IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

ALEJANDRO OLGUIN,
Defendant and Appellant.

S149303

Fourth Appellate District, Division Two, No. E039342
San Bernardino County Superior Court No. FSB051372
The Honorable Michael M. Dest, Judge

RESPONDENT'S BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **ALEJANDRO OLGUIN,** Defendant and Appellant.	S149303

ISSUE PRESENTED[1/]

"Whether the trial court imposed an invalid condition of probation by requiring appellant to obtain permission from his probation officer to own pets."

INTRODUCTION

After appellant pleaded guilty to two counts of driving under the influence of alcohol, the trial court granted him three years' probation. One of the probation conditions required appellant to keep his probation officer informed of his place of residence, cohabitants, and pets.

On its face, the probation condition requires only that appellant report his animals to his probation officer, but he argues the probation condition is unreasonable and overbroad. Appellant fails to recognize the state's interest in reforming and rehabilitating probationers and protecting the public by allowing probation officers to supervise probationers effectively. He also ignores the fact

1. Due to this Court's summary grant of review on appellant's petition, the issue presented is taken from appellant's petition for review. (Appellant's Pet. For Review, 3.)

that being required to inform his probation officer of his pets does not infringe any constitutional right and does not amount to any kind of blanket prohibition on his ability to maintain animals in his home.

"Informing" is not "prohibiting." Appellant has not been prohibited from owning any animal, therefore he has not been deprived of any property right and the probation condition need not be narrowly tailored because there has been no constitutional deprivation. Requiring appellant to report his animals is not a ban on pet ownership; it is a simple task to perform, and a probation officer should be informed of appellant's pets in order to maintain effective supervision through unannounced compliance visits at his residence.

STATEMENT OF THE CASE

On August 9, 2005, the San Bernardino County District Attorney filed a complaint charging appellant with two counts of driving under the influence on two separate dates (Veh. Code, § 23152, subd. (a); counts 1 and 3), and two counts of driving with a 0.08% or higher blood alcohol level (Veh. Code, § 23152, subd. (b); counts 2 and 4). (CT 1-3.) The complaint further alleged, for each count, that appellant had three prior convictions for driving with a blood alcohol level of 0.08% or higher (Veh. Code, § 23152, subd. (b). (CT 1-3.)

On September 29, 2005, in a plea agreement, appellant pled guilty to counts 2 and 4, driving with a blood alcohol content of at least 0.08%. (CT 11-14; RT 6-8.) On October 31, 2005, the trial court granted appellant three years' probation. (CT 16-19.) Among other conditions, the trial court imposed Probation Condition No. 8, which required appellant to keep the probation officer informed of his place of residence, cohabitants and pets, and give written notice to the probation officer of any changes 24 hours in advance. Appellant objected to Probation Condition No. 8 and asked the trial court to strike the term "pets" as unconstitutionally overbroad. (CT 23.) The trial court denied appellant's request. (CT 23.)

On appeal, appellant argued Probation Condition No. 8 should be modified to strike the term "pets" because the condition was unreasonable and therefore invalid. The Court of Appeal affirmed Probation Condition No. 8, finding it was reasonably related to future criminality because a pet can distract or prevent probation officers from entering a probationer's residence and may endanger the probation officer. (Slip Opn. 5, 8, 10.) The court also mentioned it considered the pet notification condition as a prerequisite to the search condition, and that probation officers had the implied power to exclude certain pets or direct the care of a pet in order to conduct searches. (Slip Opn. 7-8.) Appellant filed a petition for review, asserting the pet probation condition was invalid and overbroad. On March 23, 2007, this Court granted review.

