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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.

LUCIAN M. RUIZ,

Defendant and Appellant.

A139675

(San Francisco County
Super. Ct. No. SCN218215)

In a negotiated settlement, Lucian Ruiz pleaded guilty to a count of commercial burglary (Pen. Code,¹ § 459) and the trial court imposed a sentence of six months in county jail, six months of treatment in a residential facility, and one year of mandatory supervision. After a violation of mandatory supervision, a sentencing order stated November 20, 2013, as the date that mandatory supervision would terminate. That date was purportedly due to a miscalculation by the probation department. When the trial court was informed of the error, it withdrew its sentencing order for the violation and also ordered Ruiz's admission to the violation withdrawn, over his objection. The court reheard the matter of violation, Ruiz again admitted the violation, and the ensuing sentencing order stated March 28, 2014, as the termination date for mandatory supervision.

¹ Unless otherwise indicated, further statutory citations are to the Penal Code.

On appeal, Ruiz maintains that the court was without jurisdiction to withdraw his admission and vacate the earlier order. However, the issue is now moot because Ruiz's period of mandatory supervision had ended and we dismiss the appeal.

BACKGROUND

On October 10, 2012, the People filed a complaint charging Ruiz with three counts: (1) attempted residential burglary (§§ 664, 459); (2) commercial burglary (§ 459); and (3) receiving or buying stolen property (§ 496, subd. (a)).

On November 27, 2012, pursuant to a negotiated disposition, Ruiz pleaded guilty to count 2 and the remaining counts were dismissed.

On January 7, 2013, the trial court imposed a sentence of two years, to be served as follows, pursuant to section 1170, subdivision (h)(5)(B): six months in county jail, six months in a residential treatment facility, and a year on mandatory supervision by the probation department.

On March 6, 2013, the court revoked mandatory supervision and a bench warrant was issued because Ruiz had failed to appear for a hearing. On March 27, 2013, Ruiz admitted the violation of mandatory supervision. The court reinstated mandatory supervision, conditioned on Ruiz serving 10 days in jail, with credits of six days. The court's order stated a mandatory supervision termination date of January 5, 2014.

The court again revoked mandatory supervision on May 10, 2013, for failure to enroll in a residential treatment program, despite opportunities to do so.

On July 1, 2013, Ruiz admitted being in violation of mandatory supervision. The court reinstated mandatory supervision on condition that Ruiz serve 140 days in jail, with permission to serve the custody time in a residential treatment facility. The court's order stated November 20, 2013, as the mandatory supervision termination date.

On July 15, 2013, the People informed the court that there had been an error in the mandatory supervision termination date. The court ordered briefing and calendared a

hearing. The People filed a motion explaining that the termination date was wrong because the probation department had failed to account for the required six months in a residential treatment program. Ruiz opposed the motion. On July 30, 2013, the court set aside the sentence imposed on July 1. The court held that Ruiz's admission made on July 1, 2013, was not knowing and intelligent because it was based on an erroneous termination date. Accordingly, the court set aside the admission, over Ruiz's objection.

On August 26, 2013, Ruiz admitted the violation of mandatory supervision. The court reinstated mandatory supervision, conditioned on a jail term of 111 days with credits of 111 days. The mandatory supervision termination date was set at March 28, 2014.

Ruiz timely filed a notice of appeal on August 27, 2013.

DISCUSSION

Ruiz argues that the court acted in excess of its jurisdiction in vacating a previously entered final order. He asks us to vacate the order of July 30, 2013, withdrawing his admission, and to reinstate his July 1, 2013, admission and sentence. The People argue that the trial court properly corrected an unauthorized sentence and that, in any case, the trial court had the authority to modify the length of mandatory supervision based on changed circumstances.

If we were to agree with Ruiz, his termination date for mandatory supervision would be November 20, 2013. If we were to agree with the People, the termination date would be March 28, 2014. In either case, Ruiz's mandatory supervision has now terminated and the matter appears to be moot. On August 6, 2014, we ordered the parties to address the question of mootness.

Ruiz conceded that "the remedy sought in this appeal, the vacating of the trial court's order withdrawing [his] admission to a supervision violation and reinstating the

earlier admission as well as the sentence, is now moot.” Nevertheless, Ruiz argues that we should not dismiss his appeal as moot.

“A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief.” (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503.) “ “[As] a general rule it is not within the function of the court to act upon or decide a moot question” ’ ” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) Nevertheless, we may decline to dismiss a moot case “where the appeal raises issues of continuing public importance.” (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1202, fn. 8.)

The issue here, as Ruiz states it, “is whether a trial court may unilaterally and over a defendant’s explicit objection vacate a prior admission, in order to correct what was believed to be ordinary error but not jurisdictional in nature.” He argues that the issue is of continuing public importance because “absent a definitive decision, all defendants are subject to the possibility, at any moment in time, that a trial court, without legal or factual cause, could order a previous admission or guilty plea withdrawn so that the court could impose changes in a sentence which could not be lawfully done.” We reject Ruiz’s assertion that criminal defendants face such danger in California.

Ruiz also argues that the issue is likely to recur “and is likely to always result in a moot issue on appeal given the time factors governing briefing and decision.” Ruiz provides no reason for us to conclude that the issue is likely to recur. The general statement of the issue provided by Ruiz is independent from mandatory supervision and provides no reason to believe that if the issue does again arise, it would be likely for the case to be or become moot on appeal. Even if the issue arises again in a way that affects a mandatory supervision termination date, terms of mandatory supervision may be much longer than the term imposed on Ruiz, and longer terms would be less likely to result in a moot case.

DISPOSITION

The appeal is dismissed as moot.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.