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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID PRINCETON TROWELL,

Defendant and Appellant.

A107201

(Solano County
Super. Ct. No. FCR207086)

Defendant entered a plea of no contest to violating Penal Code section 261.5, subdivision (d),¹ unlawful sexual intercourse with a person under the age of 16 years. The trial court suspended judgment and sentence and placed defendant on a three-year term of formal probation with a variety of conditions, which included that defendant cannot be in the presence of females under the age of 18 years without a responsible adult present and prior written approval by the probation officer, that he abstain from all drugs and alcohol and submit to testing, and that he register as a sex offender during the term of probation. On appeal, defendant challenges the foregoing probation conditions. We conclude that the trial court abused its discretion in imposing the registration condition and we modify the condition requiring defendant not to be in the presence of any female under the age of 18 years. We otherwise affirm the judgment.

¹ All further unspecified code sections refer to the Penal Code.

BACKGROUND

On June 6, 2003, an information was filed charging defendant with committing a lewd act upon a child. (§ 288, subd. (c)(1).) The information was based on a police report made by Christie.

On July 7, 2002, Christie, who was then 22 years old, reported to the police that she and defendant had a consensual sexual relationship that began in 1993 when she was 13 years old and he was 26 years old.² Christie had a child in 1995; defendant was the biological father. Christie complained that defendant did not provide monetary support for the child. She stated that defendant began to threaten to obtain custody of their child and to move out of the state. She obtained legal assistance and, on the advice of her attorney, she contacted the police about the unlawful sexual intercourse.

Defendant told police that he believed Christie was 18 years old when he first began dating her, because she was living with her sister rather than her parents. Further, her mother encouraged the relationship. He later learned Christie's age when she became pregnant and he went with her to a doctor's appointment. He asserted that he was shocked to discover that she was 14 years old. He did, however, admit to continuing to have a sexual relationship with Christie after learning her age. He stated that the last time he had sexual relations with Christie was shortly after the birth of their daughter. He commented that he believed Christie was reporting the offense now because they were currently in a dispute over custody of their child. He said he filed for visitation in May 2002, and then Christie hired an attorney. In addition, he believed Christie was angry with him because he had given the police the location of Christie's mother and there was an outstanding warrant for her.³

² The facts are from the probation report and confidential psychological evaluation.

³ A warrant check by the probation officer revealed two outstanding warrants for Christie's mother.

According to the confidential psychological evaluation, drugs and alcohol have never been an issue for defendant. The report indicated that he drank very little and only in social situations. The probation report stated that defendant used marijuana when he was injured in 1998, and he smoked it to relieve his stomach problems and weight loss. He told the probation officer that he had last smoked marijuana three weeks earlier and that he did not believe he had a problem with it. He also claimed that he could get a prescription for marijuana if he really wanted one.

The confidential psychological report indicated that the psychologist did not consider defendant to be a pedophile or a sexual predator. She also did not view defendant as a threat to the safety of the community and did not believe that the sexual offender registration was required to reinforce issues of community safety.

The probation report recommended that defendant be granted probation with a variety of conditions that included, among others, that he abstain from illegal drugs, that he submit to alcohol/drug testing, and that he not be in the presence of any person under the age of 18 years without a responsible adult present as approved by the probation officer and court. The probation report did not recommend that defendant be required to register as a sexual offender.

On March 16, 2004, defendant pleaded no contest to committing unlawful sexual intercourse with a minor (§ 261.5, subd. (d)). On April 27, 2004, at the sentencing hearing, the prosecution requested that the court use its discretion to require defendant to register as a sex offender.

At the end of the sentencing hearing, the trial court suspended imposition of sentence and granted defendant three years formal probation. The court set forth the terms of probation, which included, among others, the following conditions: that defendant abstain from the use of alcohol and illegal drugs and submit to alcohol and drug testing, that defendant not be in the presence of any female under the age of 18 years without a responsible adult present as approved in writing by the probation officer, and that defendant register pursuant to section 290 “while on probation only.” Counsel

for defendant objected to these three probation conditions as being unreasonable, but did not specifically object on the basis that the conditions violated defendant's constitutional rights or that the court failed to state its reasons for finding registration appropriate under section 290, subdivision (a)(2)(E).

