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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DAVID LOWDER,

Defendant and Appellant.

A131831

(Napa County
Super. Ct. No. CR153437)

Defendant Michael David Lowder appeals from a judgment imposed following revocation of his probation in this case which was heard with the hearing in case no. CR 151663 which is also pending before this court.¹ He raises the same contention here as in the appeal in the latter matter, namely that he was denied the effective assistance of counsel because his counsel failed to object to certain hearsay testimony. We affirm.

On September 14, 2010, defendant was charged with felony stalking (Pen. Code,² § 646.9, subd. (b)) and misdemeanor disobeying a domestic relations court order (§ 273.6, subd. (a)). The court suspended proceedings on September 23, 2010 pending a hearing to determine defendant's competency to stand trial (§ 1368). On January 13, 2010, the court found that defendant was restored to competency and able to stand trial.

On January 28, 2011, defendant pled no contest to stalking. On February 25, 2011, the court entered a restraining order against defendant restraining him from coming

¹ We also file the opinion in *People v. Lowder*, Appeal No. 131829 [*Lowder I*] today.

² All further statutory references are to the Penal Code.

within 100 yards of Jill Sandbek. On the same day, the court placed defendant on probation for a period of three years.

On March 14, 2011, the district attorney filed a petition to revoke probation alleging that defendant violated probation by making a false report of a criminal offense (§ 148.5). On March 18, 2011, the court held a probation revocation hearing in this matter as well as case no. CR151663. The evidence presented at the hearing is set forth in *Lowder I*, slip opinion, pages 1-4. Defendant sought to prove that Sandbek and a male had come to his house, tied him up and cut the pinkie finger of his left hand. Officer Baker, the investigating officer, interviewed defendant and his roommate, David Yarlot, who gave inconsistent versions of the event. Baker also interviewed Sandbek, and found her denial of the incident credible. Sandbek also testified and denied any involvement, explaining that she had been moving items from her storage facility that weekend. The court found that the evidence was sufficient to support a finding that defendant violated probation based on a section 148.5 allegation. (*Id.* at p. 4.) At the sentencing hearing, the court reinstated defendant on probation on conditions including that he serve 120 days in jail.

In this appeal, defendant makes the identical claim as in *Lowder I* that his defense counsel was ineffective for failing to object on hearsay grounds to Officer Baker's testimony about Yarlot's statements. For the reasons set forth in *Lowder I*, we

conclude that defendant has failed to demonstrate ineffective assistance of counsel.

The judgment is affirmed.

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.