STATEMENT OF FACTS[2/]

On August 6, 2005,[3/] officers conducted an enforcement stop on a vehicle for making a non-emergency stop on the freeway. (Probation Officer's Report 2.) Upon making contact with appellant, the driver, the officers noticed a strong odor of alcohol from the vehicle and saw an open can of beer near appellant. (Probation Officer's Report 2.) They also noticed appellant's eyes were red and watery and his speech was slow and slurred. (Probation Officer's Report 2.) Appellant could not provide a driver's license, vehicle registration, or proof of insurance. (Probation Officer's Report 2.) Appellant failed a field sobriety test and officers placed him under arrest and took him into custody. (Probation Officer's Report 2.) Appellant was on a grant of summary probation when the crime was committed. (Probation Officer's Report 4.)

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2. The facts are taken from the probation report.

3. Facts of the August 6, 2005 incident pertain to count 2 only. Count 4 was based on an incident that occurred on July 30, 2004; however, the record contains no facts pertaining to that incident.

ARGUMENT

I.

THE PROBATION CONDITION REQUIRING APPELLANT TO INFORM HIS PROBATION OFFICER OF HIS PLACE OF RESIDENCE, COHABITANTS, AND PETS IS VALID BECAUSE IT IS REASONABLY RELATED TO APPELLANT'S FUTURE CRIMINALITY; AND IT DOES NOT DEPRIVE APPELLANT OF ANY CONSTITUTIONAL RIGHTS

Respondent initially notes appellant mischaracterizes the issue in this case. The challenged probation condition does not require that appellant obtain permission from his probation officer before owning any pets. Rather, it requires only that he inform his probation officer of his animals. Respondent agrees with the Court of Appeal's conclusion that a probation officer should be able to exclude certain animals from appellant's residence, but the proper method for doing so would be to petition the trial court to modify the probation condition in the event the probation officer encounters a problem with any of appellant's animals. However, the issue in this case is whether the probation condition as it currently stands, requiring appellant to report his animals to his probation officer, is reasonable and constitutional.

The probation condition requiring appellant to keep his probation officer informed of pets serves important state goals of rehabilitating appellant and promoting public safety, and therefore is a valid probation condition relating to future criminality. The requirement to report animals is not broader than necessary to effectuate the state's goals. Appellant cannot show a constitutional deprivation from merely having to inform his probation officer of his pets. Further, any minimal interest he might have in not informing his probation officer of his pets is outweighed by the state's compelling interest in reforming

probationers through effective supervision and protecting public safety. Thus, the trial court reasonably and properly imposed the probation condition, and the Court of Appeal properly affirmed.

A. The Policies And Goals Of Probation

Probation is a privilege and not a right. (*In re York* (1995) 9 Cal.4th 1133, 1150.) "Probation, like incarceration, is 'a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty,'" and probationers do not enjoy the absolute liberty to which other citizens are entitled. (*Griffin v. Wisconsin* (1987) 483 U.S. 868, 874 [107 S.Ct. 3164, 97 L.Ed.2d 709] [*Griffin*]; see also *Morrissey v. Brewer* (1972) 408 U.S. 471, 480 [92 S.Ct. 2593, 33 L.Ed.2d 484].)

Probation restrictions are meant to ensure that probation serves as a period of rehabilitation and that the community is not harmed by the probationer's being at large. These goals in turn require and justify the exercise of supervision to ensure that the restrictions are in fact observed. (*Griffin*, *supra*, 483 U.S. at p. 875 [citing "research suggest[ing] that more intensive supervision can reduce recidivism"].) "Recidivism among probationers is a major problem, and supervision is one means of combating that threat" and "also provides a crucial means of advancing rehabilitation by allowing a probation agent to intervene at the first sign of trouble." (*Griffin*, *supra*, 483 U.S. at p. 883 [Blackmun, J., dissenting].)

"The purpose of an unexpected, unprovoked search of defendant is to ascertain whether [the probationer] is complying with the terms of [probation]; to determine not only whether he disobeys the law, but also whether he obeys the law. Information obtained under such circumstances would afford a valuable measure of the effectiveness of the supervision given the defendant

and his amenability to rehabilitation." (*People v. Reyes* (1998) 19 Cal.4th 743, 752, quoting *People v. Mason* (1971) 5 Cal.3d 759, 763-764 [internal quotation omitted].)