Defendant filed a timely notice of appeal.

DISCUSSION

Defendant challenges three of the conditions of his probation; namely, that he cannot be in the presence of any female under the age of 18 years without a responsible adult present as approved by the probation officer, that he must abstain from the use of alcohol and drugs and submit to testing, and that he must register as a sexual offender during the time of his probation. The People respond that the first two conditions were proper but that the trial court should have imposed the condition of registration for defendant's lifetime.

I. Standard of Review and Waiver

The trial court has broad discretion to impose reasonable probation conditions to foster rehabilitation and to protect public safety. (§ 1203.1, subd. (j); see also *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Imposition of 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 (*Lent*), overruled on other grounds in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-292.) On appeal, we review the trial court's decision under the deferential abuse of discretion standard; we reverse only if the lower court's determination is arbitrary or capricious. (*People v. Carbajal, supra*, at p. 1120.)

When a condition of probation impacts upon the exercise of a fundamental right and is challenged on constitutional grounds, we must also determine whether the condition is impermissibly overbroad. (*People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139.) Probation conditions are valid “even though they restrict a probationer's

exercise of constitutional rights if they are narrowly drawn to serve the important interests of public safety and rehabilitation [citation] and if they are specifically tailored to the individual probationer.” (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084.)

In the present case, defendant objects to the condition limiting his association with females under the age of 18 years and to the condition requiring him to register during the probation period as impinging on his constitutional rights. The People assert that he has waived raising these issues on appeal because he made no specific constitutional challenge at the time of sentencing in the lower court. (*People v. Gardineer* (2000) 79 Cal.App.4th 148, 151.)

The Supreme Court has held that a defendant cannot argue for the first time on appeal that a condition of probation is unreasonable. (*People v. Welch* (1993) 5 Cal.4th 228, 237 (*Welch*)). Here, defendant objected to the conditions as being unreasonable, but did not object on any constitutional grounds. Some courts have interpreted *Welch* as holding that constitutional objections to conditions of probation based on overbreadth or vagueness are waived unless first made to the trial court. (See, e.g., *In re Josue S.* (1999) 72 Cal.App.4th 168, 170-171; *People v. Gardineer* (2000) 79 Cal.App.4th 148, 151.) However, the Supreme Court in *Welch, supra*, at page 235, recognized an exception to the forfeiture rule for challenges to probation conditions that raise pure questions of law. Thus, some courts have concluded that a constitutional challenge is not waived even if it is not raised below. (See, e.g., *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815.)

We need not resolve this split of authority here. In order to avoid any future possible ineffective assistance of trial counsel claim we address the challenge to the probation conditions on constitutional grounds.

II. Limiting Defendant’s Association with Females Under the Age of 18 Years

Defendant contends that the probation condition that he not be in the presence of any female under the age of 18 years without adult supervision and as approved by his

probation officer restricts conduct that is not itself criminal.⁴ He maintains that the condition is not directly related to his offense and is not reasonably related to future criminality. (See *People v. Carbajal*, *supra*, 10 Cal.4th at p. 1121.) In addition, he asserts that it violates his right of freedom of association. (*People v. Pointer*, *supra*, 151 Cal.App.3d at p. 1139.) Thus, in order to survive constitutional scrutiny, this condition not only must be reasonably related to present or future criminality, but also must be narrowly drawn and specifically tailored to the individual probationer. (*In re Babak S.*, *supra*, 18 Cal.App.4th at p. 1084.)

Defendant argues that the present situation is similar to the one in *In re Kacy S.* (1998) 68 Cal.App.4th 704, 712-713. In *In re Kacy S.*, the defendant objected to the probation condition that he “not associate with any persons not approved by his probation officer” as being overbroad and unreasonable. (*Id.* at p. 712.) The prosecutor agreed that the condition should be modified to provide that defendant not associate with the person involved in the fight. (*Id.* at p. 713.)

