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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. JAMES DEREK CALL, Defendant and Appellant.	2d Crim. No. B275151 (Super. Ct. No. 2014012609) (Ventura County)

James Derek Call appeals the judgment entered after he pled guilty to possessing or controlling child pornography (Pen. Code,[1] § 311.11, subd. (a)). Imposition of sentence was suspended and he was placed on three years of felony probation subject to various terms and conditions. Appellant contends that two of the conditions of his probation should be stricken as overbroad. We affirm.

[1] All statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

In August 2013, a Ventura County Sheriff's detective discovered a computer using a peer-to-peer network to download, store, and share 245 files containing child pornography. The records of the internet service provider for the computer were subpoenaed and appellant was identified as the subscriber. The computer and multiple external hard drives and other storage devices were subsequently seized during execution of the search warrant at appellant's residence. Numerous videos and images of child pornography were found on the devices. Appellant claimed he had deleted all of the child pornography, but admitted downloading it.

In sentencing appellant, the trial court imposed numerous terms and conditions of probation as recommended by the probation department. One of the conditions (term 10) provides that appellant "shall not own, possess, have under custody or control or immediate access to any firearm, ammunition, oleocapsicum pepper spray, or tear gas pursuant to Section 12403.7(a)(1) of the Penal Code." Another condition (term 19) states that "[y]ou shall not access the internet except at your work or school locations for work, volunteer service or school related reasons. You shall not access the Internet from home for work, volunteer service or school related reason without the prior written approval of a probation officer. A probation officer may require reasonable supervision conditions."

Appellant moved to strike term 10 on the ground that pepper spray and tear gas "have no nexus to this case." He also moved to strike term 19 as "untenable" in light of "today's technology." The court found both terms to be appropriate and accordingly imposed them.

DISCUSSION

Appellant contends the probation condition prohibiting him from possessing pepper spray and tear gas (term 10) and the condition that allows his probation officer to determine the conditions for supervising appellant's internet access (term 19) must be stricken as impermissibly overbroad. We are not persuaded.

A trial court has broad discretion under section 1203.1 in selecting the conditions of a defendant's probation. (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) "[T]he Legislature has empowered the court, in making a probation determination, to impose any '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.'" (*Ibid.*, quoting § 1203.1, subd. (j).)

A probation condition will not be invalidated on appeal "unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct that is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality[.] [Citation & Fn. omitted.]" (*People v. Lent* (1975) 15 Cal.3d 481, 486.) "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."' [Citations.]' [Citation.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

The court did not abuse its discretion in imposing the challenged conditions of probation. The prosecutor accurately

characterized term 10 as a "standard" condition that applies to all defendants convicted of a felony. The condition is based on subdivision (a) of section 22810, which provides in pertinent part that "[n]o person convicted of a felony or any crime involving an assault . . . shall purchase, possess, or use tear gas or any tear gas weapon." Pepper spray falls within the definition of "tear gas." (*People v. Autterson* (1968) 261 Cal.App.2d 627, 630-631; see also § 17240, subd. (a) [defining "tear gas" as "any liquid, gaseous, or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air"].)

In arguing that term 10 erroneously prohibits him from possessing tear gas and pepper spray as a condition of his probation, appellant misconstrues section 22810 as applying only to those convicted of assaultive behavior. Because the statute also applies to any person, like appellant, who was convicted of a felony, his overbreadth claim fails.

Appellant also fails to demonstrate that term 19 is overbroad to the extent it allows his probation officer to "require reasonable supervision conditions" regarding appellant's internet use. He acknowledges that courts have rejected overbreadth challenges to probation conditions requiring prior approval for internet access. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1347-1350; *In re Victor L.* (2010) 182 Cal.App.4th 902, 923.) Appellant claims, however, that the condition at issue here is different because it "essentially transferred to the probation officer the ability to impose any conditions on appellant's computer use without any guidelines or limitations or court involvement." He asserts that the court thus impermissibly delegated to the probation officer its authority to set the terms

and conditions of probation. (See *People v. Cervantes* (1984) 154 Cal.App.3d 353, 356-357.)

We reject this assertion. The condition at issue here does not give the probation officer the unfettered authority to dictate when, where, or how appellant may use the internet. Rather, it merely gives the officer the authority to require that such use be subject to reasonable supervision conditions. (See, e.g., *In re Victor L.*, *supra*, 182 Cal.App.4th at pp. 923-927 [upholding condition that "[t]he [m]inor shall not be on the Internet without school or parental supervision"].) This condition bears no relation to those that have been invalidated on the ground they excessively delegated the court's authority to the probation officer. (See, e.g., *People v. Cervantes*, *supra*, 154 Cal.App.3d at pp. 356-357 [court delegated to the probation officer the authority to determine the amount and manner of restitution]; *In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1690-1691 [excessive authority over parental visitation delegated to child welfare agency]; *In re Debra A.* (1975) 48 Cal.App.3d 327, 330 [probation officer delegated the authority to determine the location of a series of detentions].)

At the conclusion of his overbreadth argument, appellant also claims "there is no way for either he or a court to determine whether he is in violation" of term 19 because the condition "does not spell out precisely what appellant must do to comply with the condition[.]" This vagueness claim is forfeited because (1) it was not raised below; (2) it is not argued under a separate heading; and (3) it is not supported by meaningful argument or citations to authority. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Baniqued* (2000) 85 Cal.App.4th 13, 29; Cal. Rules of Court, rule 8.204(a)(1)(B) & (C).) In any event,

there is no merit to the claim. If the probation officer sets supervision conditions for appellant's internet usage, we presume that appellant will be made fully aware of those conditions.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Bruce A. Young, Judge
Superior Court County of Ventura

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