B. The Trial Court's Discretion To Impose Conditions Of Probation

Trial courts have "'broad discretion to impose restrictive conditions to foster rehabilitation and to protect public safety.' [Citation.]" (*People v. Mason*, *supra*, 5 Cal.3d at p. 764[4]; see also *People v. Lent* (1975) 15 Cal.3d 481, 486.) Penal Code section 1203.1 authorizes the trial court to impose any "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done. . .and generally and specifically for the reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1, subd. (j).) "If the defendant considers the conditions of probation more harsh than the sentence the court would otherwise impose, he has the right to refuse probation and undergo the sentence." (*People v. Mason*, *supra*, 5 Cal.3d at p. 764 [internal quotation marks and citation omitted].)

A trial court's decision to impose certain terms of probation is reviewed for abuse of discretion. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 63.) A trial court abuses its discretion when its determination is "arbitrary or capricious or "'exceeds the bounds of reason, all of the circumstances being considered."' [Citation.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Abuse of discretion is a highly deferential standard:

> The burden is on is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. In the absence of such a showing, the trial court is presumed to have

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4. *People v. Lent* overruled *People v. Mason* and *In re Bushman* (1970) 1 Cal.3d 767, to the extent that the three-factor test for invalidating a condition of probation — set forth below — was stated in the disjunctive rather than the conjunctive. (*People v. Lent*, *supra*, 15 Cal.3d at p. 486, fn.1.)

> acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.

(*People v. Balestra*, *supra*, 76 Cal.App.4th at p. 63 [internal quotation marks and citations omitted].)

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) related to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.'" (*People v. Lent*, *supra*, 15 Cal.3d at p. 486 [citing *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627].) All three conditions must be present for a probation condition to be invalid. (*People v. Lent*, *supra*, 15 Cal.3d at p. 486, fn.1; *People v. Wardlow* (1991) 227 Cal.App.3d 360, 366.) A condition of probation that requires or forbids non-criminal conduct "is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Lent*, *supra*, 15 Cal.3d at p. 486.)

C. The Probation Condition Does Not Affect Appellant's Ability To Maintain Animals At His Residence, And Merely Requiring Appellant To Inform His Probation Officer Of His Pets Is Valid Because It Is Reasonably Related To Future Criminality

Despite appellant's repeated assertion that the probation condition restricted ownership of all pets (AOB 13, 14, 16, 22, 24), the probation condition required only that he inform his probation officer of pets, and the present case concerns essentially a notification issue. The issue of prohibition of an animal is not ripe in this case, as appellant has not been prohibited from owning any animal. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 998 ["the ripeness requirement prevents courts from. . .considering a hypothetical state of facts in order to give general guidance rather than to resolve a specific legal dispute"]; *People v. Johnson* (2006) 142 Cal.App.4th 776, 789, fn. 4 ["'It is

rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion.'"].) Prohibition or restriction of any animal is not implicated by the facts of this case, and therefore the issue of prohibition is hypothetical and not ripe for review. However, should this Court reach the issue, respondent asserts there are judicial procedures by which appellant may be restricted from owning certain animals.