Similarly, here, defendant agrees that the probation condition barring any contact with the victim was proper, but he asserts that preventing him from being in the presence of any female under the age of 18 years without adult supervision and without prior approval by the probation officer is overbroad and unreasonable. (See also *In re Justin S.*, *supra*, 93 Cal.App.4th at p. 816 [reviewing court modified condition prohibiting minor’s association with any gang members to prohibiting association with known gang members]; *People v. Garcia* (1993) 19 Cal.App.4th 97, 101-102 [reviewing court modified condition that probationer not associate with users and sellers of narcotics, felons, and ex-felons to barring association with known users and sellers of narcotics,

⁴ The condition provides that defendant cannot “be in the presence of, or attempt to contact by any method, any female person under the age of 18 without approval in advance and in writing by the probation officer after consultation with the therapist. (This includes going to or loitering near areas frequented by children including, but not limited to, parks, playgrounds, and arcades. This also includes residing with any person under the age of 18.)”

known felons, and known ex-felons].) He asserts that this condition requires him to gain approval to associate with his daughter, his daughter's friends, other female family members or neighbors, and others. He complains that requiring advance approval is impractical and overly broad.

In the cases cited by defendant the reviewing court modified the probation condition to reflect a knowledge component on the defendant's part. The court recognized that the probationer could not be responsible from staying away from gang members or other felons unless the probationer knew this fact. Defendant has not argued that the condition is overbroad because he will not know whether the female is under the age of 18 years. Rather, defendant argues that the restriction is not related to future criminal behavior and is not reasonably related to his crime.

Defendant acknowledges that courts have upheld conditions that have limited a defendant's freedom of association. (See, e.g., *People v. Mills* (1978) 81 Cal.App.3d 171, 181-182 [reviewing court approved probation condition that defendant who had physically restrained a seven-year-old girl, molested her, and attempted to have intercourse not associate with girls under 18 years except in company of responsible adults]; *People v. Delvalle* (1994) 26 Cal.App.4th 869, 878 [reviewing court upheld probation condition that defendant who was convicted of attempting to buy a four-year-old child "stay away from any places where minor children congregate"].) Defendant argues that his crime differs from the cases where the defendant has been restricted from associating with minors. In those cases, the defendant was a pedophile or sexual predator. In contrast, defendant asserts that his history and actions do not warrant such sweeping limit on his freedom of association, especially since the psychological evaluation indicated that he was not a risk to society and was not a pedophile.

We disagree with defendant that any restriction on his association with females under the age of 18 years would be impermissible. Defendant continued to have a sexual relationship with a minor after learning her true age and therefore the trial court has a compelling interest in restricting defendant's freedom of association. We agree,

however, that the condition in the present case is too broad. Prohibiting defendant from being in the presence of any female under 18 years of age restricts benign contact with persons such as grocery clerks, sales personnel, and others. Many perfectly legal activities unrelated to future criminality are covered by this probation condition. As such, the condition as written is overbroad. “ ‘[T]o the extent [that a condition of probation] is overbroad it is *not* reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights.’ ” (*In re White* (1979) 97 Cal.App.3d 141, 146.)

We believe an appropriate balance of the competing interests requires a modification of the challenged condition to clarify that defendant is not to *associate* with female minors defendant knows or reasonably should know to be under the age of 18 years absent prior approval of the probation officer. In addition, the record contains no evidence that defendant poses a threat to his daughters or other family members and association with them should not be restricted.

Accordingly, the challenged condition should be modified as follows: “Defendant shall not associate with any minor female who defendant knows or reasonably should know is under the age of 18 years without a responsible adult being present unless approved in advance and in writing by the probation officer and after consultation with the therapist. (This includes going to or loitering near areas frequented by children including, but not limited to, parks, playgrounds, and arcades. This also includes residing with any female person under the age of 18 who is not a member of defendant’s immediate family.) ‘Minor female’ shall not include defendant’s children or other family members.”

III. Requiring Defendant to Abstain from Drugs and Alcohol

The trial court ordered as a condition of probation that defendant abstain from the use of alcohol and illegal drugs, and that he submit to alcohol and drug testing. Defendant had admitted using marijuana three weeks prior to his interview with the

probation officer and the court explained that it wanted “to make sure he [obeys all laws].” Defendant challenges these conditions as unreasonable.

