IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

TRAVIS ARCHER,

Appellant,

v. Case No. 5D19-3627

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed December 18, 2020

Appeal from the Circuit Court
for Volusia County,
Sandra C. Upchurch, Judge.

Aaron David Delgado, of Law Offices of Aaron Delgado & Associates, PLLC, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kristen L. Davenport, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Travis Archer pled no contest to felony cruelty to animals. The trial court withheld adjudication of guilt and sentenced Archer to 365 days in the county jail followed by three years' probation. He was also ordered to pay a $5000 fine to a local Labrador Retriever organization. The probation order set forth fourteen standard and twenty-five special

conditions of probation. Archer was unsuccessful in challenging or seeking clarification of the imposition of several special conditions of probation in a motion to correct sentencing errors filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). For the reasons set forth below, we affirm in part and reverse in part.

Archer's Labrador Retriever, Ponce, made a mess in Archer's house. When Archer disciplined Ponce, the dog bit Archer, who then viciously beat and stabbed the dog to death.[1] After a public outcry regarding the mild punishment associated with such horrendous animal abuse, in 2018, the Florida Legislature passed a bill, appropriately referred to as Ponce's Law, that revised section 828.12, Florida Statutes, significantly enhancing the penalties for animal abuse. The parties agreed that Ponce's Law could not ordinarily be retroactively applied to Archer. Nonetheless, during both the plea and sentencing hearings, Archer's counsel specifically stipulated that if a restriction could be crafted, Archer agreed to apply the provision of Ponce's Law which permits a court to restrict or prohibit an offender from owning animals. The trial court subsequently imposed several conditions of probation, including drug offender conditions and prohibiting Archer from owning, and residing with anyone who owned, animals.

Archer now argues the trial court erred in imposing these special conditions of probation, and in denying his rule 3.800(b)(2) motion. We review a trial court's imposition of special conditions of probation for an abuse of discretion. See J.R.M. v. State, 228 So. 3d 1147, 1149 (Fla. 4th DCA 2017); Spano v. State, 60 So. 3d 1108, 1109 (Fla. 4th DCA

[1] Archer inflicted extensive injuries on Ponce, including excessive blunt force trauma to all three sides of his head, six fractured teeth, a fractured lower jaw, blunt force trauma to his chest, two fractured ribs, a punctured lung, bruising to the lungs, internal bleeding, blunt force trauma to one kidney, and puncture wounds to his lip, hip, shoulder, chest, and thigh.

2011). However, if a motion to correct sentence presents a pure question of law, our standard of review is de novo. Thomas v. State, 286 So. 3d 884, 888 (Fla. 2d DCA 2019).

Archer first argues that he should not have to comply with drug offender conditions of probation that require him to undergo substance abuse evaluation, counseling and treatment; abstain completely from alcohol and all illegal drugs; and participate in weekly urinalysis for six months and randomly thereafter.[2] Archer asserts that he did not agree to these conditions and they are inappropriate because they have no relationship to animal cruelty and he was not charged with a drug-related offense.

"Although a sentencing court enjoys broad discretion in fashioning special conditions to probation, it is not unbounded." Williams v. State, 182 So. 3d 912, 913 (Fla. 2d DCA 2016); see Spano, 60 So. 3d at 1109 (reiterating that discretion to impose special condition of probation is not unbridled). To be valid, a condition must be "reasonably related to rehabilitation." Carty v. State, 79 So. 3d 239, 240 (Fla. 1st DCA 2012) (quoting Stephens v. State, 659 So. 2d 1303, 1304 (Fla. 1st DCA 1995)). A condition is not reasonably related to rehabilitation if 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." Biller v. State, 618 So. 2d 734, 734–35 (Fla. 1993).

Courts may prohibit alcohol consumption as a special condition of probation if there is some evidence in the record that the defendant's alcohol use had some connection to the defendant's crime or potential future criminal behavior. See, e.g., Austin v. State, 67

[2] The drug offender-related conditions are found in special conditions 33, 36, 41, 42, and 43. These special conditions of probation were all orally announced during sentencing without objection from Archer or his counsel.

So. 3d 403, 406–07 (Fla. 1st DCA 2011) (upholding condition of probation prohibiting alcohol use where defendant's presentence investigation showed "propensity towards alcohol," revealing DUI conviction, reckless driving plea related to different incident, and admission that he used alcohol "to mask things that bothered him"); Estrada v. State, 619 So. 2d 1057, 1058 (Fla. 2d DCA 1993) (upholding special condition banning alcohol use because defendant told police that he committed offense because he was intoxicated).

