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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.

THOMAS IAN GRAY,

Defendant and Appellant.

2d Crim. No. B237380
(Super. Ct. Nos. 2011030944, 2011034074)
(Ventura County)

Thomas Ian Gray appeals orders requiring him to submit to blood, breath and urine tests when requested by a peace officer or probation officer following his guilty pleas to possession of a controlled substances - methamphetamine (case No. 2011030944) and heroin (case No. 2011034074). (Health & Saf. Code, §§ 11350, subd. (a), 11377, subd. (a).) He was placed on a deferred entry of judgment (DEJ) status (Pen. Code, § 1000) for 24 months.¹ We conclude that the trial court's orders requiring Gray to submit to random drug testing are consistent with section 1000. We affirm.

FACTS

After his guilty pleas to his drug possession offenses, the trial court found Gray was qualified for DEJ status and that he must receive substance abuse treatment. It suspended all criminal proceedings and ordered him to report to the probation department.

¹ All further statutory references are to the Penal Code.

Allowing defendants to fall within the DEJ classification under section 1000 assists "the courts to identify the experimental or tentative user before he becomes deeply involved with drugs, to show him the error of his ways by prompt exposure to educational and counseling programs in his own community, and to restore him to productive citizenship" (*Terry v. Superior Court* (1999) 73 Cal.App.4th 661, 664.) It allows the defendant to avoid "the lasting stigma of a criminal conviction" and thereby reduce "the clogging of the criminal justice system." (*Ibid.*) The criminal charges are dismissed if the court determines the defendant "has performed satisfactorily" during the DEJ period. (*In re Varnell* (2003) 30 Cal.4th 1132, 1139; § 1000.3.)

Under this statutory scheme, the probation department recommends the treatment programs available for the defendant. The trial court makes "the final determination regarding education, treatment, or rehabilitation for the defendant." (§ 1000.1, subd. (b).) Section 1000, subdivision (e) provides, "Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding."

In placing Gray on DEJ status, the trial court ordered him to: 1) "[p]articipate as directed in any treatment program designated by the court"; 2) refrain from using "narcotics, dangerous drugs" or controlled substances; 3) obtain drug counseling, 4) authorize the "submission of progress reports to the court upon request"; and 5) "*[s]ubmit to and complete tests of your breath, blood or urine, when requested by a peace officer or probation officer.*" (Italics added.)

Gray objected to the last order claiming that drug testing by anyone other than an official of a drug treatment program was unauthorized for a defendant on DEJ status. The trial court overruled the objection stating, "[T]here is a salutary effect on having a person on DEJ know that if they come in to contact with law enforcement they can be requested . . . to provide a sample for testing to see that they're in compliance."

DISCUSSION

The Drug Testing Orders

Gray contends the orders requiring him to submit to random drug testing by peace and probation officers must be reversed. He suggests that: 1) only a drug treatment program may require him to submit to drug testing, 2) random testing by probation and law enforcement officers is prohibited by section 1000, 3) the trial court lacked the authority to issue the order, and 4) the order undermines the drug treatment program required by section 1000. We disagree.

In *Terry*, we rejected the argument that section 1000 precluded the court from issuing an order requiring a DEJ defendant "to submit to unannounced chemical tests at the request of a peace or probation officer." (*Terry v. Superior Court, supra*, 73 Cal.App.4th at p. 663; *id.* at p. 666.) We ruled the order was "consistent with the legislative objective of freeing one from chemical dependence." (*Id.* at p. 666.) That random testing "will facilitate appellant's compliance" with treatment, promote rehabilitation, and "[t]he possibility of random drug tests should provide an added incentive for appellant to avoid illicit drugs." (*Ibid.*) We rejected the claim Gray asserts about the court's lack authority to issue drug testing orders. Nothing in section 1000 supports Gray's position that his DEJ status immunizes him from being subject to random testing.

The orders are affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Kevin J. McGee, Judge
Superior Court County of Ventura

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