Defendant contends that this case is analogous to *In re Kiddoo* (1990) 225 Cal.App.3d 922 (*Kiddoo*), disapproved on other grounds in *Welch, supra*, 5 Cal.4th 228. In *Kiddoo*, the court concluded there was no connection between the probationer’s conviction for possession of methamphetamine and the probation condition that he not possess or consume alcohol or frequent places where it was sold. (*Kiddoo, supra*, at pp. 927-928.) The court noted that possession and consumption of alcoholic beverages and frequenting places where they are for sale are not illegal activities. (*Ibid.*) It held the condition was therefore invalid because “[t]here is no factual indication in the record that the proscribed behavior, in defendant’s case, is reasonably related to future criminal behavior.” (*Ibid.*)

Here, the record does not indicate that defendant has any alcohol problems. In addition, defendant claims his marijuana use was to help him with his medical problems. Defendant argues that a condition requiring him to abstain from alcohol would only be reasonable if he had a history of past problems with alcohol or drugs or if his crime had involved alcohol or drug use. (See, e.g., *People v. Lindsay* (1992) 10 Cal.App.4th 1642, 1644; *People v. Beal* (1997) 60 Cal.App.4th 84, 86-87; *People v. Balestra* (1999) 76 Cal.App.4th 57, 61-62.) Since neither of these situations is present, defendant contends the probation conditions requiring him to abstain from alcohol and to be tested for alcohol use are unreasonable.

Many courts have criticized the *Kiddoo* decision, pointing out that empirical evidence establishes a nexus between drug use and alcohol consumption (*People v. Beal, supra*, 60 Cal.App.4th at p. 87) and criticizing its holding as being “inconsistent with a proper deference to a trial court’s broad discretion in imposing terms of probation” (*People v. Balestra, supra*, 76 Cal.App.4th at p. 69). Defendant admitted to using marijuana and, although he claims he could obtain a prescription for it, the record does not establish this. Moreover, he did not have a prescription and therefore his use was

unlawful. Accordingly, the conditions to abstain from using drugs and to submit to drug testing relate to illegal conduct. Furthermore, the testing condition assists the probation officer in assuring that defendant is complying with the general probation condition of obeying all laws. It follows that a probation condition concerning requiring defendant to abstain from drugs and being tested assists in the “ ‘reformation and rehabilitation of the probationer,’ ” and is “ ‘reasonably related to future criminality’ and is not invalid under [*Lent, supra*, 15 Cal.3d at page 486].” (*People v. Balestra, supra*, 76 Cal.App.4th at p. 65.)

Defendant does not dispute the nexus between alcohol and drugs but asserts that he was not convicted of a drug-related crime and simply admitted to using marijuana three weeks before his interview with the probation officer. However, in *People v. Balestra, supra*, 76 Cal.App.4th 57, the court affirmed imposition of an alcohol- and drug-testing condition on a probationer convicted of elder abuse. Although the court noted the defendant’s abuse of alcohol in its statement of the facts (*id.* at pp. 61, 62), the court’s reasoning did not rely on or cite these facts. Rather it criticized the *Kiddoo* decision as “inconsistent with a proper deference to a trial court’s broad discretion in imposing terms of probation, particularly where those terms are intended to aid the probation officer in ensuring the probationer is complying with the fundamental probation condition, to obey all laws.” (*Balestra, supra*, at p. 69.)

Accordingly, we conclude that abstinence from alcohol and drug use and the testing for them were reasonable conditions of probation to effectuate the goal of deterring defendant from future criminal behavior.

IV. Requiring Defendant to Register While on Probation

At the sentencing hearing, the prosecution urged the court to require registration as a condition of defendant’s probation even though the probation report had not recommended registration as a sex offender. The prosecution urged the court to use its discretion to impose registration as a sex offender because the victim was 13 years old when the relationship began and defendant was 26 years old. The court noted that the

relationship had been consensual, but the victim’s testimony indicated that she did not “understand the ramifications of the relationship.”