Here, the record reveals that Archer consumed alcohol on the night of the incident. Archer's father testified that he believed that Archer was under the influence of alcohol on the evening of the incident Archer's mental health therapist opined that alcohol played a factor that evening as well. Further, in his presentence investigation, Archer reported that he drank three to six beers at least once a week. Archer also admitted to past recreational use of marijuana, which is illegal in Florida. And, Archer's therapist testified at the sentencing hearing that Archer could benefit from ongoing therapy. There is clearly some evidence that Archer's use of alcohol was involved in this crime and could reasonably relate to future criminality. Therefore, the drug offender conditions of Archer's probation meets all three tests of relatedness. Accordingly, we affirm the imposition of the drug offender-related special conditions of probation, and thus, affirm that aspect of the order denying Archer's rule 3.800(b)(2) motion.

Next, in his rule 3.800(b)(2) motion, Archer sought clarification regarding special condition 35, which prohibits him from residing with anyone who owns a pet. He asked the trial court to clarify if that would prohibit him from residing with his ex-wife and their two children, who have two pet cats. He also expressed uncertainty regarding the length

of the ban imposed by this special condition because special condition 34 imposed a lifetime ban of owning animals based on his purported stipulation.

The trial court denied Archer's request for clarification of special condition 35. Given the relatively recent enactment of Ponce's Law, the proper scope of restricting an offender's access to animals has not been fully developed. However, it is not uncommon to forbid probationers from associating with potential victims. For example, defendants who sexually molest children are typically forbidden by their probation orders from being in the unsupervised presence of children or even living near venues, such as schools or parks, where children congregate. By analogy, there is nothing unreasonable about restricting an animal abuser's access to animals, as the trial court did here. Nor is there anything in special condition 35 that suggests it would continue to be in effect beyond the three-year probationary term.

Finally, Archer challenges special condition 34 of the trial court's probation order, which prohibits him from owning any animal for the duration of his life.[3] Assuming without

[3] The dissent contends the legality of the lifetime ban on animal ownership was not raised below in Archer's Rule 3.800(b) motion, and thus not preserved for appeal. We disagree. Archer's motion asserted, in pertinent part:

> 14. Archer agreed to an animal ownership ban. Specifically, during the sentencing hearing, defense counsel stated:
>
> "[I]f we could craft the restriction on owning animals we agree to the Court to sentence."
>
> ***
>
> "We agree to impose a prohibition on owning animals."
>
> 15. No time limit was discussed by the trial court at that time. Archer agreed to a prohibition on owning animals during the probationary period, not for the rest of Archer's life. Archer did not give permission to defense counsel to make a longer

deciding that section 828.12, Florida Statutes, as revised in 2018, applies in this case, Archer's crime is a third-degree felony punishable by up to five years in prison or probation or a combination thereof. Below, and on appeal, the State contends Archer agreed to a lifetime ban. In fact, Archer agreed to a restriction on animal ownership "if [we] could craft the restriction." While it is true, as the State argues, that section 828.12(6) authorizes the court to prohibit an offender from owning an animal "for a period of time determined by

---

> agreement. Furthermore, that is why defense counsel specified he would like to be part of crafting the restriction.
>
> 16. Archer's ownership of animals should be restricted only during the pendency of probation. Archer does not intend to own any animal. However, he wants to be able to be with his ex-wife and children who have two cats.
>
> 33. Archer agreed to an animal ownership ban for the duration of probation. However, he did not agree to a lifetime ban.
>
> ***
>
> 35. The statute expressly states the court may determine the period of time. A court lacks authority to impose restrictions past the duration of probation.
>
> 36. Although the statute did not apply retroactively, Archer agreed to the condition for the duration of probation. No time limit was discussed by the trial court at that time. Archer agreed to a prohibition on owning animals during the probationary period, not for the rest of Archer's life. Archer did not give permission to defense counsel to make a longer agreement. Furthermore, that is why defense counsel specified he would like to be part of crafting the restriction.
>
> ***
>
> 38. Upon termination of probation, Archer should be released from all probation conditions, including owning an animal.

the court," we do not read this as a license to exceed the general rule that prohibits a court from imposing a probationary term beyond the statutorily permissible term, which in this case is five years. See Medina v. State, 604 So. 2d 30, 30 (Fla. 2d DCA 1992). A defendant cannot agree to an illegal sentence. Wilson v. State, 752 So. 2d 1227, 1229 (Fla. 5th DCA 2000).