The Court of Appeal stated that "notification of pets implies a probation officer's authorization to exclude certain pets or direct the care of the pet (i.e. keeping them contained) in order to allow searches." (Opn. at pp. 7-8.) Respondent disagrees. Once notified that appellant is keeping an animal at his residence, should a probation officer take issue with the animal, he or she may then file a petition requesting the trial court to modify the probation condition. (Pen. Code, § 1203.2.) Under Penal Code section 1203.2, the court may modify appellant's probation upon the petition of appellant, his probation officer, or the district attorney. (Pen. Code, § 1203.2, subd. (b).) Furthermore, the procedures for court modification of probation are set forth under Penal Code section 1203.3, thereby providing appellant due process prior to any modification prohibiting him from maintaining specific animal. Nothing in the probation condition here implies that the probation officer may prohibit an animal without prior court modification of the probation condition. Regardless, as the Court of Appeal also stated (Opn. at pp. 6, 8), any interpretation of the probation officer's authority to effectuate the terms of probation does not authorize the probation officer to irrationally or capriciously exclude any pets. (See *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241 [a trial court giving a probation department the authority to supervise probation conditions does not authorize irrational directives by the probation officer].) In any event, appellant has not been prohibited from owning any animals; thus the focus of the issue at hand is informing, not prohibiting.

Respondent acknowledges Probation Condition No. 8 is not directly related to appellant's underlying offense and is not in itself criminal conduct. The probation condition is, however, related to future criminality. Appellant contends that the probation condition is not related to future criminality because pet ownership does not increase the risk of driving while intoxicated. (AOB 11.) However, he misses the point. Requiring him to inform his probation officer of pets would alert his probation officer to any safety or security concerns should the officer need to search appellant's residence. Thus, the probation condition is valid because it serves important state goals of rehabilitating appellant and promoting public safety, and therefore is related to future criminality.

Appellant correctly notes his current offense was factually unrelated to pets. (AOB 7.) He cites numerous cases in which probation conditions prohibiting possession of animals were found reasonable where the convicted offenses involved cruelty to animals or mistreatment of animals. (AOB 8-9.) He implies that because his current offense did not involve an animal, the probation condition regarding pets must therefore be unreasonable. However, *Lent* does not require each and every probation condition to be factually related to the probationer's crime to be reasonable, and the three-factor test for validity is conjunctive, not disjunctive. (*Lent, supra*, 15 Cal.3d at p. 486, fn.1.) Thus, simply because appellant's crime was not factually related to pets does not automatically invalidate the challenged probation condition.

Appellant also states a condition of probation is invalid if it related to conduct which is not itself criminal. (AOB 9.) Again, the three-factor test under *Lent* is conjunctive. (*Lent, supra*, 15 Cal.3d at p. 486, fn.1.) A probation condition that restricts or prohibits conduct that is not in itself criminal is not automatically invalid.

A probation term that regulates conduct not in itself criminal remains valid so long as it reasonably relates to future criminality. (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121.) One of the primary goals of probation is to ensure "[t]he safety of the public. . .through the enforcement of court-ordered conditions of probation." (*Id.* at p. 1120 [citing Pen. Code, § 1202.7].) When a probationer is released into the community, the possibility that he or she might commit additional crimes while on probation endangers the safety of the community. Probation is geared toward preventing future criminality, which requires careful supervision by the probation officer. Unannounced and unscheduled searches of a probationer's residence are critical to the state's effective supervision of probationers, because "probationers have even more of an incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal because probationers are aware that they may be subject to supervision and face revocation of probation." (*United States v. Knights* (2001) 534 U.S. 112, 120 [122 S.Ct. 587, 151 L.Ed.2d 497]; see *People v. Reyes, supra*, 19 Cal.4th at p. 753.)

Requiring a probationer to inform his or her probation officer of any pets sharing the probationer's residence, just as with cohabitants, is appropriate to facilitate the probation officer's ability to perform unannounced searches of the probationer's residence. Requiring appellant to inform his probation officer of his residence, cohabitants, and pets would appropriately aid the probation officer in the event that the officer might conduct a search of the residence to ascertain whether appellant is complying with the terms of probation. Presumably, knowing the inhabitants of a probationer's residence, human or animal, enables a probation officer to be aware of, and prepared for, situations which may arise should the probation officer seek the probationer at his or her residence or conduct a search of the residence. A probation officer may endanger his or her own safety by appearing at a probationer's residence

unannounced, should the probationer have a dangerous animal on the premises. A probation officer is an employee of the state who is charged with protecting the public interest (*Griffin, supra*, 483 U.S. at p. 876), and he or she should not have to worry about personal safety while performing his or her regular duties. Furthermore, a probation officer should not have to call animal control and wait until an animal control agent is available to accompany the officer prior to conducting every residential search on the chance that a probationer may have a difficult or dangerous animal present. Being informed of a probationer's animals enables the probation officer to make tailored preparations for supervising each probationer safely and efficiently.

Additionally, a pet may act as a warning system, alerting a probationer of the probation officer's approach and enable the probationer quickly to dispose of evidence of criminal activity. A pet may also serve to distract or prevent a probation officer from entering a residence while the probationer hides or destroys evidence within. If a probation officer is made aware of a probationer's pets, then he or she can be prepared when conducting unscheduled searches, perhaps bringing an animal control employee or other support.

Furthermore, simply being aware of a probationer's pets circumvents surprise and may prevent authorities from panicking and shooting or injuring one of a probationer's animals. (See *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose* (9th Cir. 2005) 402 F.3d 962, 977-978 (*Hells Angels*) [police officers shot and killed the defendant's dog]; see also *Fuller v. Vines* (9th Cir. 1994) 36 F.3d 65, 68 (*Fuller*) [police officers shot and killed the defendant's dog].) As these cases illustrate, probation officers who enter a probationer's residence would be subject to liability for destroying the probationer's property, if they shoot or injure the probationer's pet. Similarly, knowing what pets appellant maintains in his home prior to a residential search

also allows probation officers to be careful not to inadvertently let any animals loose. For instance, if the probation officer was aware that appellant owned a cat or a horse, he or she would be careful not to leave a gate open, so that the animal could run loose. The state could be liable for property damage in the event that a probation officer's search of a probationer's residence led to loss or destruction of any of the probationer's pets, so it is reasonable to alert the probation officer to the presence of any animals to avoid such damage.

Appellant argues that in order to prohibit future conduct, there must be a "factual predicate" linking pet ownership to the crime of driving while intoxicated to reasonably relate to future criminality under *People v. Burden* (1988) 205 Cal.App.3d 1277, 1279-1280 (*Burden*). (AOB 12.) First, the probation condition does not prohibit appellant from maintaining any animal at his residence. The condition merely requires that he inform his probation officer of any animals he maintains at home. Second, appellant misapplies *Burden*. In *Burden*, the appellate court struck a probation condition prohibiting the defendant from working as a salesman, where his underlying crime was writing bad checks. (*Burden, supra,* 205 Cal.App.3d at p. 1280-1281.) The appellate court found that the defendant's job as a salesman was not reasonably related to the crime of writing bad checks because the defendant had not written the bad checks in his capacity as a salesperson, therefore there was no relationship between prohibiting the defendant from being a salesperson and future criminal acts. (*Id.* at p. 1280.) The court required a factual predicate for the condition prohibiting the defendant from otherwise gainful employment because the condition infringed on the defendant's constitutional right to work, would effectively deprive him of his livelihood, and did not reasonably relate to future criminality. (*Id.* at p. 1281.)

By contrast, knowing of appellant's pets facilitates a probation officer's ability to supervise appellant effectively. "Insofar as a probation condition

serves the statutory purpose of 'reformation and rehabilitation of the probationer,' it necessarily follows that such a condition is reasonably related to future criminality' and thus may not be held invalid whether or not it has any 'relationship to the crime of which the offender was convicted.'" (*People v. Balestra*, *supra*, 76 Cal.App.4th at p. 65.) As noted above, effective supervision is critical to reforming and rehabilitating a probationer, and being aware of the situation at appellant's residence, including what animals he keeps there, allows a probation officer to maintain effective supervision over him.

