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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.

RICHARD THEODORE CASEY,

Defendant and Appellant.

G048305

(Super. Ct. No. R-01174)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Christopher J. Evans, Temporary Judge. (Pursuant to Cal. Const., art. IV, § 21.) Affirmed.

Patrick Hennessey, Jr., 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, Charles C. Ragland and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Richard Theodore Casey, a convicted sex offender, appeals from an order denying his request to modify the conditions of his release under the Postrelease Community Supervision Act of 2011. (Pen. Code, § 3450 et seq.) He argues the conditions requiring him to 1) wear a GPS monitoring device, 2) attend sexual offender treatment, and 3) stay away from adult entertainment establishments are unduly restrictive. We disagree and affirm the trial court's ruling.

### FACTS

In 2002, Casey sodomized and engaged in oral copulation with a male minor at Orangewood Children's Home. Casey, who was 17 years old at the time, was declared a ward of the juvenile court and granted probation in that case.

In 2007, Casey had unlawful sexual intercourse with a 15-year-old female runaway in Riverside. As part of a plea bargain, Casey pleaded guilty to statutory rape, imposition of sentence was suspended, and he was placed on probation for five years. Casey subsequently violated probation several times by failing to report and otherwise comply with the terms of his probation. During his probationary term, he was also convicted of hit and run driving, possessing marijuana, and robbery.

Although Casey served numerous stints in custody for his various crimes and violations, he was not sentenced for his statutory rape until November 10, 2011. At that time, the court revoked Casey's probation and sentenced him to two years in prison.

Less than a year later, on September 22, 2012, Casey was released from custody and placed on postrelease community supervision (PRCS) in Orange County for a period of three years. As part of his PRCS plan, Casey was required, inter alia, to obey all laws, report to his probation officer as directed, submit to drug testing, participate in a sex offender treatment program, and wear a GPS monitoring device.

It didn't take Casey long to run afoul of these conditions. On November 26, 2012, he was arrested in Long Beach for trespassing. On January 3, 2013, he was terminated from his sex offender treatment program for noncooperation. Five days later,

he removed his GPS device without permission, and the following day, he failed to report to his probation officer for a scheduled drug test.

Due to these violations, Steven Berry, Casey's probationer officer at the time, filed a petition to revoke Casey's PRCS. In his accompanying report, Berry explained that, because of Casey's criminal record, his probation was "managed using the Containment Model, which is comprised of intensive supervision, specialized sex offender treatment and polygraph examinations. . . . The goal is to provide proactive supervision and ongoing risk assessment [and] allow for intervention during high-risk conduct prior to recidivism, thereby reducing victimization of the community."

Berry's report also included information about why Casey was terminated from his sex offender program. Berry stated that, according to the program's director Eduardo Rendon, Casey had been belligerent, argumentative and uncooperative during the sessions he attended. Casey also failed to take responsibility for the sex offenses he had committed and questioned his need to participate in the program. Due to Casey's obstinacy, Rendon felt Casey was at high risk to reoffend, particularly in the rape of an adolescent or adult female victim.

In his report, Berry also noted Casey was a transient who used marijuana regularly, he had been diagnosed with schizophrenia, and he had not sought work since being released from custody in the fall of 2012. It was Berry's opinion that Casey was a danger to himself and others and that he "may need a considerable amount of custody time in order evaluate the seriousness of his actions."

On February 7, 2013, Casey admitted he violated the terms of his PRCS. Thereupon, the court revoked and reinstated his PRCS on the condition Casey spend 120 days in the Orange County jail.

Casey subsequently filed a motion to modify the conditions of his PRCS. He objected to three specific conditions that are at issue in this appeal, namely, that he must: 1) wear a GPS monitoring device; 2) attend sex offender treatment; and 3) stay

away from topless bars and adult entertainment shops. Casey argued these conditions should be stricken because they infringed his constitutional rights and were not reasonably related to his underlying conviction for statutory rape.

At a hearing on the motion, probation officer Berry testified the conditions of Casey's release were dictated largely by the fact he has had two prior episodes of criminal sexual misconduct. Knowing Casey had victimized a minor on both occasions, Berry determined he should be required to attend sex offender treatment and wear a GPS monitoring device. Berry believed the monitoring was necessary because Casey was a transient who spends much of his time outside Orange County, and because he absconded on probation recently by removing his GPS tracker and failing to report his whereabouts. Berry also testified it was important for Casey to stay away from pornography because it is a "trigger" for reoffending and is prohibited in sex offender treatment.

Probation officer Jason Gomez testified he had recently taken over the case, and in the few days he had been supervising Casey, he had seized a small amount of marijuana from him, along with his cell phone. The web browser on the phone indicated a recent search for sex with girls. Casey admitted he used the wireless network at a restaurant to access the site. During another meeting with Casey, Gomez observed him talking to a 16-year-old girl who was on probation. Gomez didn't know what they were talking about, but he was concerned Casey might be coming on to the girl. Gomez believed it was necessary to keep tabs on Casey to ensure he does not visit places where minors congregate. He also felt that sex offender treatment was necessary to mitigate Casey's risk of reoffending.

