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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE JOAQUIN,

Defendant and Appellant.

2d Crim. No. B279733
(Super. Ct. No. 2016028734)
(Ventura County)

Jesse Joaquin appeals an order granting probation with “gang terms,” arguing that the gang terms are unreasonable. We affirm.

Facts and Procedural History

The factual basis for appellant’s change of plea is the probation report which contains the following summary: On August 3, 2016, a Ventura County Sheriff’s deputy saw appellant, a documented Sur Town gang member, standing next to Desiree Amador outside an apartment building in Moorpark. The deputy approached and asked to speak to appellant. Appellant fled to an upstairs apartment as Amador ran away.

Appellant said he was on probation and “I didn’t do anything wrong.” When the deputy told appellant he was being detained, appellant reached into his waistband. The deputy drew his firearm and ordered appellant to show his hands. Appellant ran towards the deputy, leaned over the balcony, and threw a silver handgun into the bushes. The deputy struggled with appellant for about 20 seconds before arresting him. Appellant was transported to the police station where it was determined that he was under the influence of a controlled substance.

A witness saw appellant throw the handgun off the balcony and saw Amador retrieve the handgun and run. Deputies arrested Amador and found the handgun (a Ruger .22 caliber semi-automatic) hidden in nearby bushes. The handgun was loaded and had four live rounds. Amador admitted smoking marijuana and methamphetamine, and tested positive for drugs. Inside Amador’s purse was a baggie of 3.32 grams of marijuana. The purse also contained a small radio with “Sur Town” gang writing on it.

Appellant waived the preliminary hearing and pled guilty to possession of a loaded firearm while under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (e)) and resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).¹ Pursuant to the written plea agreement, appellant admitted a 2007 prior strike conviction (§§ 667, subds. (c)(1) & (e)(2), 1170.12, subds. (a)(1) & (c)(1)), and entered a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754). At the sentencing hearing, the trial court granted appellant’s motion to strike the

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

prior strike conviction (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497), suspended imposition of sentence, and granted three years probation with 365 days county jail. Over appellant's objection, the trial court imposed the following gang terms as a condition of probation:

"You shall not associate with gang members including, but not limited to members of the Sur Town gang."

"You shall not be present in any meeting place or gang gathering area, including but not limited to the Sur Town gang."

"You shall not wear, display, use or possess any insignia, emblem, badge, cap, hat, scarf, bandana, or any article of clothing which is evidence of affiliation with or membership in any gang, including, but not limited to the Sur Town gang."

Discussion

Appellant contends that the gang terms are unreasonable and should be stricken. We review for abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) "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" [Citation.]' [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, 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. [Citation.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 379–380.)

Appellant argues that his current offenses -- possession of a firearm while under the influence of a controlled substance and resisting arrest -- have nothing to do with a gang. Appellant, however, threw the handgun over the balcony so that Amador could hide it from the police. Amador possessed gang paraphernalia, which suggested that she was a Sur Town gang member. It can be reasonably inferred that appellant possessed and passed off the handgun to Amador for the benefit of, or in association with the Sur Town gang.

Appellant claims that the gang terms are unreasonable because he is prohibited from associating with a wide range of people who have gang connections and appellant has to be careful about what he wears because it might be considered gang attire. The trial court reasonably concluded that the gang terms were necessary to prevent future criminality. Appellant was a documented Sur Town gang member and had a 25 year history of gang and drug related criminal activity, with failed attempts at probation, conditional sentences, and opportunities to rehabilitate his life. This is reflected in the prior strike conviction for unlawful taking or driving a vehicle (Veh. Code, § 10851, subd. (a)) with a gang enhancement (§ 186.22, subd. (b)(1)). Appellant committed the offense with a Sur Town gang member, wore Sur Town gang attire, and had “Chiques” and “DBS (Diablitos)” tattoos on his neck.

The trial court reasonably concluded that gang terms should be imposed to insulate appellant “from a source of temptation” to commit crimes with other gang members. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 626.) Appellant is prohibited

from frequenting gang areas to ensure that he will not be involved in future gang activity. The restriction on wearing or displaying gang indicia is designed to remove appellant “from . . . the visible reminders of his past gang connection. [Citation.]” (*Ibid.*) Each gang term is reasonable and designed to prevent future criminality. (*People v. Olguin, supra*, 45 Cal.4th at pp. 379-380.)

Appellant argues that he armed himself because he is addicted to drugs and has to deal with dangerous drug dealers. “Gang activities and weapon possession go hand-in-hand.” (*In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1154, fn. 4.) Appellant’s gang history and association with Amador indicates that appellant will continue to interact with gang members. It is a concern because appellant’s criminal history includes theft, vandalism, assault, battery, firearm violations, vehicle theft, resisting arrest, and drug related offenses. The probation report states that appellant has a high risk of reoffending and that appellant’s drug use, coupled with “negative peer associations and possible gang participation is a danger to the safety of the community.”

We conclude that the gang terms are reasonable and reasonably designed to prevent future criminal behavior. (*People v. Olguin, supra*, 45 Cal.4th at p. 380.) Although appellant claims he no longer “gang bangs,” the propriety of the gang terms does not turn on whether appellant is currently connected with a gang. (*People v. Lopez, supra*, 66 Cal.App.4th at p. 624.) Probation terms have been approved that bar defendants from being present at gang gathering areas, associating with gang members, and wearing gang clothing. (*Ibid.*) The instant case is no exception. Here, the gang terms are reasonable and promote

“section 1203.1’s goals of rehabilitation and public safety by forbidding conduct reasonably related to future criminality. [Citation.]” (*Id.* at p. 626.)

Disposition

The judgment (order suspending imposition of sentence and granting probation with gang terms) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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