

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MIKAELA TYRONA BOLDS,

Defendant and Appellant.

B287926

(Los Angeles County
Super. Ct. No. LA075180)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Martin Larry Herscovitz, Judge.
Dismissed.

Andrea Keith, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Kenneth C. Byrne and Nicholas J. Webster,
Deputy Attorneys General, for Plaintiff and Respondent.

Following revocation of probation, Mikaela Tyrona Bolds (defendant) was sentenced to two years in county jail. On appeal, defendant challenges a probation condition requiring her to disclose her internet account passwords to her probation officer. Defendant contends this probation condition violated her right to privacy under the Fourth Amendment and was unconstitutionally overbroad. We dismiss this appeal as untimely.

BACKGROUND

On May 14, 2014, defendant pled no contest to falsifying a check. (Pen. Code, § 470, subd. (d).)¹ At the time, defendant was also on probation on another matter, Los Angeles Superior Court, case No. LA070094, and therefore her plea resulted in a probation violation in that case. The trial court sentenced defendant to a total term of two years eight months in county jail, comprised of the midterm of two years for her current case, plus an additional and consecutive eight months for the probation violation in case No. LA070094.

Execution of that sentence was suspended and defendant was placed on three years of probation subject to various terms and conditions. Relevant to this appeal is defendant's probation condition which required her "to disclose to the probation department all electronic mail accounts and internet accounts for access, all passwords and access codes to financial institutions" (electronic search probation condition).² Defendant did not object

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The parties dispute whether defendant's probation condition was limited to defendant only providing her internet

to this probation condition when it was imposed and did not appeal her sentence.

In January 2017, the probation department indicated defendant was in violation of her probation for failing to complete 90 days of Probation Adult Alternative Work Services (P.A.A.W.S.). The trial court revoked defendant's probation and issued a warrant for her arrest.

Defendant was picked up on the bench warrant, and a probation violation hearing was scheduled for January 31, 2018. Following a contested hearing, the trial court concluded defendant was in violation of her probation for failing to complete P.A.A.W.S. The trial court ordered defendant's probation "permanently revoked" and imposed a two-year sentence.³ That same date, defendant filed a notice of appeal.

account passwords related to "financial institutions." Defendant contends she was required to provide "all" of her internet account passwords to the probation officer. Given our ruling, we need not resolve this issue.

³ Defendant already had custody credits for the eight-month sentence imposed in case No. LA070094 (probation violation). Thus, at the January 31, 2018 hearing, the trial court reinstated and terminated case No. LA070094.

DISCUSSION

Defendant's sole issue on appeal is whether the electronic search probation condition violated her right to privacy under the Fourth Amendment and was unconstitutionally overbroad. We need not reach the merits of this issue because defendant's appeal is untimely.

"[A] notice of appeal . . . must be filed within 60 days after the rendition of the judgment or the making of the order being appealed." (Cal. Rules of Court, rule 8.308(a).) "A timely notice of appeal, as a general matter, is 'essential to appellate jurisdiction.' [Citation.] It largely divests the superior court of jurisdiction and vests it in the Court of Appeal. [Citation.] An untimely notice of appeal is 'wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.' [Citation.] The purpose of the requirement of a timely notice of appeal is, self-evidently, to further the finality of judgments by causing the defendant to take an appeal expeditiously or not at all." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1094 (*Mendez*).)

An order granting probation is an appealable order. (§ 1237, subd. (a); *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421 (*Ramirez*).) "Thus, a defendant who elects not to appeal an order granting or modifying probation cannot raise claims of error with respect to the grant or modification of probation in a later appeal from a judgment following revocation of probation. [Citations.]" (*Ramirez, supra*, at p. 1421.)

Here, the trial court imposed the electronic search probation condition at defendant's initial sentencing on May 14, 2014. Although defendant could have appealed and challenged

the condition within 60 days after it was imposed, she did not do so. (Cal. Rules of Court, rule 8.308(a).) Thus, defendant's challenge to the electronic search probation condition is untimely.

Recognizing this problem, defendant contends her appeal must still be heard because an exception to the rule applies when an appeal is based on a constitutional issue. Defendant's reliance on *People v. Munoz* (1975) 51 Cal.App.3d 559, 563 and *People v. Silva* (1966) 241 Cal.App.2d 80, 82–83 for this proposition is without merit. Neither of these cases hold that the 60-day time limit to appeal is excused for constitutional arguments. And both cases precede our Supreme Court's ruling in *Mendez*, which made clear that a timely notice of appeal is "essential to appellate jurisdiction" and "cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief." (*Mendez, supra*, 19 Cal.4th at p. 1094.) Accordingly, the appropriate disposition in this case is dismissal.

DISPOSITION

The appeal is dismissed.

_____,
ASHMANN-GERST, J.

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT