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

THE PEOPLE,

Plaintiff and Respondent,

v.

LINDSEY RACHAEL MANZIE,

Defendant and Appellant.

A129576

(Napa County
Super. Ct. No. CR142000)

Defendant and appellant Lindsey Rachael Manzie appeals the trial court's order that she serve a 180-day term in county jail, which was imposed as a condition of probation following her guilty plea to felony access card fraud and grand theft, stayed at the time of sentencing in lieu of a requirement that she serve 1200 hours of community service, and executed upon her failure to complete the community service hours. We dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2007, the District Attorney (DA) of Orange County filed an information alleging that defendant committed felony access card fraud (Penal Code, § 484g, subd. (a))¹ (count 1) and felony grand theft (§ 487, subd. (a)) (count 2). On November 16, 2007, in Orange County Superior Court, defendant pleaded guilty to both counts of the information pursuant to a plea agreement and waived arraignment for judgment and time for sentencing. In accordance with the plea agreement, the trial court suspended

¹ Further statutory references are to the Penal Code unless otherwise noted.

imposition of sentence and placed defendant on three years supervised felony probation. As a condition of probation, the court ordered defendant to serve 180 days in county jail with four days credit for time served. The court stayed the balance of the jail term until November 16, 2009, pending defendant's enrollment in, and successful completion of, 1200 hours of community service.

On September 3, 2008, a hearing was held in Napa County Superior Court regarding Orange County Probation Department's request for a jurisdictional transfer of the case pursuant to section 1203.9.² Defendant informed the court she was a Napa resident and had met with the Napa County probation officer to complete a residence check. The court granted the request for jurisdictional transfer. The issue of community service hours was not discussed at the hearing.

On November 13, 2009, three days before the deadline for completion of community service hours, defendant filed a pro per criminal motion in Napa Superior Court seeking an extension of time to complete her community service hours "due to medical reasons . . . as my case was a transfer." The court referred the matter to probation for a report and recommendation and scheduled a further hearing for January 5, 2010.

Probation interviewed defendant and submitted a report to the court for the January 2010 hearing. The probation report notes defendant has completed 10-12 hours at Goodwill in Napa County. Defendant informed probation her failure to complete more hours was due to a longstanding kidney condition causing chronic pain and hematuria (blood in urine). The report also includes a doctor's letter submitted by defendant giving her medical clearance for four to six-hours of volunteer work per day involving "standing and carrying objects from 10 to 15 pounds up to 30 minutes at a time" or sitting doing "clerical/office work" provided she has "brief breaks for walking or stretching."

Defendant represented herself at the January 2010 hearing and explained that she had been unable to complete more community service hours due to her medical

² Orange County Superior Court entered the order of transfer on February 2, 2009.

condition. After defendant agreed to an extension of her probation period until November 16, 2011, the court scheduled a review hearing for July 6, 2010, to assess defendant's progress in completing the community service hours, advised defendant she was "looking at jail time" unless she made significant progress in that regard or provided documentation that she was prevented from doing so by her medical condition, and referred the matter to probation for a supplemental report.

The probation office filed a supplemental probation report dated July 1, 2010. The supplemental report notes defendant failed to respond to phone calls initiated by probation, and also failed to appear for an appointment with the probation officer on June 24, 2010. The report also notes defendant had completed 50 hours and 45 minutes of community service at Goodwill since September 14, 2009. Defendant told probation she "was unable to do community service work due to a medical condition" but did not provide "further documentation or diagnosis" from her medical providers. The probation officer recommended "defendant's jail sentence be imposed by the Court at this time given defendant's delay and lack of commitment in completing the assigned hours."

Defendant did not appear at the scheduled hearing on July 6, 2010. The case was continued to July 9 and a public defender appointed to represent defendant in another case agreed to appear for her in this case. Appearing with appointed counsel at the July 9 hearing, defendant informed the court that a recent illness and a change in medications left her unable to meet with the probation officer to "give her the hours and give her the information from my doctor with regards to the diagnosis and what's going on."

At a further hearing on July 29, defense counsel argued that the term of probation had not expired and that the court had not set a strict deadline for the completion of defendant's community service hours. Counsel added that defendant was currently performing community service hours and had completed 69 hours to date. Defendant also addressed the court, stating that after the January hearing she began to research her condition with a goal of identifying an alternative pain medication and three months ago began taking an herbal supplement which allows her to work longer hours without pain. After hearing from counsel and defendant, the court opined it was not reasonably likely

defendant would complete the community service hours within the probationary period, lifted the 180-day jail sentence stay, vacated the 1200 hours of community service and ordered defendant to complete the 180-day jail sentence with credit of 12 days for time served and community service hours completed.

Shortly thereafter, defense counsel asked to recall the matter. Counsel informed the court defendant had never admitted a violation of probation and there had not been “a hearing with due process accorded at which [defendant] with counsel had an opportunity to present any defense or to require the prosecutor to prove that she was in fact in violation of probation.” Counsel argued that under the circumstances “a defendant is entitled to due process and a *Vickers*³ hearing . . . and she apparently has not gotten that.” The court rejected counsel’s argument, stating, “I disagree with you. I see this as very much different because she was given a date to conclude the community service hours and she didn’t complete them. I don’t think you need a violation of probation to be filed in the situation. The matter was put over for review.” The court declined to change its order that defendant complete the 180-day jail sentence.

