

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO ALEJANDRO RAMIREZ,

Defendant and Appellant.

H037015  
(Santa Clara County  
Super. Ct. No. C1104505)

Defendant appeals from the trial court's imposition of a probation condition that does not contain a knowledge requirement. The People have no objection to our modifying the condition, and we will modify it.

FACTS AND PROCEDURAL BACKGROUND

The facts are irrelevant to this appeal and we need not describe them. Defendant pleaded no contest to one count of unauthorized use of a motor vehicle (Veh. Code, § 10851, subd. (a)), one count of tampering with a motor vehicle (*id.*, § 10852), three counts of burglary (Pen. Code, § 459) of an automobile, one count of petty theft with a prior conviction or convictions for an enumerated larcenous offense (*id.*, § 666), and one count of obstructing a police officer (*id.*, § 148, subd. (a)(1)). The trial court placed defendant on three years' formal probation with a number of conditions, including a one-year jail sentence.

## DISCUSSION

Defendant claims that the following probation condition is unconstitutionally vague, overbroad, and/or otherwise in violation of his constitutional rights: “[D]efendant shall not possess or consume alcohol or illegal drugs or go to places where alcohol is the known primary item of sale. Defendant is not to possess or use illegal controlled substances or go anywhere he knows illegal drugs or non-prescribed controlled substances are used or sold and shall enter and complete a substance abuse treatment program if directed to do so by Probation.”

A reviewing court reviews a trial court’s imposition of a probation condition under one of two different standards. The applicable standard depends on the condition’s effect on a defendant’s civil liberties. “ ‘[A] probation 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.’ ” (*People v. Olguin* (2008) 45 Cal.4th 375, 384.) All others are reviewed for abuse of discretion, i.e., “[w]e do not apply such close scrutiny in the absence of a showing that the probation condition infringes upon a constitutional right . . . [and] absent such a showing . . . simply review[ ] such a condition for abuse of discretion, that is, for an indication that the condition is ‘arbitrary or capricious’ or otherwise exceeds the bounds of reason under the circumstances.” (*Ibid.*) The court may “impose conditions to foster rehabilitation and to protect public safety.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.)

“A probation condition should be given ‘the meaning that would appear to a reasonable, objective reader.’ ” (*People v. Olguin, supra*, 45 Cal.4th at p. 382.)

“ ‘A probation condition is subject to the “void for vagueness” doctrine . . . .’ ” (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1070.) “ ‘The underlying concern’ ” of the void for vagueness doctrine “ ‘is the core due process requirement of adequate *notice*: [¶] “ ‘No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands

or forbids.’ [Citations.]” ’ ” (Ibid., quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115; accord, *In re Sheena K.* (2007) 40 Cal.4th 875, 890.) In sum, “A probation condition ‘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,’ if it is to withstand a challenge on the ground of vagueness.” (*In re Sheena K., supra*, at p. 890.)

As for overbreadth, “[a] probation 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.” (*In re Sheena K., supra*, 40 Cal.4th at p. 890.)

Defendant observes that he could unwittingly violate the alcohol term by driving a car not knowing that alcoholic beverages are in the trunk. The same could be true, of course, of the other substances mentioned in the probation condition that defendant challenges. We will modify the condition so as to avoid such problems.

#### DISPOSITION

The judgment is modified as follows:

Replace the following probation condition:

“[D]efendant shall not possess or consume alcohol or illegal drugs or go to places where alcohol is the known primary item of sale. Defendant is not to possess or use illegal controlled substances or go anywhere he knows illegal drugs or non-prescribed controlled substances are used or sold and shall enter and complete a substance abuse treatment program if directed to do so by Probation.”

As follows:

“Defendant shall not knowingly possess or consume alcohol or illegal drugs or go to places where he knows that alcohol is the primary item of sale. Defendant is not to knowingly possess or use illegal controlled substances or go anywhere he knows illegal drugs or nonprescribed controlled substances are used or sold, and shall enter and

complete a substance abuse treatment program if directed to do so by the probation authorities.”

As so modified, the judgment is affirmed.

---

Duffy, J.\*

WE CONCUR:

---

Bamattre-Manoukian, Acting P. J.

---

Mihara, J.

---

\* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.