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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE CAYLAO,

Defendant and Appellant.

H037354

(Santa Clara County

Super. Ct. No. C1102791)

Joe Caylao was convicted by plea of one count of grand theft in violation of Penal Code sections 484-487, subdivision (a).<sup>1</sup> He was placed on probation for three years and ordered to serve 300 days in jail. The court imposed various terms of probation, among them that he refrain from possessing or consuming alcohol or knowingly being in any place where alcohol is the primary item of sale. Caylao challenges this probation term on appeal, contending that it was not reasonably related to the crime of which he was convicted. On this record, which reveals that Caylao has a criminal history involving drug related charges, we reject the challenge and affirm the judgment.

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<sup>1</sup> Further unspecified statutory references are to the Penal Code.

## STATEMENT OF THE CASE

### I. *Factual Background*<sup>2</sup>

On January 14, 2011, Caylao had been staying for three of four days in the family home of Darrell Matos, whom he had known for quite some time from church. Matos had offered to rent Caylao a room in the house for about \$400 per month as Caylao needed a place to stay. That evening, Caylao borrowed Matos's truck, ostensibly to retrieve some money with which to pay rent. When Matos got into the truck the next day, he found a syringe and concluded that Caylao had a drug problem. Because of this, Matos asked him to leave the house, saying, "we both know why," referring to the syringe. Matos encouraged Caylao to get help for his drug problem. Without admitting to drug use, Caylao left but asked Matos if he could return later to pick up his belongings, to which Matos agreed.

The following week, Caylao phoned Matos and made arrangements to retrieve his things. Matos asked his sister-in-law to come to his house while he was at work to let Caylao in. She did so, watching Caylao remove a couple of boxes and assisting him in moving a couch. After Caylao took his belongings, Matos's sister-in-law locked up the house and left, observing Caylao lingering in front of the house as she drove away. The next morning, Matos's wife discovered that her laptop, which she had left on the kitchen table where it remained when Matos's sister-in-law left the house, was missing. Matos's wife also discovered that her cell phone was missing. She called Matos, who, in turn, called Caylao and accused him of stealing these things. Caylao denied having stolen anything and insisted that Matos would owe him an apology, but still offered that he may have taken the cell phone by accident. When Matos got home later that day, he confirmed the items missing, which included a pair of his shoes, and he discovered that the screen on the bathroom window had been damaged.

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<sup>2</sup> We take the facts of the crime from the transcript of the preliminary hearing.

Matos obtained a printout of telephone calls made from his wife's stolen cell phone, which revealed a long distance call to Modesto, and he contacted police. San Jose Police Officer Jolliff investigated the case. As part of his investigation, he called the Modesto telephone number listed on the printout and spoke with a man named Abdo Obaid, who told the officer that he had bought a laptop from Caylao, for which he had paid \$100. Obaid also said that he knew Caylao from numerous transactions in the past. Officer Jolliff directed Matos to Obaid in Modesto, where Matos went and retrieved the laptop.

## II. *Procedural Background*

After being bound over for trial, Caylao was charged by amended information filed July 20, 2011, with first degree burglary in violation of sections 459-460, subdivision (a) (count 1) and grand theft in violation of sections 484-487, subdivision (a) (count 2). That day, Caylao waived his rights and pleaded no contest to count 2 on the conditions that count 1 be dismissed and that he serve no more than 300 days in jail.

At sentencing on August 26, 2011, the court suspended sentence and placed Caylao on probation. He was ordered to serve 300 days in the county jail, with credit for time served. The waived referral report generally recommended that because of Caylao's "extensive criminal history involving drug-related charges," that conditions of probation include chemical testing and substance abuse counseling, and it specifically recommended conditions relating to the prohibited use of illegal drugs and the requirement that Caylao enter into a substance abuse treatment program. A second set of recommendations included those same conditions along with an additional condition that defendant "not possess or consume alcohol or illegal drugs, or knowingly be anywhere illegal drugs are used or sold or alcohol is the major item of sale."

Caylao's counsel objected to the proposed specific conditions of probation concerning substance abuse and chemical testing (numbers 6, 8, & 9 of the recommended conditions), including the one that precluded his use of both alcohol and drugs, as "not

being related to the facts of the case” or the criminal allegations. The court responded that it had seen the police report, which had referenced that defendant was asked to leave Matos’s house because of his heroin use. Caylao’s counsel replied that this was not “enough to impose drug related probation conditions in a theft case.” The prosecutor reiterated what the court had referenced about heroin in the police report and went on to suggest that the report included information to the effect that before asking Caylao to leave, Matos “confirmed [his] history of drug use and substance abuse problems with friends and family” and that while the prosecutor could not say for certain what had motivated this particular crime, substance abuse problems often lead to theft. The court gave its view that “there’s enough of a nexus” with Matos’s discovery of the syringe and imposed the recommended substance abuse and alcohol related conditions of probation, along with other standard terms.