Counsel for defendant objected to the condition of registration and stated that the victim reported the crime 10 years later after becoming involved in a heated custody dispute that involved defendant and their daughter. When sentencing defendant, the court stated: “One of the arguments [defense counsel] brought forth, . . . you tried to equate your client’s life with the victim’s life since the crime has been committed. I don’t think they equate. [¶] I think the victim will suffer and has suffered because of it. And I think you’ve tried to make the victim out to be the bad guy. I don’t think that is the case. He in effect has taken her childhood away from her.” The court then, without any further explanation, ordered registration for the period of defendant’s probation.

Defendant challenges the probation condition that he must register as a sexual offender during the period of his probation. He claims the trial court made no findings as required under section 290, subdivision (a)(2)(E). Further, he claims the registration requirements violate his Sixth, Eighth, and Fourteenth Amendment rights of the United States Constitution. The People respond that he has waived raising a challenge based on the court’s failure to make any findings because he failed to object at sentencing and any error is harmless. Further, the People assert, because section 290 requires a lifetime registration requirement, the probation condition should be changed from a three-year requirement to a lifetime registration requirement.

Section 290, subdivision (a)(1)(A), provides that “[e]very person described in paragraph (2), for the rest of his or her life while residing in California . . . shall be required to register . . .” Section 290, subdivision (a)(2) sets forth persons who are required to register pursuant to subdivision (a)(1). Defendant’s conviction for violating section 261.5, subdivision (d), is not a listed offense requiring mandatory section 290 registration.

Section 290, subdivision (a)(2)(E), does provide the trial court with the discretion to require registration after making the proper findings. This subdivision provides the

following: “Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.” (§ 290, subd. (a)(2)(E).)

Although the trial court has discretion to impose registration on a defendant who did not commit any of the enumerated crimes that have mandatory registration, it can only do so if it finds the offense was the result of sexual compulsion or for purposes of sexual gratification. (§ 290, subd. (a)(2)(E).) In the present case, the trial court failed to state its reasons on the record in support of its findings that defendant should be required to register as a sex offender. Reasons in support of a discretionary sentencing choice “must be supported by a preponderance of the evidence in the record and must ‘reasonably relat[e]’ to the particular sentencing determination.” (*People v. Scott* (1994) 9 Cal.4th 331, 349-350, fn. omitted.)

The People claim that defendant has forfeited any right to challenge the registration requirement on the grounds that the court failed to state its reasons because he did not object on this basis at the time of sentencing. (See *People v. Bautista* (1998) 63 Cal.App.4th 865, 868.) Additionally, the People maintain that the trial court erred by requiring registration for only three years because registration is a lifetime requirement. The People claim that, despite the court’s failure to state its reasons for requiring a three-year registration, we should modify the probation condition to require defendant to register for his entire lifetime.⁵

The court in *Bautista, supra*, 63 Cal.App.4th 865 did hold that the defendant must object to the court’s statement of reasons at the time of sentencing or the defendant waives challenging the adequacy of the reasons on appeal. The *Bautista* court stated that

⁵ The People also argue that section 290 must be amended to clarify that registration must always be a lifetime requirement. This is an issue to be posed to the Legislature, and not to us.

the trial court ordered the probation condition of registration and stated it believed registration was appropriate “ ‘in view of the circumstances surrounding the offense[.]’ ” (*Id.* at p. 868.) The *Bautista* court held that therefore the defect, if any, was not the failure to state reasons, but the failure to state adequate reasons. (*Ibid.*)

In the present case, the issue is not the adequacy of the court’s statement of reasons. The court provided no statement of reasons for requiring registration.

Even if we assume that defendant has forfeited his right to challenge the trial court’s failure to state its reasons, he has preserved for appeal a challenge based on the court’s abusing its discretion in imposing the probation condition. Here, the court imposed a temporary period for registration and clearly did not intend the registration requirement to be for defendant’s lifetime. The statute, however, did not give the court discretion to impose registration for the length of defendant’s probation. Thus, the question before us is whether the record supports by a preponderance of the evidence the discretionary determination that defendant should register for his lifetime and whether this registration requirement reasonably relates to the particular policy reasons for imposing registration under section 290, subdivision (a)(2)(E). (See *People v. Scott*, *supra*, 9 Cal.4th at pp. 349-350.)

