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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.

KEVIN ALAN HILLIARD,

Defendant and Appellant.

A133933

(Sonoma County  
Super. Ct. Nos. SCR-507069 & SCR-  
547923)

After entering guilty pleas to all charges and admitting all allegations in two unrelated cases, the trial court suspended imposition of a 15-year 4-month prison sentence, placed defendant on 5 years of probation, and ordered him to enter and complete the Delancey Street residential treatment program. Over a year later, the probation department requested the court to revoke defendant's probation alleging he had failed to complete the Delancey Street program and had absconded from probation supervision. Following a contested revocation hearing, the court found defendant in violation of probation, ordered probation revoked, and imposed the 15-year 4-month prison term. Defendant's counsel has asked this court, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, to conduct an independent review of the record to determine whether it contains any arguable issues. Defendant was notified of his right to file a 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.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Case No. SCR-507069**

On March 1, 2007 at approximately 10:00 p.m., Deputy Newton of the Sonoma County Sheriff's Office contacted defendant after he left an apartment complex. Prior to contacting defendant, Newton saw him "discard an item into some shrubs or bushes." Deputy Murdock recovered a "clear plastic package material," containing 15.29 grams of cocaine. Eight of 63 smaller packages recovered were tested and determined to contain a total of 1.69 grams of cocaine base.<sup>1</sup>

An information was filed on September 24, 2007, charging defendant with one count of possession for sale of cocaine base (Health & Saf. Code, § 11351.5) and one count of transportation of cocaine base (Health & Saf. Code, § 11352, subd. (a)). It was further alleged defendant had suffered three prior narcotics convictions (Health & Saf. Code, § 11370.2) and four state prison prior convictions (Pen. Code, § 667.5, subd. (b)).

### **B. Case No. SCR-547923**

On October 29, 2008, defendant assaulted the victim after he left his neighbor's apartment carrying a duffle bag containing two and a half pounds of marijuana. Defendant punched and kicked the victim numerous times, took the duffle bag, and fled in a vehicle.

An information was filed on December 8, 2008, charging defendant with one count of robbery (Pen. Code, § 211) and one count of assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)). It was further alleged defendant personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)), was on bail at the time of the commission of the offenses (Pen. Code, § 12022.1), and had suffered one state prison prior conviction (Pen. Code, § 667.5).

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<sup>1</sup> Although the parties stipulated the package contained 15.29 grams of "cocaine," the information alleged in both counts defendant possessed or transported cocaine base.

### ***C. Plea and Sentencing***

Defendant pleaded guilty on February 2, 2009, to all charges and admitted all allegations in both cases in exchange for a suspended 15-year 4-month prison term. The trial court subsequently sentenced defendant to the agreed upon state prison term with imposition suspended. Defendant was placed on probation for five years and ordered as a term and condition of probation to complete the Delancey Street treatment program. He agreed to waive all credits while in the program.

### ***D. Probation Revocation***

On April 15, 2010, the Sonoma County Probation Department requested defendant's probation be revoked and a bench warrant issue because he had failed to complete residential treatment at Delancey Street and had absconded from probation supervision. Later, a supplemental report was received alleging defendant had violated probation by being convicted of a misdemeanor in Oregon.

A contested probation revocation hearing was held on August 25, 2011. Deputy probation officer Ann Batiste with the Sonoma County Probation Department testified the department received a letter dated April 1, 2010 from Delancey Street stating defendant's "residency was terminated" because he had "a negative attitude and behavioral issues." A request was then made for the issuance of a bench warrant. According to Batiste, at the time the letter was received, there were no indications in defendant's file he was having "active contact" with his probation officer, nor had he submitted monthly reports from Delancey Street. The court also admitted into evidence a certified judgment of an Oregon misdemeanor conviction for giving a false name to a police officer. At the conclusion of the hearing, the court found defendant was in violation of his probation because he failed to complete the Delancey Street treatment program, absconded from probation supervision, and failed to be of good conduct by "picking up the new matter" (referring to the Oregon conviction).

At sentencing, the defense submitted a sentencing brief asking to have defendant reinstated to probation and ordered to complete a different residential treatment program. Defendant also submitted a motion to withdraw his pleas based on the court's failure to

inform him and “he could not have known, that he could be terminated from the Delancey Street residential treatment program at the whim of program staff who only cited vague, arbitrary and capricious reasons for the termination, and for which no documentary evidence was provided.” The court denied his motion to withdraw his plea and imposed the previously suspended sentence of 15 years 4 months in state prison.

Defendant filed an informal request for the court to recall the sentence pursuant to Penal Code section 1170, subdivision (d) on October 14, 2011. That motion was denied.

Defendant timely filed his notice of appeal in both cases.

## **II. DISCUSSION**

The standard of proof required for probation revocation is a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447.) Review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848–849.)

Substantial evidence supports the trial court’s decision to revoke defendant’s probation. Here, the court suspended a lengthy sentence and placed defendant on formal probation with the express understanding defendant would have a chance to rehabilitate himself. In that regard, the trial court imposed a number of probationary terms including participating in the Delancey Street treatment program, reporting to his probation officer, and obeying all laws. As the record reflects, however, defendant failed to comply with these court conditions. He was terminated from the Delancey Street program, he failed to report to his probation officer, and he failed to obey all laws as evidenced by his Oregon misdemeanor conviction. In short, the trial court’s finding defendant violated the terms of his probation was neither arbitrary, capricious, nor irrational.

As noted above, defendant sought to withdraw his guilty pleas. “A guilty plea may be withdrawn any time before judgment for good cause shown.” (*People v. Hunt*

(1985) 174 Cal.App.3d 95, 102–103.) “To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of [defendant’s] free judgment. [Citations.] Other factors overcoming defendant’s free judgment include inadvertence, fraud or duress.” (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.) “A plea may not be withdrawn simply because the defendant has changed his mind.” (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) “The general rule is that the burden of proof necessary to establish good cause in a motion to withdraw a guilty plea is by clear and convincing evidence.” (*Huricks*, at p. 1207.) “Withdrawal of a guilty plea is left to the sound discretion of the trial court. A denial of the motion will not be disturbed on appeal absent a showing the court has abused its discretion.” (*Nance*, at p. 1456.)

Here, the trial court did not abuse its discretion in denying defendant’s motion to withdraw his guilty pleas based on the court’s failure to inform him he could be terminated from Delancey Street. There is nothing in the record to suggest defendant’s pleas were anything other than free and voluntary after he was fully advised of and waived his constitutional rights. His pleas were also not the result of mistake, inadvertence, or fraud. And contrary to defendant’s claim, the court was not required to inform him that he could be terminated from the treatment program.

Defendant was represented ably by counsel throughout the probation revocation proceedings.

There are no sentencing errors.

The court has reviewed the entire record and finds no arguable legal issues requiring further briefing.

The judgment is affirmed.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.