Caylao timely appealed, challenging the sentence or matters occurring after the plea but not affecting its validity. (Cal. Rules of Court, rule 8.304(b).)

## DISCUSSION

### I. *The Court Acted Within Its Discretion to Impose the Alcohol Condition*

On appeal, Caylao challenges the probation condition relating to his use of alcohol or knowingly being in a place where that is the major item of sale.<sup>3</sup> He contends that the condition is improper because it is unrelated to the crime of which he was convicted. Anticipating respondent’s claim that the issue is forfeited on appeal, he further contends that if this is so, his counsel provided ineffective assistance by not specifically objecting below to the alcohol condition, separate and apart from the general drug conditions to which counsel did collectively object as being unrelated to the crime.

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<sup>3</sup> Caylao’s opening brief also challenged a \$40 court security fee, contending it should be only \$30 under section 1465.8. But his reply brief withdraws that challenge and we therefore need not address the issue.

Preliminarily, we readily dispense with respondent’s claim that Caylao’s objection to the alcohol-related condition of probation is forfeited on appeal as not having been raised below. Defense counsel referred by number to the specific conditions to which objection was raised, including the single condition that together referenced drug and alcohol use and places where those substances are sold. While counsel generally referenced the offending conditions as relating to substance abuse, it was quite clear to what she was referring and on what specific basis. Moreover, alcohol is a substance that can be abused and falls under the rubric of “substance abuse” even though it is not an illegal drug per se. On this record, and because the manner in which the alcohol-related condition was combined with the condition related to illegal drug use, Caylao’s objection to the alcohol-related condition only has been sufficiently preserved for appeal by his general objection to probation conditions relating to substance abuse.

Under section 1203.1, subdivision (j), a court granting probation may impose “reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer . . . .” The “primary goal of probation is to ensure ‘[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.’ [Citation.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*)). “In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to . . . section 1203.1. [Citations.]” (*Id.* at pp. 1120-1121.) “We review conditions of probation for abuse of discretion. [Citations.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*)). As with any exercise of discretion, “the sentencing court violates this standard when its determination is arbitrary, capricious or ‘ “ ‘exceeds the bounds of reason, all of the circumstances being considered.’ ” [Citations.]’ [Citation.]” (*Carbajal, supra*, 10 Cal.4th at p. 1121.)

“The trial court’s discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute. In addition, we have interpreted . . . section 1203.1 to require that probation conditions which regulate conduct ‘not itself criminal’ be ‘reasonably related to the crime of which the defendant was convicted or to future criminality.’ ” (*Carbajal, supra*, 10 Cal.4th at p. 1121, quoting *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*)). Accordingly, a probation condition “will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*Lent, supra*, 15 Cal.3d at p. 486.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. . . . As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*Olguin, supra*, 45 Cal.4th at pp. 379-380.)

Here, the record contains no information that alcohol was involved in the grand theft offense, and alcohol possession and use are legal for someone, like defendant, who is over 21 years of age. The only issue, therefore, is whether the no-alcohol condition forbids conduct that is not reasonably related to future criminality. This analysis is highly fact specific. (*People v. Lindsey* (1992) 10 Cal.App.4th 1642, 1644 (*Lindsey*)).

Some courts have found alcohol-related conditions reasonable where the record reveals a factual basis to find that the defendant abused alcohol. For example, in *Lindsey*, the defendant had an “ ‘alcohol problem’ ” and an “ ‘addictive personality’ ” and his crime involved selling drugs to support his addiction. (*Lindsey, supra*, 10 Cal.App.4th at pp. 1644-1645.) The addiction to drugs, combined with defendant’s alcohol problem, created a nexus between the potentially impaired judgment resulting from alcohol use and an increase in the potential for a drug use relapse in the future. (*Id.* at p. 1645.) The

alcohol use prohibition was therefore reasonably related to future criminality. Similarly, in *People v. Balestra* (1999) 76 Cal.App.4th 57 (*Balestra*), the defendant smelled of alcohol when she committed elder abuse on her mother. The trial court commented at the plea hearing that the defendant “ ‘need[ed] treatment for what everybody appears to agree is an alcohol problem . . . .’ ” (*Id.* at p. 62.)