Appellant asserts that a less restrictive alternative would be to fashion the probation condition as follows: "Prior to the probation officer making a compliance visit, the officer could call to determine if appellant had any pets, and depending on the type of pet, require the pet be restrained during the visit or removed from any area where the probation officer might be. When unannounced probation compliance checks are made, upon arriving at the appellant's residence, the probation officer could ask that all animals to be restrained prior to entry." (AOB 15.) Appellant's proposed alternative completely disregard the state's interest in effective supervision of probationers. Requiring the probation department to give advance notice to the probationer prior to conducting a search — that is, conduct searches-by-appointment — would undermine the state's ability to supervise the probationer through unannounced visits or unscheduled searches. Appellant's probation includes various other terms, including that he neither possess nor have under his control any dangerous or deadly weapons, that he neither use nor possess any controlled substance without medical prescription, and that he not possess any drug paraphernalia. (CT 18.) Any of these items could be quickly hidden or disposed of within minutes, if not seconds, if appellant knows that his residence is going to be searched. A probation officer must be able to appear and search appellant's residence without advance notice in order to ascertain whether

appellant is complying with these terms. Without the threat of an unscheduled compliance visit from his probation officer, the remaining conditions of appellant's probation are rendered ineffective and unenforceable.

Reporting a pet to a probation officer is a simple task and does not impose any hardship on the probationer. Once notified that appellant has an animal at his residence, the officer may then request court modification of the probation term to exclude that certain animal. (Pen. Code, § 1203.2 [probation officer may file a petition for modification].) The probation condition requiring appellant to inform his probation officer of his pets, when taken together with other conditions, is properly geared toward preventing future criminality, and thus toward protecting public safety. The probation condition is reasonable and the trial court properly exercised its discretion by imposing it.

D. Appellant Has No Constitutional Right Not To Inform Anyone Of His Pets; In Any Event, The Pet Probation Condition Serves The State's Dual Interests In Rehabilition And Public Safety Therefore The Condition Is Not Overbroad

A trial court's discretion to impose conditions of probation is limited to the goals of probation and circumscribed by constitutional safeguards. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 940-941.) A probation condition is overbroad only when it is not reasonably related to the compelling state interest in rehabilitation and reformation and is an unconstitutional restriction on the exercise of fundamental constitutional rights. (*People v. Mason*, *supra*, 5 Cal.3d at p. 768.)

Respondent emphasizes that the requirement that appellant report his pets to his probation officer does not limit his ability to maintain pets in any manner. Appellant claims constitutional protection from being deprived of property (AOB 14, 16-17), but there is no deprivation involved in this case. The cases he cites involve owners who had their dogs permanently taken away from them, which is not applicable in this case, where he is merely required to

report what pets he maintains at his residence. (See *Hells Angels*, *supra*, 402 F.3d at pp. 977-978 [police officers shooting and killing the defendant's dog amounted to a Fourth Amendment seizure]; see also *Fuller*, *supra*, 36 F.3d at p. 68 [police officers unnecessarily shooting and killing the defendant's dog, amounting to a Fourth Amendment seizure].) Neither of the cases found a Fourteenth Amendment right to own pets, nor did they find a constitutional violation in requiring a probationer to inform his probation officer of his pets.

Contrary to appellant's assertion (AOB 17), this Court has stated that there is no constitutional right to keep a pet, much less to refuse to report a pet. (See *Nahrstedt v. Lakeside Village Condominium Assoc.* (1994) 8 Cal.4th 361, 388 [no general right to own pets].) Furthermore, whatever measure of constitutional right other citizens have to own pets, probationers do not enjoy the absolute liberty to which other citizens are entitled. (*Griffin*, *supra*, 483 U.S. at p. 874.) Because the probation condition does not infringe any constitutional rights, it need not be narrowly tailored or subjected to special scrutiny to determine whether it serves the dual purposes of rehabilitation and public safety.

