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First Amendment vs. Officer Safety:

Court Affirms Social Media Ban for Online Death Threats

A recent California appellate decision, *People v. Nixon*, addresses a court's ability to impose restrictions on a defendant's use of social media when it is used as a tool to commit a crime-- making threats online against police officers.

In 2018, Nixon pleaded no contest to several charges, including carrying a concealed weapon and perjury. He received a split sentence involving jail time and mandatory supervision. During his mandatory supervision in 2021, Nixon was convicted of making a criminal threat via a Facebook post dating back to July 2019. The post targeted Elk Grove Police Department officers and included an image with crosshairs over the officers' faces accompanied by the words: "F*** both of these bitch ass cops and the Elk Grove Police Department. I hope both of you scum bags are killed in the line of duty and your family members are BRUTALLY murdered."

Following a resentencing, Nixon was ordered to serve seven years and four months in prison.

Upon his release, Nixon was placed on post-release community supervision which included a condition prohibiting him from using social media. Nixon challenged the condition, arguing it violated his First Amendment rights. The appellate court rejected that argument.

The court found that prohibition against social media was constitutionally valid and justified because social media was the instrumentality of the crime. Nixon's threats were not merely expressive; they constituted a criminal act carried out via Facebook. The court concluded that a complete social media ban here was narrowly tailored to serve the government's compelling interest in rehabilitating Nixon's conduct, even if the prohibition burdened his First Amendment rights.

This case serves as a strong reminder: First Amendment rights are not absolute when criminal conduct is involved. Online platforms may offer freedom of expression, but they are not shields for criminal threats, especially against peace officers.

Takeaway: Courts can, and will, curb a defendant's digital access when it's used as a weapon. The ruling in People v. Nixon reinforces that public safety, including the safety of officers, justifies targeted restrictions on speech when it crosses the line into unlawful threats.

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