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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.

JESUS MORA,

Defendant and Appellant.

2d Crim. No. No. B232979
(Super. Ct. No. 201100274)
(Ventura County)

Jesus Mora appeals from the judgment following his plea of guilty to fighting in public and his admission that the crime was committed for the benefit of a criminal street gang. (Pen. Code §§ 415, subd. (1) & 186.22, subd. (d).)¹ The trial court suspended imposition of appellant's sentence and granted him five years' probation on terms and conditions, which included that he not associate with two of his brothers.

Appellant contends that although he and his brothers are admittedly active members of the same street gang, the nonassociation term imposed by the trial court was unreasonable and violative of his constitutional right to freedom of association. He asks that we not disrupt his "close familial bonds (at a time when those bonds are probably more important in order to reintroduce a measure of

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

security and stability for a probationer)." We conclude that it is those very bonds which have, for nearly a decade, created insecurity and instability in appellant's life and led to his criminality. Accordingly, we affirm the order of the trial court.

BACKGROUND

Appellant and his brothers, Rudy Mora and Jonathan Mora, belong to the Little Boyz gang (LBZ). LBZ and Eastside/The Boyz gang (Eastside) are rivals.

On January 23, 2011, just after 2:00 p.m., Eastside member Jose Herrera, his girlfriend, Carolina L., and her sister were walking in Fillmore. They had a baby in a stroller with them. Appellant yelled, "LBZ" at Herrera and challenged him to fight. Herrera continued walking and said he would not fight while the baby was with them. Appellant and several companions yelled "LBZ," flashed gang signs, and rushed toward Herrera and his companions. Carolina pushed her sister and the stroller out of the way, and tried to stop the attack. It made no difference. Appellant and his companions attacked Herrera. Appellant had been released from custody less than 12 hours earlier.

Later on January 23, police officers found appellant with his brother, Rudy, a few blocks from the crime scene, on A Street, "prowling in and around a residence." The officers arrested them for fighting in public and prowling. (§§ 647, subd. (h) & 415, subd. (1).)

Before he attacked Herrera, appellant committed crimes in Ventura County for nearly a decade. In 2003, at the age of 13, appellant and two other minors were arrested with appellant's 21-year-old brother, Jonathan Mora, for breaking and entering a residence. Appellant's other juvenile arrests include malicious mischief, for throwing rocks at and breaking a teacher's car window (October 2011); burglary of a shoe store (November 2001); assaulting another minor in a juvenile facility, while announcing his gang name (January 2006); and resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1) (May 2006)). In some cases, the juvenile court sustained Welfare and Institutions Code section

602 delinquency petitions. By February 2010, appellant had violated probation 10 times.

In April 2010, as an adult, appellant pled guilty to resisting, delaying or obstructing a peace officer. In September 2010, he was charged with robbery, after hiding near a vehicle in a victim's driveway, aggressively approaching, and demanding the victim's cell phone. He pled guilty to grand theft person.

On February 10, 2011, appellant pled guilty to fighting in public with Herrera and admitted that he committed that crime for the benefit of a criminal street gang. (§ 415, subd. (1) & 186.22, subd. (d).) At sentencing, the trial court expressly found a factual basis for the plea, based on documentation in the probation report. It further found that it would help to remove appellant "from the entrenched gang association in a small town like Fillmore." The court granted him formal felony probation for five years, subject to several conditions, including his serving 180 days in county jail. Addressing appellant, the court stated, "You shall not associate with Rudy Mora, Jonathan Mora, Christian Cardoza or Jose Ruiz."

Defense counsel objected on the ground that Rudy and Jonathan Mora were appellant's brothers. The trial court responded, "They're also fellow gang members and he's not allowed to have any association with them *without prior approval of the probation department.*" (Italics added.) It further ordered that appellant "not associate with any gang members including but not limited to the Little Boyz gang."

