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

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL CATALAN,

Defendant and Appellant.

H037596

(Monterey County

Super. Ct. No. SS101688)

Defendant Raul Catalan appeals from an order reinstating probation. His sole complaint is that the trial court deviated impermissibly from the directive of this court, in a previous appeal, modifying a condition of probation limiting defendant's freedom to attend court proceedings. We find no error, and affirm.

BACKGROUND

Defendant pled no contest to carrying a concealed firearm (Pen. Code, § 12025, subd. (a)(2)) and misdemeanor participation in a criminal street gang (Pen. Code, § 186.22, subd. (a)), and admitted that he was not the registered owner of the firearm (Pen. Code, § 12025, subd. (b)(6)). The trial court placed him on probation. On appeal he contended that certain gang-related provisions were overbroad. (See *People v. Catalan* (Jul. 19, 2011, H036000) [nonpub. opn.] (*Catalan I*)). Another panel of this court agreed with some of these contentions and modified the challenged conditions

accordingly. (*Id.*, [pp. 6-10].) As pertinent here, the court held overbroad a condition prohibiting his presence in and around criminal courthouses except where he himself had court business or the permission of his probation officer. (*Id.*, [p. 15].) The court directed a modification to state, “You shall not be present at any criminal court proceeding that you know or reasonably should know involves either criminal street gang charges or a person associated with a criminal street gang (as defined in Penal Code section 186.22) as a member or witness, unless you are scheduled for a court hearing, have the express permission of your probation officer, or have other lawful business with the court or county administration.” (*Id.*, [p. 16].)

On remand the trial court imposed the condition as modified, except that it struck the word “member” and replaced it with “party,” as follows: “You shall not be present at any criminal court proceeding that you know or reasonably should know involves either criminal street gang charges or a person associated with a criminal street gang (as defined in Penal Code section 186.22) as a ~~member~~ party or witness, unless you are scheduled for a court hearing, have the express permission of your probation officer, or have other lawful business with the court or county administration.”

Defendant brought this timely appeal.

DISCUSSION

Defendant’s sole contention on appeal is that the trial court impermissibly departed from this court’s mandate in *Catalan I* by adopting language that diverged from the court’s directions. We find no error; the trial court’s alteration was entirely sound.

The indisputable intent of the subject probation condition, as modified in *Catalan I*, was to limit defendant’s freedom to attend criminal proceedings involving a specified subject matter (gang charges), or specified persons (gang members or associates). The condition was ambiguous, however, because the phrase “as a member or witness” might modify either the immediately preceding phrase “person associated with a

criminal gang,” or the slightly more remote phrase “proceeding that . . . involves.” Defendant’s argument supposes that the court intended the former of these interpretations, but we are confident that the trial court was correct in concluding that the court intended the latter. The adverbial phrase “as a member or witness” modifies “involves” and not “associated.”

This conclusion flows, first, from the logical effect of the inclusion of “witness” in the phrase under scrutiny. Defendant’s reading contemplates situations where a person is “associated with a criminal gang . . . as a . . . witness.” We are unable to conceive of any real-world circumstances in which this phrase could have any application. The noun “witness” has little if any practical application outside of judicial or similar proceedings. Certainly it has no apparent application to the operations of criminal street gangs. This strongly suggests that the phrase “member or witness” refers to “proceeding that . . . involves” and not “person associated.”

Of course this reading presents a reciprocal difficulty. Just as one cannot readily be conceived as being associated with a gang as a witness, so a person cannot be meaningfully described as “involved” in a judicial proceeding “as a member.” But the trial court correctly recognized the logical ineffectuality of the phrase “as a member” and quite rationally inferred an intent to apply the condition whenever a gang associate was involved in the proceeding as a *party* (or witness). This is plainly what our colleagues intended, since otherwise the condition would apply where a gang member was testifying but not where, e.g., he was charged with a crime and exercised his right not to testify.

We find further support for the trial court’s reading in the needless verbosity that flows from defendant’s reading. The practical effect of defendant’s reading is to limit the clause under scrutiny to cases where a gang member is testifying; but that intent could be expressed far more succinctly by stating that the prohibition applies to any “criminal court proceeding that you know or reasonably should know involves either criminal street

gang charges or a ~~person associated with~~ *member of* a criminal street gang (as defined in Penal Code section 186.22) ~~as a member or witness.~~”

In sum, we are confident that the inclusion of the term “member” in this court’s previous decision was in the nature of a clerical error and that the trial court correctly discerned the court’s true intention, which was to make the condition applicable whenever a person associated with a gang is involved in a criminal proceeding as a party or witness. Since defendant asserts no infirmity in the language at issue other than its failure to conform to the mandate in *Catalan I*, we find no error.¹

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

¹ We note that although the court’s previous mandate was stated unconditionally in the dispositional paragraph of the opinion, the modification is described in less mandatory terms in the body of the opinion: “[W]e believe that the existing condition can be adequately tailored to balance defendant’s constitutional rights and legitimate concerns for the integrity of the judicial process *as in* the following paragraph.” (*Catalan I, supra*, H03600, [p. 15], italics added.)