

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DUSTIN DEAN McALISTER,

Defendant and Appellant.

A135294

(Del Norte County  
Super. Ct. No.CRF 089670)

Dustin Dean McAlister pleaded guilty to one count of second degree burglary in 2009. Imposition of sentence was suspended and he was placed on probation subject to numerous conditions, including county jail time. During 2010, he admitted or was found to have violated the conditions of his probation three times. Probation was reinstated, conditioned on additional county jail time. In 2011, four additional probation violations were alleged. A contested hearing was held on the first of these, based on a residential burglary that occurred on March 9, 2010. The court found the allegations of first degree burglary true. Defendant then admitted the other three alleged probation violations. The court refused to reinstate probation and sentenced defendant to the midterm of two years on the original burglary conviction, with total credits of 39 days. Defendant was ordered to serve the time in county jail, with a recommendation he be permitted to attend fire camp. 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 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**

The testimony concerning the March 9, 2010, residential burglary was, in relevant part, as follows: Defendant and his sister, who is a registered nurse, were at their family home that day. Defendant was gone in the morning and returned about 10:00 a.m. He and his sister then spent several hours watching television. Defendant left again about 1:00 p.m. According to his sister, he returned almost immediately, calling her on his way to tell her to lock their dogs in the garage because numerous law enforcement personnel were at a neighbor's house. He and sister then remained in the house until about 2:00 p.m.

The neighbor, Georgette Goodrich, testified she arrived home around 1:30 p.m., found her laundry room door ajar and heard her bedroom door shut. She yelled out, "who's there," fled outside, locked herself in her van and called 911, and waited there until the police arrived. Officers arrived in about five to 10 minutes. They did not find anyone in the house, but found the bedroom window screen had been removed and was on the ground.

After the police left, defendant went over to the Goodrich's. Mrs. Goodrich told him the police advised her to carry a gun and shoot to kill if she was ever in the same situation again. According to Goodrich, defendant swallowed hard and his eyes "popped out of his head," leading her to think he had been the person in the house. Mr. Goodrich, a correctional officer at Pelican Bay state prison, similarly described defendant as getting a "deer in the headlight look" when Goodrich arrived home after the burglary, and causing him to think the same thing. Goodrich acknowledged, however, there had been some trouble in the neighborhood involving a house with suspected drug dealers. He also acknowledged defendant had given Goodrich a ride that night to try to locate and record the license plate of a suspicious truck Goodrich had seen drive by.

During the police investigation, an evidence clerk took fingerprints from the Goodrichs' bedroom window. He obtained no usable prints from the outside, but obtained one from the inside. A Department of Justice (DOJ) analyst then obtained a right palm print from defendant and determined there was a match with the window print. The analyst did not run defendant's print through the DOJ data base. The Goodrichs testified they wash their windows inside and out approximately once a month. Mr. Goodrich was aware defendant had once been in their house five or six years earlier. Defendant's father, also a correctional officer at Pelican Bay, testified he had seen defendant do yard work at the Goodrichs' and he had accompanied his sister when she took care of the Goodrichs' cats and dog. His sister testified she had seen him in the house about a year prior to the burglary.

Noting the preponderance of the evidence standard of proof in a probation violation proceeding, the trial court found defendant committed the alleged burglary and was in violation of the obey all laws condition of his probation. The court credited the Goodrichs' testimony and observed there was no evidence as to how defendant's print could have been on the window other than due to his escaping through it. The court found defendant's sister, on the other hand, not credible, noting the passage of time may have affected her recollection of time periods. Defendant subsequently admitted three more probation violations, including entering a liquor store and failing to report to his probation officer.

Given defendant's numerous probation violations, the trial court concluded reinstatement was not warranted and sentenced defendant on the underlying second degree burglary conviction. The court imposed the midterm of two years, with total credits of 39 days. Defendant was ordered to serve the time in county jail, with a recommendation he be permitted to attend fire camp.

### **DISCUSSION**

We review the revocation of probation for abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443, 445.) "Although a court may not act arbitrarily or capriciously in revoking probation [citation], its discretion in this matter is very broad."

(*People v. Breaux* (1980) 101 Cal.App.3d 468, 475.) Probation revocation hearings are fundamentally different than criminal trials. Because “[r]evocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions,” the full protection provided to criminal defendants does not apply to them. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 480.) In contrast to a criminal trial, at a probation revocation hearing there is no right to a jury, a reduced burden of proof (preponderance of the evidence), and “[r]elaxed rules of evidence.” (*Jones v. Superior Court* (2004) 115 Cal.App.4th 48, 60-61; see *People v. Maki* (1985) 39 Cal.3d 707, 715.)

Here, defendant was ably represented by counsel during the probation revocation hearing. The court’s finding of a violation was thoroughly set forth on the record and is supported by substantial evidence. Defendant was duly advised of his rights before admitting the three additional probation violations. At the sentencing hearing, both defendant and his attorney addressed the court, defendant acknowledging that he had made mistakes and hoped to get on the right track. He specifically asked for the opportunity to serve at the fire camp, and the court included that as a recommendation in sentencing. There was no error, nor any abuse of discretion, in sentencing. The trial court considered all relevant matters, made all necessary and appropriate findings, and ordered restitution and imposed required fines and fees.

**DISPOSITION**

After a full review of the record, we find no arguable issues and affirm the judgment.

---

Banke, J.

We concur:

---

Marchiano, P. J.

---

Margulies, J.