Even assuming appellant has a constitutional right not to inform anyone about his pets, the probation condition is not overbroad because merely requiring him to report his pets serves the state's interests in public safety and rehabilitation. (*People v. Peck* (1996) 52 Cal.App.4th 351, 362 [even a probation condition that infringes a constitutional right is permissible where it is necessary to serve the dual purposes of fostering rehabilitation and protecting public safety]; see also *People v. Mason*, *supra*, 5 Cal.3d at p. 768 [a probation condition is unconstitutionally overbroad only when it is not narrowly drawn or is not reasonably related to the compelling state interest in rehabilitation and reformation].) The state has a compelling interest in rehabilitating and reforming probationers. Effective supervision is an integral means of ensuring

that probationers are complying with the terms of their probation. The state has a substantial interest in knowing the surrounding circumstances of a probationer's residence in order to facilitate unrestricted searches. The threat of an unannounced search is fully consistent with the deterrent purposes of the search condition. (*People v. Reyes* (1998) 19 Cal.4th 743, 752.) Probation officer safety and ability to perform unannounced searches of the probationer's property are crucial to facilitate effective supervision of the probationer.

Appellant argues that because pets can be beneficial and assist probationers in their rehabilitation[5/] (AOB 20-21), the condition restricts too much and is thus overbroad. The argument that pets may be beneficial does not compel the conclusion that requiring appellant to inform his probation officer of the animals he keeps at his residence is unconstitutional. Telling his probation officer about his animals does not infringe upon his enjoyment of his pets. Again, he appears to ignore the fact that the probation condition at issue is not a blanket prohibition on maintaining animals. The condition merely requires that he report any pet he owns or acquires to his probation officer, allowing the probation officer to determine the proper way to proceed with his

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5. Respondent does not truly contest the potential beneficial effects of being around animals. However, appellant relies on numerous websites (AOB 20-21), without requesting this Court judicially notice them. These citations should not be considered unless and until he does so. (Cal. Rules of Court, rule 8.252; Evid. Code, § 452, subd. (h).) In any event, many of appellant's websites are not appropriate material for judicial notice under Evidence Code section 452, subdivision (h), which allows for judicial notice of "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." For example, Wikipedia.com is a website of unknown authorship, as anyone with internet access may contribute and edit its content, and should be independently verified for accuracy. Also, his references to cancerwise.org and holisticonline.com refer to articles stating conclusions about the health benefits of pets without citing any actual studies that support those conclusions.

supervision, considering appellant's individual circumstances. The probation condition requiring appellant to notify his probation officer of his pets is an easy task, is sufficiently tailored to any of appellant's concerns, and does not prevent his enjoyment of any pets.

Appellant argues the law already sufficiently restricts him from maintaining dangerous dogs, and therefore obviates the state's concerns. (AOB 22-23; see Food & Agr. Code, §31601, et. seq.) However, the existing law does not provide sufficient protection for probation officers, nor does it effectuate sufficiently the state's interest in supervising probationers. Appellant points to laws which apply to all citizens, regardless of whether they have been convicted of a felony and granted probation. As such, these laws are not intended to facilitate supervision of probationers, and to conclude that a probationer is entitled to the same panoply of rights ordinary citizens enjoy directly contradicts the basic principles of probation. (See *Griffin*, *supra*, 483 U.S. at p. 874.) Under the Food and Agriculture Code, a dog may acquire the designation of a potentially dangerous or vicious dog if it has, unprovoked, bitten either another domestic animal or a person at least twice within a 36-month period, causing injury of varying degrees. (Food & Agr. Code, §§ 31602, 31603.) Furthermore, an owner is only required to keep potentially dangerous dogs indoors or in a securely fenced yard from which the dog cannot escape. (Food & Agr. Code, § 31642.) The existing laws do not protect probation officers or facilitate the ability of the probation officers to conduct unannounced searches. A probation officer may search inside appellant's residence or yard, and be attacked or threatened by the unexpected presence of an aggressive and dangerous animal. Moreover, a probationer's animal may give the probationer an early warning of the probation officer's presence, allowing the probationer to destroy or hide evidence of illegal activity. The probation condition requiring probationers to report their pets serves the state's

interest more effectively than the existing law. Once a probation officer is informed of a probationer's animals, he or she will then know better how to proceed to enforce the terms of probation. Appellant's suggestion that a probation officer is entitled only to protection provided by statute for statutorily defined "dangerous dogs" minimizes the crucial role of the probation officers play in effective supervision of probationers.