The fact that the court only wanted to require registration for a short period of time indicates that the court did not believe defendant represented a threat to society; otherwise, the court would have imposed registration for defendant’s lifetime. Indeed, registration for a temporary period of time defeats the underlying purpose of the statute, which is to prevent recidivism and to facilitate the location of offenders by law enforcement. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527.) Thus, the court’s own ruling indicates that it did not find that defendant was a danger to society.

The only argument the prosecution offered for imposing registration was the age difference between the victim and defendant. However, these factors do not establish the findings required under the statute that defendant committed this offense as a result of sexual compulsion or for sexual gratification (§ 290, subd. (a)(2)(E)).

We conclude that the record does not support a finding that defendant committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The facts reflected by defendant's plea and sentencing make no reference to sexual compulsion or sexual gratification. The psychologist's evaluation pursuant to section 1017 indicated that defendant had no sexual pathology and no major mental disorder. The psychologist concluded that she did not view defendant "as a threat to the safety of the community nor do I believe that sexual offender registration is required to re-enforce issues of community safety."

Defendant acknowledged that he should not have had relations with the victim, but he explained that when he first met her she was living with her sister and her mother supported the relationship between the victim and him. These factors lead him to believe she was 18 years old. Other than the fact that defendant had an unlawful sexual relationship with a 13-year-old female, there is nothing in the record that indicates defendant acted with compulsion or that his attraction lacked an emotional basis.

The People argue that the fact that defendant had a sexual relationship with the victim resulting in a child being born, and the fact that defendant continued to have a sexual relationship with the victim after learning her real age, establish that he had a sexual relationship with her for the "purposes of sexual gratification." (§ 290, subd. (a)(2)(E).) However, the fact that defendant did not abandon the victim completely after she had a child and the fact that he wanted to participate in the raising of the child indicate that his purpose was not solely for sexual gratification. There was no dispute that defendant wanted to have and made every effort to have a continuing relationship with his daughter. The record contains no evidence that he talked about his relationship with the victim in strictly sexual terms, nor does it contain any other evidence to suggest that there was no emotional purpose. Further, no force was involved and defendant stated that the victim's mother often drove her to his house; thus he believed the mother sanctioned and encouraged the relationship.

A final consideration is that the crime occurred about 10 years ago and the record indicates that defendant has not reoffended and is not at risk to reoffend. Defendant's conduct during the past 10 years also supports a finding that his acts with the victim were not the result of sexual compulsion or for purposes of sexual gratification. As stated *ante*, the purpose of the registration requirement for sex offenders is to prevent recidivism and to facilitate the location of offenders by law enforcement. (*Wright v. Superior Court, supra*, 15 Cal.4th at p. 527.) Thus, other than the fact that defendant had an ongoing sexual relationship with an underage female, there is nothing to support a finding that the crime was committed as a result of sexual compulsion or for purposes of sexual gratification. If these facts alone were sufficient to warrant registration as a sex offender, the Legislature would have included this crime as requiring mandatory registration.

Accordingly, we strike the probation condition that requires registration as a condition of probation.⁶

DISPOSITION

The probation condition ordering that defendant not be in the presence of any female person under the age of 18 years without a responsible adult present as approved by the probation officer is stricken. This condition is modified as follows: "Defendant shall not associate with any minor female who defendant knows or reasonably should know is under the age of 18 years without a responsible adult being present unless approved in advance and in writing by the probation officer and after consultation with the therapist. (This includes going to or loitering near areas frequented by children including, but not limited to, parks, playgrounds, and arcades. This also includes residing

⁶ Since we conclude the trial court abused its discretion in requiring registration for the probationary period, we need not address defendant's arguments that registration violates his constitutional rights. For similar reasons we need not consider defendant's argument, which relies on *People v. Tye* (1984) 160 Cal.App.3d 796, that section 290 does not apply to his case because his crime is exempt from the list of sex crimes that require mandatory registration

with any female person under the age of 18 who is not a member of defendant's immediate family.) 'Minor female' shall not include defendant's children or other family members."

The probation condition ordering defendant to register pursuant to section 290 "while on probation only" is stricken.

As modified, the judgment is affirmed. Upon remand, the trial court shall correct its records.

Lambden, J.

We concur:

Haerle, Acting P.J.

Ruvolo, J.