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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JASON MICHAEL CASTILLO, Defendant and Appellant.	H039070 (Monterey County Super. Ct. No. SS121940)

Defendant Jason Michael Castillo pleaded guilty to driving with a blood-alcohol level of .08 or higher and admitted suffering three prior convictions for driving under the influence of alcohol or drugs. The trial court placed him on probation with conditions. On appeal, defendant challenges three conditions. We modify two of the conditions and affirm the probation order.

LEGAL BACKGROUND

Under Penal Code section 1203.1,[1] 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." (§ 1203.1, subd. (j).) "The primary goal of probation is to ensure '[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.' " (*People v. Carbajal* (1995) 10

[1] Further unspecified statutory references are to the Penal Code.

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 Penal Code section 1203.1." (*Ibid.*)

"The trial court's discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute." (*Carbajal*, *supra*, 10 Cal.4th at p. 1121.) The Supreme Court has "interpreted Penal Code 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.' " (*Ibid.*) "Generally, '[a] condition of probation 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 . . . ." ' " (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) Thus, "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." (*Id.* at p. 380.)

"As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ' " 'exceeds the bounds of reason, all of the circumstances being considered.' " ' " (*Carbajal*, *supra*, 10 Cal.4th at p. 1121.) "We review conditions of probation for abuse of discretion." (*People v. Olguin*, *supra*, 45 Cal.4th at p. 379.)

As to infringement of constitutional rights, "probation is a privilege and not a right, and . . . adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights--as, for example, when they agree to warrantless search conditions." (*People v. Olguin*, *supra*, 45 Cal.4th at p. 384.) But the Supreme Court has recognized that "[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.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*).) In addition, "[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." (*Ibid.*) Thus, a probation condition forbidding a minor from associating with " 'anyone disapproved of by probation' " (*id.* at p. 889) was unconstitutionally vague where the probation condition did not inform the minor "in advance with whom she might not associate," (*id.* at p. 891) but it could be rendered constitutional by modifying the condition "to impose an explicit knowledge requirement." (*Id.* at p. 892.)

While a defendant forfeits any claim that a probation condition is unreasonable if he fails to timely raise an objection in the trial court (*People v. Welch* (1993) 5 Cal.4th 228, 234-237), the forfeiture rule does not apply to a facial challenge to a patently unconstitutional probation condition that may be corrected on appeal without reference to the particular sentencing record developed in the trial court and without remanding to the trial court for further findings. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 885-889.) Other constitutional challenges cannot be raised on appeal in the absence of objection in the trial court. (*Id.* at p. 889.)

FACTUAL BACKGROUND

The trial court imposed the following probation condition No. 18: "Not remain in any vehicle either as a passenger or driver which you know to be stolen or to contain any firearms or illegal weapon." Defendant had objected to imposition of the condition on the ground that "it has nothing to do with this case." The trial court had overruled the objection by explaining that "the aim of probation is to keep the probationer from straying into territory that is risky" and "when you're a convicted felon, I mean, there's a little bit of common sense that we can apply here, I think, in structuring probation in a way that he can succeed."

The trial court also imposed conditions Nos. 7 and 8 to which defendant did not object.

Condition No. 7 states: "Totally abstain from the use of alcoholic beverages, not purchase or possess alcoholic beverages, and stay out of places you know alcohol to be the main item of sale."

Condition No. 8 states: "Not use or possess alcohol, intoxicants, narcotics, or other controlled substances without the prescription of a physician; not traffic in, or associate with persons you know, or have reason to know, to use or traffic in, narcotics or other controlled substances."

DISCUSSION

Defendant contends that condition No. 18: (1) "is not reasonably related to the offense for which he was placed on probation," because his offense was driving under the influence, not automobile theft; (2) "relates to conduct that is not in itself criminal" because it is not criminal to merely ride in a stolen car; and (3) "does not reasonably relate to preventing future criminality" because he "was not accused of theft in the present case."

Defendant's analysis is erroneous. The third *Olguin* factor need not relate to the same criminality for which defendant was placed on probation. (*Olguin*, *supra*, 45 Cal.4th at p. 379 [" ' "requires or forbids conduct which is not reasonably related to future criminality" ' "].) The question is simply whether it is beyond reason for the trial court to have concluded that keeping defendant away from stolen cars or cars containing firearms or illegal weapons was reasonably related to future criminality. We think not.

Defendant also contends that conditions Nos. 7 and 8 are unconstitutionally vague and overbroad. He argues that they do not contain a knowledge requirement.

The obvious jurisprudential trend is toward requiring that a term or condition of probation explicitly require knowledge on the part of the probationer that he is in violation of the term in order for it to withstand a challenge for unconstitutional

vagueness. "[P]robation conditions that implicate constitutional rights must be narrowly drawn" and the knowledge requirement in these circumstances "should not be left to implication." (*People v. Garcia* (1993) 19 Cal.App.4th 97, 102.)

The People do not object to modifying the conditions to more precisely provide a knowledge requirement.

Defendant also complains that condition No. 8 is additionally vague and overbroad because it does not adequately define the term "intoxicants." According to defendant, he could be held in violation of probation by possessing legal substances such as glue or gasoline.

Defendant's apprehension that he will be forced to violate probation from such innocent activities is unwarranted. The language of a condition must be read in context of the situation and is not vague or overbroad " 'if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.' " (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117.) Here, the condition places "intoxicants" together with "other controlled substances." The condition, as reasonably and practically construed, limits the use and possession of illegal intoxicants.

DISPOSITION

Probation condition No. 7 is modified as follows: "The defendant shall totally abstain from the use of alcoholic beverages; shall not knowingly purchase or possess alcoholic beverages; and shall stay out of places the defendant knows alcohol to be the main item of sale."

Probation condition No. 8 is modified as follows: "Defendant shall not knowingly use or possess alcohol, intoxicants, narcotics, or other controlled substances without the prescription of a physician; defendant shall not traffic in or associate with persons he knows, or has reason to know, use or traffic in narcotics or other controlled substances."

As so modified, the order for probation is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.