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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.

DANIEL BRITO FLORES,

Defendant and Appellant.

A130571

(Solano County Super. Ct.
Nos. FCR230653, FCR216743)

Defendant Daniel Brito Flores appeals from an order after a contested hearing revoking his probation and imposing sentence in two cases. After first seeking to reverse the order for lack of substantial evidence that he willfully violated probation, defendant concedes that substantial evidence exists. He also argues that sentence should be reversed in one case because it exceeded the court’s jurisdiction over defendant. We disagree, and affirm the court’s order in all respects.

BACKGROUND

Case No. FCR216743

In August 2004, in case No. FCR216743, the Solano County District Attorney filed an information charging defendant with three counts, including count two, receiving a stolen motor vehicle in violation of Penal Code section 496d, subdivision (a). Defendant agreed to plead guilty to count two in exchange for certain things that were memorialized in a “Waiver of Constitutional Rights and Declaration in Support of Defendant’s Motion to Change Plea.” He stated in this waiver and declaration that he was promised dismissal of the remaining counts and enhancements and another case, that

the court would grant probation and one year in county jail, and that probation would terminate upon completion of his county jail term assuming “no record.” The waiver form also indicates that the maximum punishment the court could impose based on his plea was “3 YRSP,” referring to three years of probation.

At the hearing regarding the change of plea, his attorney informed the court that defendant would enter a no contest plea regarding count two, including with the “understanding that this court will grant probation and impose one year county jail and terminate probation upon the completion of the county jail, assuming [defendant] has no record.” The People agreed. The trial court accepted the no contest plea.

At the sentencing hearing, the trial court suspended imposition of judgment and sentence, and placed defendant on probation. The court stated that, based on defendant’s prior record, it would make probation for three years, but was going to order that he serve one year in county jail, with credit for time served and conduct. The court then stated, “And upon his completion of the jail time, probation will terminate.” It further imposed a \$200 fine that would convert to a civil judgment if he did not pay it before probation terminated. Defendant stated that he understood and accepted the terms.

The minute order from this sentencing hearing, signed by defendant, states that defendant was placed on formal probation for three years, on the terms and conditions indicated below. Further below on the same page, the order states his jail commitment was “1 Year,” he was awarded a total of 117 days credit, and he was allowed day for day work credits as well. A box below this was checked which stated, “Probation shall terminate upon defendant’s release from jail.” The \$200 fine was to be paid by April 6, 2005 or it would be converted to a civil judgment.

Defendant does not provide any information about his conduct in jail, or when he was released.

Case No. FCR230653

In February 2006, the Solano County District Attorney filed a complaint charging defendant with four counts, including count four, alleging possession of methamphetamine in violation of Health and Safety Code section 11377, in case No.

FCR230653. Defendant agreed to plead no contest to count four in exchange for probation pursuant to Proposition 36 (regarding probation and drug treatment).

Subsequent Violations of Probation

Two years later, in April 2008, defendant admitted that he violated probation in both case Nos. 216743 and 230653 by giving a false name to a police officer. An April 24, 2008 hearing transcript indicates that defendant was before the court for a pretrial conference on a new case, a misdemeanor, and for admissions or denials of alleged probation violations in both cases. The transcript indicates that, as part of a plea agreement, defendant admitted the probation violations, at which time the People, based on defendant's admissions, moved to dismiss the new misdemeanor case. The court dismissed the new case and set the financial obligation in that case to the minimum. Defendant's probation in both case Nos. 216743 and 230653 was extended one year and he was removed from the Proposition 36 program.

On May 30, 2008, defendant was deported to Mexico. After his deportation, the record indicates he did not contact his probation officer with information about his whereabouts.

Two years later, in September 2010, defendant was arrested in Solano County and subsequently found to have violated his probation in both case Nos. 216743 and 230653 by failing to maintain contact with his probation officer. The court sentenced defendant to the middle term of two years for possession of methamphetamine in violation of Health and Safety Code section 1137, subdivision (a) (No. 230653), and a concurrent term of two years for receiving a stolen motor vehicle in violation of Penal Code section 496d (No. 216743).

Defendant filed a timely notice of appeal in both cases.

DISCUSSION

I. Defendant's Probation Violation was Willful

In his opening brief, defendant argues that his failure to maintain contact with probation after he was deported to Mexico was not supported by sufficient evidence that he did so willfully and, therefore, was not a violation pursuant to *People v. Galvan* (2007)

155 Cal.App.4th 978. After the People pointed out in their respondent's brief that defendant told a probation officer after his arrest that he did not contact probation because he knew immigration officials would be contacted and he would be deported a second time, defendant concedes the issue. He is correct to do so.

II. Defendant's Probation in Case No. FCR216743

Defendant also contends that his probation in case No. 216743, granted in 2004, was not initially for three years, but instead ended by its own terms when he completed his one-year county jail sentence, and that any contradictory information was "a likely clerical error." He argues that, because his probationary period ended with his release from county jail, the court's personal jurisdiction over him in this case ended at that time, rendering any subsequent orders regarding that probation null and void pursuant to *In re Griffin* (1967) 67 Cal.2d 343 (*Griffin*). He further argues that he is not estopped from bringing this claim because "there is no evidence that [defendant] was aware that the court exceeded its jurisdiction."

The People disagree, arguing that defendant's claim is not cognizable on appeal because he did not timely appeal from the subject probation order, or the subsequent order in 2006, rendering his present claim time-barred. We reject defendant's argument for two reasons that are not directly addressed by the People.

First, defendant does not meet his appellant's burden of establishing that he qualified for the termination of his probation when he completed his county jail term pursuant to the terms of the court's 2004 order. Defendant claims that, although the language of the court's minute order sets his probation for a period of three years, it is contradicted by the more specific conditions of probation stated therein and in the plea agreement. He is correct, in that the order states, "Probation shall terminate upon defendant's release from jail," and the terms of the plea agreement, both as announced by his counsel in open court and stated in the waiver form, included that probation would be terminated upon completion of his county jail term assuming "no record." However, defendant fails to recognize the significance of the phrase, "'no record.'" This, along with the setting of probation at three years, indicates everyone understood and agreed that

probation would only terminate at the conclusion of defendant's county jail term if defendant's conduct was satisfactory while in jail. Defendant does *not* establish that his conduct in county jail was satisfactory. Therefore, we have no reason to conclude that his probation was in fact terminated upon his completion of his county jail term pursuant to the court's order.

Second, even assuming that the court's subsequent orders regarding petitioner's probation were in excess of the court's jurisdiction as claimed by defendant, the record makes plain that he nonetheless is estopped pursuant to the case on which he relies. As defendant explains, "[i]n *Griffin*, the defendant objected to the trial court's exercise of jurisdiction after the defendant's period of probation had ended. ([*Griffin, supra*, 67 Cal.2d.] at p. 345.) At an earlier hearing, before the probationary period ended, the defendant had asked for a one-month continuance to obtain private counsel. (*Ibid.*) The continuance was at his request, for his own benefit, and the trial court found that he had 'knowingly' sought the continuance past the expiration of his probationary period. (*Ibid.*) The court found that the defendant had 'waived his right to insist on the jurisdictional nature of timely revocation of probation' and imposed sentence. (*Ibid.*) The California Supreme Court affirmed, finding that the defendant had simply 'asked the court to do in a manner that was in excess of jurisdiction' what the court could have properly done within its jurisdiction. (*Id.* at pp. 348-349.)"

Thus, defendant in the present case concedes by this discussion that it is possible for defendant to take action that would estop him from arguing the trial court acted in excess of its jurisdiction regarding his probation after his time in county jail. Nonetheless, he contends, "there was no evidence that [defendant] asked the court to continue its jurisdiction. Any argument that [defendant] should be estopped from complaining about the excess of jurisdiction must rely on a theory that he consented to the excess, but there is not evidence that [defendant] was even aware the court was exceeding its jurisdiction. In each instance, [defendant's] probation was revoked routinely along with a subsequent case. [Defendant] never asked for this, never bargained for it, and never received any benefit. True, [defendant] did receive probation

in the subsequent case, but there is no reason to believe that this was in exchange for consenting to the court exceeding its jurisdiction in the first case.”

Defendant’s contention is directly contradicted by the record. As we have already indicated, in April 2008, the record indicates defendant admitted that he violated probation in both case Nos. 216743 and 230653 by giving a false name to a police officer as part of a plea agreement. When he made this admission, a new misdemeanor case against him *was dismissed and the financial obligation set to the minimum*. His probation in both cases was extended one year and he was removed from the Proposition 36 program. Thus, defendant received a benefit—the dismissal of the misdemeanor case and setting of the financial obligation to the minimum—in return for admitting he was in violation of his probation and consenting to the court’s extension of his probation, purportedly in excess of its jurisdiction. Pursuant to *Griffin*, as indicated by defendant’s own analysis of that case, he is estopped from arguing now that the court acted in excess of its jurisdiction because he received this benefit.

DISPOSITION

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Haerle, J.