Appellant argues that the courts and probation officers were clearly not concerned with "harmless" animals such as cats, rabbits, hamsters, or fish. (AOB 23.) However, as discussed above, notification of pets addresses not only the safety of probation officers, but also prevents probationers from using animals as an advance warning of a probation officer's arrival, and enables officers to avoid property damage. Thus, the state's concerns encompass more than simply vicious dogs or other dangerous and hazardous animals. To the extent that the probation condition may include a few more animals than the state might be directly concerned with, the alternative is not to allow probationers to subjectively determine which animals they deem to be of sufficient concern to the state and which animals they believe should or should not be reported. The probation condition requires only that appellant notify his probation officer of his pets, which is hardly a burden on him. The probation condition is no hardship on probationers and does not prevent or hinder them from obtaining pets.

Appellant gives an unreasonable example of a situation in which he might be found in violation of his probation condition to report his pets. He argues that he could be found in violation of his probation terms if a friend stopped by his residence while walking a dog and was present when the probation officer arrived for an unannounced search. (AOB 23.) This scenario is unreasonable and frivolous. A trial court is to give a probation term the meaning that would appear to a reasonable, objective reader. (*People v. Bravo*

(1987) 43 Cal.3d 600, 606-607.) No court would find the situation appellant describes as a violation of his probation condition. A visitor to appellant's home who brings along an animal does not fall within the probation condition because the pet does not reside with appellant. A trial court can be trusted to limit and interpret this probation term reasonably.

Appellant suggests the probation "condition should have been worded to require appellant, if indeed he owned a pet, to have a cage or crate where any pet must be placed during any search of appellant's residence. Any pets at the residence not owned by appellant could similarly be required to be placed in a cage or taken out of the residence by the pet's owner." (AOB 24.) Appellant's proposed solution is more burdensome and restrictive than the challenged probation condition. His alternative would require him to pay for, and have ready, some form of containment for all animals he might maintain at his residence, as well as for animals guests might bring to visit his home. In the case of larger-than-average animals or dogs, he might have to have a cage specially made to contain such animals. His proposed alternative is simply unfeasible, and imposes a greater burden on him than the simple requirement that he inform his probation officer of his pets.

Merely requiring appellant to notify his probation officer of his pets does not infringe upon any constitutional rights, because there is no right not to report one's pets. Appellant would be free to maintain pets at his residence; he would only have to inform his probation officer of them. Therefore, because the condition is reasonably related to the goals of rehabilitation and public safety, and appellant has not shown any constitutional deprivation, the condition need not be more narrowly tailored. In any event, the probation condition is not unduly restrictive, as telling his probation officer about his pets is an easy task that does not impose a hardship on appellant. Thus, the condition is reasonable and is not overbroad..

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the judgment be affirmed.

Dated: October 4, 2007

Respectfully submitted,

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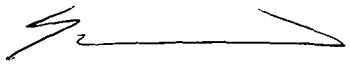

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CERTIFICATE OF COMPLIANCE

I certify that the attached DOCUMENT TITLE uses a 13 point Times New Roman font and contains 6624 words.

Dated: October 4, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Alejandro Olguin**

No.: **S149303**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On October 4, 2007, I served the attached **Respondent's Brief On The Merits**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 4, 2007, at San Diego, California.

B. Trigueros
Declarant

Signature