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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO SANDOVAL FLORES,

Defendant and Appellant.

B281611

(Los Angeles County
Super. Ct. No. LA085371)

APPEAL from the judgment of the Superior Court of Los Angeles County, Susan M. Speer, Judge. Affirmed as modified.

Mary Jo Strnad, 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, Susan Sullivan Pithey and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

As a condition of probation, the trial court ordered Pedro Sandoval Flores (Flores) to stay away from places where drug users, buyers or sellers congregate. On appeal, he contends that the probation condition is vague and overbroad. Because we agree, we modify the order and, as modified, affirm the judgment.

BACKGROUND

Flores pled no contest to selling, transporting, or offering to sell heroin (Health & Saf. Code, § 11352, subd. (a)). The court placed him on formal probation for three years. As a condition of probation, he was ordered to “[s]tay away from places where [drug] users, buyers or sellers congregate.”

DISCUSSION

Flores claims the above-quoted probation condition is vague and overbroad in violation of the federal and state Constitutions. We agree.

I. Applicable law

In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety. (*People v. Nice* (2016) 247 Cal.App.4th 928, 944 (*Nice*), review granted Aug. 24, 2016, S235635, and review dism. Mar. 22, 2017, S235635.) Vagueness and overbreadth objections to such conditions are often raised together. “‘[T]he underpinning of a vagueness challenge is the due process concept of “fair warning.”’ [Citation.] A probation condition so vague that men and women of common intelligence must guess at its meaning and differ as to its application violates ‘“the due process concepts of preventing arbitrary law enforcement and providing adequate notice”’ to the probationer. [Citation.] ‘A probation

condition “must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,” if it is to withstand a challenge on the ground of vagueness.’” (*Id.* at p. 944.)

“‘The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights’ [Citation.] ‘A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.’ [Citation.] ‘A narrow condition that achieves rehabilitation should be used in place of broad conditions that prevent otherwise lawful conduct and necessary activities.’” (*Nice, supra*, 247 Cal.App.4th at pp. 944–945.) Our review of constitutional vagueness and overbreadth challenges to a probation condition is de novo. (*Ibid.*; *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1134, 1143; cf. *In re Sheena K.* (2007) 40 Cal.4th 875, 888–889 (*Sheena K.*).)¹

In *Nice, supra*, 247 Cal.App.4th at page 944, the trial court imposed the following probation condition: “‘You shall not . . . go *anywhere* you know . . . controlled substances are being used or sold.’” (Italics added.) The defendant argued the condition was vague because it failed to make clear “how far he must remain from places where illegal drugs are being used or sold.” (*Id.* at

¹ The People erroneously suggests we review imposition of a probation condition for abuse of discretion. That standard of review is inapplicable to defendant’s constitutional vagueness and overbreadth challenges. (*In re Shaun R., supra*, 188 Cal.App.4th at p. 1143.)

p. 947.) He argued the condition was overbroad because he would “need to avoid *all places* where he knows illegal drug activity takes place, such as public parks, beaches, and music concerts.” (*Ibid.*, italics added.) Stated otherwise, a large public park might have discrete locations contained within, for example, a theater and an observatory. If drugs are sold at the theater, may a probationer subject to this condition go to the observatory? May he go to the park at all?

To address this question, *Nice* discussed *In re H.C.* (2009) 175 Cal.App.4th 1067, *People v. Leon* (2010) 181 Cal.App.4th 943 (*Leon*), and *People v. Barajas* (2011) 198 Cal.App.4th 748 (*Barajas*), involving analogous probation conditions directing defendants not to “frequent any *areas*” of gang-related activity. (*Nice, supra*, 247 Cal.App.4th at pp. 948–949, italics added.) *H.C.* ruled that a knowledge requirement provides sufficient notice about what specific locations are prohibited. (*Nice*, at p. 948.) *Leon* similarly modified a probation condition to impose a knowledge requirement: “ ‘ “You are not to visit or remain in any specific location which you *know to be or which the probation officer informs you* is an area of criminal-street-gang-related activity.” ’ ” (*Nice*, at p. 949, italics added.)

In contrast to *Leon*, *Barajas, supra*, 198 Cal.App.4th at page 752 rejected vagueness and overbreadth challenges to a probation condition that read, “ ‘You’re not to visit or remain in any specific location which you know to be or which the probation officer informs you to be an area of criminal street gang-related activity.’ ” The knowledge condition gave defendant fair warning of what areas to avoid and ensured that he would not be found in violation of probation due to a factual mistake, accident, or misfortune. (*Nice, supra*, 247 Cal.App.4th at p. 949.)

Nice, supra, 247 Cal.App.4th at pages 947, 950 applied these principles to the proposed condition there that prohibited the defendant from “going anywhere he knows illegal drugs or nonprescribed controlled substances are used or sold.”² *Nice* concluded the phrase “‘shall not go anywhere’” implicated vagueness and overbreadth concerns. (*Id.* at pp. 950–951.) “[T]he knowledge condition may not suffice to provide fair notice [to defendant] of ‘which “areas” would come within the condition’s purview.’ [Citation.] That is, the words ‘shall not go anywhere’ fail to assign any sense of scale or scope to the taint of illegal drug activity in a location, and ‘reasonable minds may differ’ as to whether [the defendant] can remain ‘anywhere’ in a public space where he knows prohibited drug activity is taking place. [Citation.] Consequently, we find the condition is overbroad because the failure to specify scale or scope inevitably will impinge on lawful travel and movement more than otherwise required in order to enforce the purpose of the probation condition.” (*Ibid.*) Put differently, the word “anywhere” in the phrase, “‘[y]ou shall not . . . go *anywhere*’” (*id.* at p. 944, italics added) was ambiguous because it failed to specify a boundary for the taint flowing from illicit drug activity, or how far the defendant had to be from such a boundary.

