurisdiction over a criminal matter which has a ‘good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur,’ to issue a restraining order. The statute specifies a nonexclusive list of restraining orders that are permissible, among others, an order protecting victims and witnesses from annoying, harassing or threatening contacts.” (*Stone, supra*, 123 Cal.App.4th at pp. 158-159.)

But “section 136.2 protective orders are ‘operative only during the pendency of criminal proceedings and as prejudgment orders.’” (*Ponce, supra*, 173 Cal.App.4th at p. 383.) “Although section 136.2 does not indicate on its face that the restraining orders it authorizes are limited to the pendency of the criminal action in which they are issued or to probation conditions, it is properly so construed. It authorizes injunctions only by courts with jurisdiction over criminal proceedings and is aimed at

protecting only ‘victim[s] or witness[es],’ an indication of its limited nature and focus on preserving the integrity of the administration of criminal court proceedings and protecting those participating in them.” (*Stone, supra*, 123 Cal.App.4th at p. 159.) The statute’s “only purpose is to protect victims and witnesses in connection with the criminal proceeding in which the restraining order is issued in order to allow participation without fear of reprisal. [¶] Additionally, the absence of any express time limitation on the duration of a restraining order issued under section 136.2 suggests that its duration is limited by the purposes it seeks to accomplish in the criminal proceeding.” (*Ibid.*)

Thus, the court may not rely upon section 136.2 to issue a no-contact protective order when sentencing a defendant to state prison. (*Ponce, supra*, 173 Cal.App.4th at pp. 381, 386 [similar Judicial Council form citing § 136.2]; *Stone, supra*, 123 Cal.App.4th at pp. 158, 161 [former form].) At that point, the possible duration of a section 136.2 protective order has expired.

The form signed by the court expressly warns against issuing such an order. It cites *Stone* in its “WARNINGS AND NOTICES”: “Orders under Penal Code section 136.2 are . . . not valid after imposition of a state prison commitment. (See [*Stone, supra*,] 123 Cal.App.4th 153.)”

The order also exceeds the court’s inherent authority. “An existing body of statutory law regulates restraining orders. “[I]nherent powers should never be exercised in such a manner as to nullify existing legislation . . . .” [Citation.] Where the Legislature authorizes a specific variety of available procedures, the courts should use them and should normally refrain from exercising their inherent powers to invent alternatives. [Citation.] [¶] Moreover, even where a court has inherent authority over an area where the Legislature has not acted, this does not authorize its issuing orders against defendants by fiat or without any valid showing to justify the need for the order.” (*Ponce, supra*, 173 Cal.App.4th at p. 384.)

In this case, no evidentiary showing was made or even offered. As was true in *Robertson*: “the prosecutor did not make an offer of proof or argument justifying the need for a no-contact order. The trial was finished and [defendant] was sentenced to prison. Accordingly, we agree with the parties that the no-contact order is unauthorized and must be stricken.” (*Robertson, supra*, 208 Cal.App.4th at p. 996 [striking oral no-contact order as unauthorized by § 136.2 or court’s inherent authority]; accord *Ponce, supra*, 173 Cal.App.4th at pp. 384-385 [striking order]; *Stone, supra*, 123 Cal.App.4th at p. 161 [reversing order].)

#### DISPOSITION

The protective order is reversed. The judgment is otherwise affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.