At sentencing, the trial court specifically noted that at least one of appellant's brothers was present, or "alleged to be present during this offense." Defense counsel again objected and argued that by issuing that order, the court was ordering appellant not to have contact with his brothers Rudy and Jonathan Mora. Based on the probation report, the trial court expressly found that Jonathan and Rudy Mora were LBZ gang members and that appellant's further association with either of them would be a violation of his probation and likely cause him to continue to participate in the gang and reoffend.

DISCUSSION

Section 1203.1 gives trial courts broad discretion to impose conditions of probation to foster rehabilitation of the defendant, protect the public and the victim, and ensure that justice is done. (§ 1203, subd. (j); *Brown v. Superior Court* (2002) 101 Cal.App.4th 313, 319.) "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 & fn. omitted.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*People v. Lent* (1975) 15 Cal.3d 481, 486.) As with any exercise of discretion, the court violates this standard when it imposes a condition of probation that is arbitrary, capricious or exceeds the bounds of reason under the circumstances. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Probation conditions "prohibiting an individual from associating with other persons including spouses and close relatives, who have been involved in criminal activity [are] generally [valid] when reasonably related to rehabilitation or reducing future criminality. [Citations.]" (*People v. Wardlow* (1991) 227 Cal.App.3d 360, 367 [brothers]; see also *In re Peeler* (1968) 266 Cal.App.2d 483, 484 [spouse].) Restriction of the right of association is part of the nature of the criminal process (*People v. Peck* (1996) 52 Cal.App.4th 351, 363), and conditions prohibiting gang association are constitutionally valid because they are reasonably related to the prevention of future criminality (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624; *People v. Lent*, *supra*, 15 Cal.3d at p. 486).

At oral argument, appellant's counsel asserted that California authority prohibits a no-contact condition under the circumstances of this case. We disagree. Counsel stressed the distinction between this case and *Wardlow* where the no-contact condition related to "two persons who were repeat child molesters."

(*People v. Wardlow, supra*, 227 Cal.App.3d at p. 367.) The *Wardlow* reviewing court reasoned that "[k]eeping [him] from associating with other child molesters was reasonably related to rehabilitation and future criminality, particularly since Wardlow, himself, believed he had become a child molester because his brother had molested him." (*Ibid.*) Here, also, the condition barring appellant's association with his brothers was reasonably related to his rehabilitation and the prevention of future criminality. (*Ibid.*)

The trial court examined the entire record, weighed the evidence, and correctly concluded that whatever chance appellant had at success on probation lay in breaking his association with the gang and his brothers. Appellant and his brothers, Rudy and Jonathon, were active LBZ gang members. In 2003, appellant and Jonathon were arrested together for committing a residential burglary. On January 23, 2011, hours after his release from custody, appellant and other gang members fought with Herrera in Fillmore. Later that day, police officers arrested appellant and Rudy, upon finding them prowling around a nearby residence.

Appellant and his sister, who lived in Lompoc, each wrote a letter to the trial court asking that he have a chance to transfer his probation to Lompoc to make a new beginning, and leave the City of Fillmore. Appellant wrote that moving to Lompoc would be one of the smartest choices he could possibly make. His sister wrote that living in Lompoc would "help him stay out of trouble," and that he "never got into trouble" when he lived in Texas.

The trial court did not abuse its discretion in the imposition of the probation condition barring appellant's association with his brothers. The condition was rehabilitative rather than punitive. It was not absolute; the probation officer could grant appellant permission to see his brothers. Further, the trial court tailored the condition "narrowly to include only those family members" who belonged to the LBZ gang. (*People v. Wardlow, supra*, 227 Cal.App.3d at p. 367.)

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Nancy Ayers, Judge
Superior Court County of Ventura

Stephen P. Lipson, Ventura County Public Defender, Michael C. McMahon, Chief Deputy - Appellate, and Kenneth N. Hamilton, Deputy Public Defender, for Defendant and Appellant.

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