We view a lifetime prohibition on Archer's ownership of animals, however justified, to exceed the trial court's jurisdiction. On remand, the trial court shall modify special condition 34 to be coextensive with the remainder of the probationary term.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

ORFINGER and HARRIS, JJ., concur.
EDWARDS, J., concurs in part and dissents in part with opinion.

EDWARDS, J., concurring in part and dissenting in part.

I concur in those portions of the majority opinion that affirm the trial court's denial of Appellant's rule 3.800 motion, but I respectfully dissent from reversing Appellant's lifetime ban on animal ownership for the following reasons.

First, by advising the trial court in his rule 3.800 motion that he had no interest in ever owning an animal again, Appellant did not raise that issue properly below, and it has not been preserved for our review. Second, it was announced on the record first by the State and then by the trial court, that Appellant had agreed or stipulated to a lifetime ban on animal ownership. By his silence, Appellant confirmed the agreement. Thus, as requested by Appellant's counsel, he and his counsel did participate in crafting the restriction on animal ownership. Stipulations are binding on the parties whether they concern facts, procedure, or law. *See Hunter v. Emps. Mut. Liab. Ins. of Wis*., 427 So. 2d 199, 200 (Fla. 2d DCA 1982); *Risk Mgmt. Servs., Inc. v. McCraney*, 420 So. 2d 374, 374–75 (Fla. 1st DCA 1982); *Bd. of Pub. Instruction of Dade Cnty. v. Dade Cnty. Classroom Teachers' Ass'n*, 243 So. 2d 210, 213 (Fla. 3d DCA 1971).

Third, the concept of invited error prohibits appellate courts from allowing parties to renegotiate, renege, or seek reversal on appeal for a claimed error that they invited. *Thomas v. State*, 730 So. 2d 667, 668–69 (Fla. 1998) (where counsel communicates to the trial judge his acceptance of procedure to be employed, any error is waived); *Czubak v. State*, 570 So. 2d 925, 928 (Fla. 1990); *Anderson v. State*, 93 So. 3d 1201, 1203, 1206 (Fla. 1st DCA 2012); *Rosen v. State*, 940 So. 2d 1155, 1161 (Fla. 5th DCA 2006) (based

on doctrine of invited error, even if verdict is incorrect, defendant may not sandbag trial court by requesting a ruling, which he later tries to appeal); *Krasnick v. State*, 691 So. 2d 523, 524 (Fla. 4th DCA 1997) (invited error incorporated into condition of probation will not be reversed); *Ashley v. State*, 642 So. 2d 837, 838 (Fla. 3d DCA 1994) (any procedural error was invited by defendant who cannot take advantage on appeal of situation he created below); *Goodman v. Aero Enters.*, 469 So. 2d 835, 836-37 (Fla. 4th DCA 1985). Appellant invited the trial court to impose a lifetime ban on animal ownership and should not be heard to complain that his invitation was accepted. Based upon the lack of preservation below, his stipulation, and the doctrine of invited error, this court should not have reviewed the issue of his lifetime animal ban.

If that issue had been properly preserved for review, it should have been affirmed. Appellant agrees that he can be banned from animal ownership during his three-year probationary term, but he claims that the trial court abused its discretion by imposing the ban for life. "If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). Given that Appellant stipulated to having the pet ownership restrictions of Ponce's Law apply to his sentence and specifically agreed to a lifetime animal ownership ban, it is hard to conceive of how the trial court abused its discretion by incorporating that stipulation into the sentence it handed down. It is impossible to determine from the record whether the trial court would have agreed to withhold adjudication of guilt, as it did, absent Appellant's stipulation to a lifetime pet ban. Appellant seems unwilling to find out what could happen if he were to test the trial court in that fashion, as he has not sought to withdraw his plea, nor has he agreed to be

resentenced de novo. Appellant does not argue that his lifetime ban of animal ownership constitutes an illegal sentence; thus, we should not have engaged in any such analysis.[4]

[4] "[I]n both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlow v. United States*, 554 U.S. 237, 243 (2008). "[I]t is not the role of the appellate court to act as standby counsel for the parties." *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 888 (Fla. 2018) (Canady, J., dissenting). Nor is it "'the function of the Court to rebrief an appeal' and thereby 'become an advocate.'" *Id.* (quoting *Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983)).