Filed 2/29/12 P. v. Graham CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM MCKAY GRAHAM, Defendant and Appellant.	A132392 (Sonoma County Super. Ct. No. SCR547583)

After defendant William Graham admitted violating the terms and conditions of his probation (which he had accepted following a no contest plea to residential burglary (Pen. Code, § 459)[1] and use of force resulting in bodily injury (§ 243, subd. (d)), the trial court imposed additional terms and conditions, including that he serve nine months in the county jail, agree to extend probation for three years, maintain employment at Labor Ready and continue to reside in the Forestville area. On defendant's motion, the trial court modified the new terms and conditions to allow him to work at employment of his choice, but denied his request to lift the residency restriction without prejudice to renew his request should the restriction become burdensome. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a

[1] All further statutory references are to the Penal Code unless otherwise indicated.

supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm the judgment.

BACKGROUND

Given the posture of the case, the details regarding the underlying offense to which defendant pleaded no contest are immaterial. Suffice it to say, defendant and a female friend broke into the residence of the friend's girlfriend late at night. Defendant pinned her to the floor, accused her of stealing and threatened to kill her. She required medical attention following the assault.

On October 14, 2008, the Sonoma County District Attorney filed a criminal complaint against defendant charging him with three counts: residential burglary (§ 459), criminal threats (§ 422) and use of force resulting in bodily injury (§ 243, subd. (d)). It was further alleged the burglary occurred while a person was in the residence (§§ 462, subd. (a), 667.5, subd, (c)) and a deadly weapon had been used (§ 1192.7, subd. (c)(23)).

On October 27, 2008, defendant pleaded no contest to counts 1 and 3, and admitted the allegation that a person was present in the residence.

On January 8, 2009, the trial court imposed and suspended a six-year prison term (the upper term) for the residential burglary and a concurrent four-year term for the assault. The court placed defendant on three years' formal probation subject to numerous terms and conditions to which defendant agreed, including completion of the Jericho House program, no presence in any place where alcohol is the primary source of business, no possession, use or trafficking in narcotics or dangerous drugs, maintain regular employment, a stay away from the victim and no change of address without notification of his probation officer.

Two years later, on February 28, 2011, the court administratively revoked defendant's probation for violation of the no-drug condition. On March 10, 2011, defendant admitted the violation.

The probation report recommended that probation be revoked and defendant be sent to prison. However, over the prosecution's objection and based on the fact defendant was employed and now living in a clean and sober environment in Forestville,

the trial court, on April 21, 2011, reinstated defendant on probation for an extended three-year term. The court also imposed additional terms and conditions, including serving nine months in the county jail, maintaining employment at Labor Ready and maintaining residence with a Mr. Carlisle in the Forestville area. Defendant filed a timely notice of appeal from the probation order on June 16, 2011.

On July 14, 2011, defendant moved in pro per for modification of the employment and residency conditions. The basis of defendant's concern about the employment condition was that the specified job at Labor Ready had ended and he now had an opportunity to work for a different employer (and at a higher wage). The court modified the employment condition to allow defendant to work at the employer of his choice. The basis of defendant's concern about the residency requirement was that the specific individuals with whom he intended to reside might move out of Forestville and he then would be in violation of the modified terms and conditions. The court acknowledged his concern and told him if that occurred, it would similarly modify the residency requirement.

DISCUSSION

The fact defendant pleaded no contest to two of the three underlying charges does not preclude the instant appeal following the revocation of his probation and imposition of additional probation terms and conditions. (See *People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.)

During the probation revocation proceedings, defendant was ably represented by counsel. Defendant knowingly and voluntarily admitted a violation, and his counsel successfully urged the trial court to reinstate probation, despite the probation department's recommendation against it and objection by the prosecution. As for the additional terms and conditions imposed by the trial court, defendant made no objection to them when they were imposed and therefore forfeited any challenge on appeal. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 882-886.) In addition, all pass muster under *People v. Lent* (1975) 15 Cal.3d 481, 486, and were within the court's discretion. (See *People v.*

Olguin (2008) 45 Cal.4th 375, 379-381; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1123.) Finally, as to the residency requirement—that defendant continue to reside in the Forestville area—it was the area in which defendant was attending sobriety programs and the court expressly stated defendant could seek further modification of the condition if it presents a problem in the future.

DISPOSITION

After a full review of the record, we find no arguable issues and affirm the order reinstating probation and adding additional terms and conditions of probation.

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Banke, J.

We concur:

_____
Marchiano, P. J.

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Margulies, J.