Nice, supra, 247 Cal.App.4th at pages 951 to 952 thus held the following language was neither vague nor overbroad: “‘You

² *Nice, supra*, 247 Cal.App.4th at page 950 concluded the phrase “‘knows illegal drugs or non-prescribed controlled substances are used or sold’” eliminated the danger “Nice might violate the probation condition unwittingly,” and “the knowledge condition ensures that Nice ‘will not be found in violation due to a factual mistake, accident, or misfortune.’”

shall not . . . visit or remain in any specific location where you know illegal drugs or non-prescribed controlled substances are used or sold.’ ”

II. Application of the law to this case

Here, Flores’s probation condition that he “[s]tay away from *places* where users, buyers or sellers congregate” (italics added), with its geographic and spatial term “places,” presents problems substantially similar to those presented by “ ‘[y]ou shall not . . . go *anywhere*.’ ” (*Nice, supra*, 247 Cal.App.4th at p. 944, italics added.) The word “places” in the phrase “[s]tay away from *places*” is ambiguous because it specifies neither a boundary for the taint flowing from drug-related activity nor how far defendant has to be from any such boundary. The result is an ambiguous probation condition that unnecessarily prevents otherwise lawful conduct and travel.

Sheena K., supra, 40 Cal.4th at page 878 involved a probation condition prohibiting the defendant from associating with “ ‘anyone disapproved of by probation.’ ” *Sheena K.* concluded the condition failed to notify the defendant with whom she could not associate. The court therefore modified the condition to direct the defendant “ ‘not to associate with anyone “known to be disapproved of” by a probation officer.’ ” (*People v. Hall* (2017) 2 Cal.5th 494, 503 (*Hall*), italics added.) A similar lack of notification exists here.

The People do not argue *Nice* was wrongly decided; to the contrary, the People argue Flores’s probation condition is valid because it is “analogous” to the modified conditions imposed in *Leon*, *Barajas*, and *Nice* with their respective express knowledge requirements. We are persuaded *Nice*’s reasoning compels an analogous express knowledge requirement here.

Indeed, the People concede that if Flores were detained for violating this condition, “he would not immediately know for certain that [Flores] did so knowingly. That would be adjudicated in court.” This concession belies the requirement that “[a] probation condition so vague that men and women of common intelligence must guess at its meaning and differ as to its application violates ‘the due process concepts of preventing arbitrary *law enforcement*’ ” ‘ [Sheena K., *supra*, 40 Cal.4th at p. 890].” (*Nice, supra*, 247 Cal.App.4th at p. 944, italics added.) “A vague law ‘not only fails to provide adequate notice to those who must observe its strictures, but also “impermissibly delegates basic policy matters to policemen, . . . for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” ’ ” (*Sheena K.*, at p. 890.)

We conclude Flores’s probation condition is unconstitutionally vague and overbroad. We will modify it to read: “You shall not visit or remain in any specific location in which users, buyers, or sellers of illegal drugs or non-prescribed controlled substances congregate, when you know, or the probation officer informs you, that such users, buyers, or sellers congregate there.” (Cf. *Sheena K., supra*, 40 Cal.4th at pp. 890–893; *Nice, supra*, 247 Cal.App.4th at pp. 944–945, 947–952.)³

³ Because we modify the condition of probation, we need not reach defendant’s argument that his probation condition is duplicative of other probation conditions.

III. The People's cases or arguments do not compel a contrary conclusion

None of the cases cited by the People compel a contrary conclusion. First, the People cite *Hall* for the proposition there is an implied knowledge requirement that Flores “stay away from places where *he knows* drug users, buyers or sellers congregate.” *Hall* is inapposite. *Hall* involved a probation condition that prohibited a defendant from possessing firearms or illegal drugs or weapons. (*Hall, supra*, 2 Cal.5th at p. 497.) *Hall* rejected the defendant's vagueness challenge on the ground the probation condition included an implied requirement of knowing possession of the contraband, in particular, knowledge of the presence and restricted nature of the contraband. (*Id.* at pp. 497, 503.)

Unlike *Hall*, Flores's probation condition involves, not possession of contraband, but staying away from “places.” Generally, terms such as “illegal drugs” and “illegal weapons” are unambiguous and describe items with a particular locus. “Places” is ambiguous and can describe a broad spatial area. The implication (based on a presumption of willfulness) of a requirement that Flores know “places” that, e.g., sellers are congregating, does not resolve for Flores the previously discussed issues regarding how far he must be from any taint-related boundary. Further distinguishing *Hall* is that the defendant there made no overbreadth challenge; defendant here makes that challenge whether or not his probation condition is vague.

In re Edward B. (2017) 10 Cal.App.5th 1228, is also distinguishable. There, the trial court imposed a probation condition directing the defendant, in pertinent part, “‘not to be on a school campus.’” (*Id.* at p. 1232.) *Edward B.* rejected the defendant's vagueness challenge. (*Id.* at p. 1238.) Unlike the

geographic and spatial term “places,” which is ambiguous and potentially broad in application, the phrase “school campus” specifically identifies a kind of location, and the defendant in *Edward B.* was prohibited from being “on” it.

DISPOSITION

The probation condition order is modified to read: “You shall not visit or remain in any specific location in which users, buyers, or sellers of illegal drugs or nonprescribed controlled substances congregate, when you know, or the probation officer informs you, that such users, buyers, or sellers congregate there.” As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.