On August 9, 2010, defendant filed a “Motion to Reconsider Order Executing Sentence” (motion to reconsider) arguing that (1) pursuant to *People v. Vickers, supra*, the court was required to hold a further evidentiary hearing before imposing execution of a suspended sentence; and, (2) her current schedule of work would allow her to complete her community service within the probation period. The court denied defendant’s motion to reconsider at a hearing on August 27, 2010 and defendant filed a notice of appeal

³ *People v. Vickers* (1972) 8 Cal.3d 451, 457-459 (*Vickers*) [holding that under the federal and state constitutions, the minimum requirements of due process for revocation of probation include written notice of the claimed violations of probation; disclosure of the evidence of the alleged violations; an opportunity to be heard in person and to present witnesses and documentary evidence; the right to confront and cross-examine adverse witnesses; and a written statement of the reasons for revoking probation].

challenging execution of the jail sentence on the same date. Defendant has completed the jail sentence.⁴

DISCUSSION

Characterizing her jail sentence as one imposed following revocation of probation, defendant contends (1) the trial court violated her due process rights by denying a *Vickers* hearing and (2) that the trial court abused its discretion in finding appellant willfully failed to perform community service. Last, defendant asserts the appeal is not moot.

Respondent, on the other hand, asserts the appeal should be dismissed as moot, or, alternatively, should be dismissed because defendant executed a valid waiver of her appellate rights as part of the negotiated disposition.⁵ Last, respondent asserts defendant was not denied due process prior to execution of her jail sentence.

We first address the question of mootness. “ ‘It is well settled that the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it [citation].’ (Citation.)” (*In re J.G.* (2001) 159 Cal.App.4th 1056, 1062.) “ ‘ ‘It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]’ [Citations.]’ (Citations.)” (*In re Sodersten* (2007) 146 Cal.App.4th 1163, 1217.)

⁴ Counsel for appellant requests that we “take judicial notice of the fact that as of the date [May 2, 2011] of this filing [appellant’s opening brief], appellant had completed her 180 day sentence.” We so note.

⁵ Respondent filed an earlier motion to dismiss the appeal on this ground, which this Court denied by order dated October 7, 2011. Accordingly, we need not revisit the issue here.

The traditional rule is that if a defendant has already served his or her sentence, the appeal is moot and the defendant is precluded from attacking either the sentence or the conviction. (See *People v. DeLong* (2002) 101 Cal.App.4th 482, 487.) California courts, however, have fashioned several exceptions to the traditional rule that allow an appeal to proceed even where a defendant has served his or her sentence. One exception applies where a defendant could face adverse collateral legal consequences in the future as a result of either the sentence or the conviction. (See, e.g., *People v. Ellison* (2003) 111 Cal.App.4th 1360, 1368-1369 [appeal not moot after defendant’s conviction for drug possession had been set aside pursuant to Prop 36 upon completion of her probation and drug treatment because the conviction counted as a felony for purposes of making possession of a firearm illegal].) Another exception applies if the challenged decision leaves defendant “with a besmirched name or the stigma of criminality.” (*People v. DeLong, supra*, 101 Cal.App.4th at p. 492; see also *In re Dana J.* (1972) 26 Cal.App.3d 768, 771 [where juvenile court placed minor on probation for loitering without adjudging him a ward of court, appeal was not moot after expiry of probation period because juvenile should be afforded the opportunity to “clear his name” of a criminal charge].) Neither exception applies here.

First, any adverse collateral consequences faced by defendant attached when she pleaded guilty to felony access card fraud and felony grand theft. Defendant’s criminal record will reflect that she suffered two felony convictions, was placed on supervised felony probation and completed her term of probation without suffering a revocation of probation.⁶ We are unable to discern any additional adverse collateral consequences stemming from the fact that defendant satisfied a condition of probation by serving a county jail sentence rather than community service hours. (Cf. *People v. Ellison, supra*, 111 Cal.App.4th at pp. 1368-1369 [stating that criminal appeal is not moot even though defendant has completed the sentence because the sentence exposes him to “a possible future enhancement for a prior prison term. (§ 667.5, subd. (b).)”).] Similarly,

⁶ No revocation proceedings were initiated against defendant pursuant to section 1203.2 based on an allegation that she violated the terms or conditions of probation.

defendant will suffer no stigma of criminality as a result of her jail sentence because it was imposed as a condition of probation at sentencing, not following a violation of her probation, which would have appeared in her permanent record. (Cf. *People v. Nolan* (2002) 95Cal.App.4th 1210, 1213 [appeal from revocation of probation not moot after defendant served 120 day jail term imposed upon revocation because “[t]he *probation violation finding is part of her permanent record*. Even if a defendant is not subject to further punishment, the appeal affords the opportunity to erase the ‘stigma of criminality.’ (Citation.)”] [italics added].)

In sum, defendant has completed her county jail sentence and her probationary term has expired. We can discern no stigma of criminality or potential adverse collateral consequences related to the trial court’s order lifting the stay of her previously imposed county jail sentence; nor, as importantly, can we identify any relief we could afford defendant if we concluded that the trial court erred in lifting the stay. Accordingly, this appeal must be dismissed as moot.⁷

⁷ We realize that appellate courts may also exercise their inherent discretion to hear an otherwise moot appeal implicating an issue of important public interest that is capable of repetition yet evading review. (See, e.g., *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) But defendant has identified no broader issue of public interest warranting the exercise of our discretion under this exception to the mootness doctrine; Rather, on the basis of the specific factual setting peculiar to this case, defendant asserts she should have been afforded a *Vickers* hearing before the trial court ordered her to serve the remainder of the county jail term. Thus, our intervention is not required under the public interest exception to the mootness doctrine.

DISPOSITION

The appeal is dismissed as moot.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.