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

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO CARRILLO,

Defendant and Appellant.

H037621

(Monterey County

Super. Ct. No. SS111335)

Defendant Sergio Carrillo, age 33, engaged in “sexting” with a 13-year-old girl between May 2011 and July 2011. In September 2011, he pleaded no contest to exhibiting harmful material to a minor (Pen. Code, § 288.2, subd. (a)) in exchange for dismissal of other counts and a cap on his sentence of 16 months in prison. In November 2011, the trial court granted him probation with various conditions including a 240-day jail term and gave him credit for 111 days of actual custody credit and 54 days of conduct credit against his jail term. It rejected his claim that he was entitled to additional conduct credit. Defendant timely appealed.

On appeal, defendant’s first contention is that two probation conditions were unconstitutional because they lacked knowledge requirements. These two probation conditions read as follows: (1) “you’re not to be in the presence of anyone under the age of eighteen [except your son] unless there is another responsible adult continuously present”; and (2) “You’re not to be within a hundred yards of the perimeter of places

where children congregate, such as schools, parks, playgrounds, video arcades and swimming pools” “except as reasonably necessary to transport your child” or “as allowed by the probation officer” or “as necessary to comply with the law.”

The Attorney General concedes each of these two probation conditions must be modified to include a knowledge requirement, and we agree. A probation condition prohibiting association with minors must include a knowledge requirement. (*People v. Turner* (2007) 155 Cal.App.4th 1432, 1436.) Here, both conditions depend upon defendant’s knowledge of the presence of a child or a congregation of children. Hence, a knowledge requirement is needed, and we will direct the trial court on remand to modify each of these conditions to include a knowledge requirement.

Defendant also contends that the court’s order that he “pay a fine of \$1,480 pursuant to 290.3” was inadequate because it failed to detail the penalty assessments. The applicable Penal Code section 290.3 fine is \$300. The Attorney General concedes that a remand is necessary for the court to detail the penalty assessments that were attached to the fine so as to raise the total to \$1,480, and we agree. Trial courts are required to identify the statutory basis for all fees, fines, and penalties imposed. (*People v. Eddards* (2008) 162 Cal.App.4th 712, 718.)

Defendant’s final argument is that his right to equal protection entitled him to additional conduct credit under the revised version of Penal Code section 4019 that took effect on October 1, 2011, even though that statute stated that it applied only to those whose crimes were committed after October 1, 2011. Defendant acknowledged in his reply brief that this issue was likely to be resolved by the California Supreme Court in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*), which was pending at that time. A few days after defendant filed his reply brief, the California Supreme Court filed its opinion in *Brown* rejecting a similar equal protection argument with respect to a previous version of Penal Code section 4019. It found that prospective only application of the new version of the statute did not violate equal protection because the purpose of the statute was to

create an incentive for good behavior, which could not be done retroactively. (*Brown*, at pp. 328-330.) “[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows.” (*Brown*, at pp. 328-329.) The same is true here, as the California Supreme Court recognized in *People v. Lara* (2012) 54 Cal.4th 896 (*Lara*), which concerned the very same version of Penal Code section 4019 that defendant seeks the benefit of. (*Lara*, at p. 906, fn. 9.) Based on *Brown* and *Lara*, we therefore reject defendant’s claim that he is entitled to additional conduct credit.

The order is reversed and remanded with directions to the trial court to (1) modify each of the two probation conditions identified above to include a knowledge requirement, and (2) identify the statutory basis for each penalty assessment associated with the Penal Code section 290.3 fine.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Marquez, J.