Other courts have imposed a no-alcohol condition even when the defendant had no history of alcohol abuse. In *People v. Smith* (1983) 145 Cal.App.3d 1032 (*Smith*), the court concluded that a no-alcohol condition was reasonably related to the defendant’s conviction for PCP possession and to his future criminality because he had an “extensive involvement with drugs,” was “emotionally unstable,” and had “a poorly integrated personality.” (*Id.* at pp. 1034-1035.) The court recognized a “nexus between drug use and alcohol consumption,” and noted that “the physical effects of alcohol are not conducive to controlled behavior.” (*Id.* at p. 1035.) *Smith* upheld conditions of probation forbidding alcohol use and presence at alcohol-sale premises under the circumstances, concluding these conditions were “reasonably related to . . . future criminality.” (*Ibid.*)

By contrast, in *People v. Kiddoo* (1990) 225 Cal.App.3d 922 (*Kiddoo*), disapproved on another point in *People v. Welch* (1993) 5 Cal.4th 228, 237, on which defendant here relies, the court of appeal invalidated a condition prohibiting the defendant from possessing or consuming alcohol following his guilty plea to possession of methamphetamine. The defendant had been selling drugs to support a gambling habit; he had been using drugs and alcohol since he was 14, but he considered himself only a “social drinker.” (*Kiddoo*, at p. 927.) Because Kiddoo’s past drug use had involved substances other than alcohol, the court believed the alcohol conditions were not reasonably related to criminality. (*Id.* at p. 928.) The court accordingly found no facts to support the conclusion that the prohibited conduct was reasonably related to future criminality, and it struck the condition.

In *People v. Beal* (1997) 60 Cal.App.4th 84 (*Beal*), on the other hand, the court of appeal disagreed with the implicit assumption in *Kiddoo* that alcohol use and drug abuse are not reasonably related. (*Id.* at p. 87.) In *Beal*, the defendant pleaded guilty to possession for sale and simple possession of methamphetamine. Like the defendant in *Kiddoo*, she described herself as a “social drinker,” but she did not view alcohol use to be a problem for her. (*Ibid.*, fn. 1.) She did, however, admit that she suffered from chemical dependency, having used methamphetamine and other drugs for several years. The *Beal* court expressed the view that “empirical evidence shows that there is a nexus between drug use and alcohol consumption. It is well documented that the use of alcohol lessens self-control and thus may create a situation where the user has reduced ability to stay away from drugs. [Citations.] Presumably for this very reason, the vast majority of drug treatment programs, including the one *Beal* participates in as a condition of her probation, require abstinence from alcohol use.” (*Ibid.*) The court concluded that the alcohol condition was reasonable because “alcohol use may lead to future criminality where the defendant has a history of substance abuse and is convicted of a drug-related offense.” (*Ibid.*)

In this case, there is no evidence that Caylao had any history of alcohol abuse or that he even consumed alcohol. And his crime did not appear to involve alcohol consumption. Nevertheless, as in *Beal* and *Smith*, given his apparent history of drug charges and the presence of the syringe, defendant appears to have a drug problem. Giving “proper deference to a trial court’s broad discretion in imposing terms of probation, particularly where those terms are intended to aid the probation officer in ensuring the probationer is complying with the fundamental probation condition, to obey all laws” (*Balestra, supra*, 76 Cal.App.4th at p. 68), we cannot say that the no-alcohol condition was unreasonable in the circumstances presented.

We acknowledge, as defendant points out, that the offense of which he was convicted was not drug-related and in this, the case is distinct from *Beal* and *Smith*. We

further recognize that because the record contains no evidence of a history of alcohol addiction or abuse, the case is distinct from *Lindsey* or *Balestra*, in which the defendants apparently had a history of alcohol problems. But based on defendant's "extensive criminal history involving drug-related charges" as noted in the waived referral report, the presence of the syringe in the factual backdrop of the current conviction, and the recognized connection between drug use and alcohol consumption, there is a nexus to drug use here.

We therefore conclude that a probation condition proscribing the use of alcohol and the defendant's knowing presence in places where alcohol is the major item of sale is reasonably related to future criminality. The trial court accordingly did not abuse its discretion in imposing the challenged probation condition.

#### DISPOSITION

The judgment is affirmed.

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Duffy, J.\*

WE CONCUR:

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Rushing, P.J.

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Premo, J.

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\* 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.