Despite this testimony, defense counsel argued it was unreasonable for Casey to have to wear a GPS monitor, attend sex offender treatment, and refrain from visiting adult entertainment venues. In so arguing, counsel pointed out these conditions were not included in the terms of Casey's original probation, and he was not required to register as a sex offender by virtue of his conviction in that case. However, the trial court

ruled “every single one of these terms are appropriate. It doesn’t even seem close to me.” Stating he “just [couldn’t] imagine [Casey] being supervised in any other way,” the trial judge denied Casey’s request to modify the terms of his release.

#### DISCUSSION

Casey renews his claim the three release conditions he challenged below are unreasonable. He argues subjecting him “to these conditions unduly restricts his rights to freedom of movement and freedom of association. They are unnecessary and overbroad. The trial court should have granted [his] motion to strike the conditions.” We find no basis for disturbing the trial court’s ruling.

Casey was released from prison pursuant to the Postrelease Community Supervision Act of 2011, which was designed to improve public safety and facilitate the successful reintegration of inmates back into society. (Pen. Code, § 3450, subs. (b)(4), (5).) The act sets forth a variety of conditions that are generally applicable to PRCS. (Pen. Code, § 3453.) It also authorizes additional conditions, including GPS monitoring, if they are tailored to the individual offender. (*Id.*, at subs. (a), (b).) These additional conditions must “be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender’s risk of recidivism, and the offender’s criminal history, and be otherwise consistent with law.” (*Id.*, at subd. (a).)

In that sense, the conditions for PRCS are not unlike the conditions of probation, which must be “‘reasonably related to the crime of which the defendant was convicted or to future criminality.’ [Citation.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) In addition, any condition “that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

Casey argues it doesn’t make sense to require him to wear a GPS monitor because there is no evidence he has engaged in sexual misconduct since he committed

statutory rape in 2007. But before then, he sexually victimized another minor, which shows the rape was not an isolated event. The fact Casey has committed multiple sex crimes against multiple victims indicates he has a problem controlling his sexual impulses. And since his victims were both minors, requiring him to wear a GPS monitor is a reasonable method to ensure he does not frequent locations where children are known to gather or otherwise violate the terms of his release. GPS monitoring is “reasonably related to [Casey’s] past behavior and likely to deter future criminality.” (*In re A.M.* (2013) 220 Cal.App.4th 1494, 1500 [probation condition requiring minor to wear a GPS bracelet was a reasonable means to ensure his compliance with curfew].) Because it will “do no more than indicate his location at any particular time” (*In re R.V.* (2009) 171 Cal.App.4th 239, 248), it does not unduly restrict Casey’s freedom of movement or his right to associate with others. (See *id.* at pp. 248-249 [rejecting probationer’s constitutional challenges to condition requiring him to wear a GPS device].)

Casey gathers he was signaled out for GPS monitoring because he is homeless. But there is nothing in the record to suggest Casey’s transient lifestyle played into the monitoring requirement. It appears the main reason for the requirement is because Casey likes to travel outside of Orange County, which is not necessarily related to his homelessness. Indeed, when asked if the monitoring requirement would apply if Casey “resolve[d] his transiency,” Berry testified it was “[m]ore than likely,” due to the other circumstances presented in his case. Therefore, we cannot say Casey was subjected to unfair treatment simply because he lacks the means to acquire permanent housing. Given his overall history, we are convinced the GPS requirement would apply to him even if he had a place to stay in Orange County.

Casey also objects to his release conditions on the ground they are not supported by any “fact-based evidence.” He claims the conditions requiring him to attend sex offender treatment and stay away from adult entertainment establishments are unnecessary because there are no “indications that [he] was re-offending, contacting

minors or was inclined to do so[.]” But the point is to make sure those things do not happen.

Casey has a lengthy criminal record and a dismal record on probation. He was kicked out of his last sex offender treatment program because he refused to cooperate or take any responsibility for his prior sex crimes. And when he met with Gomez upon his release in this case, his cell phone indicated he had been searching for information about, or websites involving, sex with girls. Casey was also in possession of marijuana and seen talking to a girl little more than half his age for no apparent reason. His actions show nothing but contempt for the state’s attempt to curb his penchant for illegal behavior.

For all these reasons, we find it was entirely appropriate for the probation department to require Casey to attend sexual offender treatment and refrain from visiting establishments that might trigger recidivism, such as topless bars and adult entertainment shops. We find nothing unreasonable or unconstitutional about these conditions.

#### DISPOSITION

The trial court’s order denying Casey’s motion to modify the terms of his release is affirmed.

BEDSWORTH, J.

WE CONCUR:

O’LEARY, P. J.

THOMPSON, J.