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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.

DEMARCO LAMAR WOOTEN,

Defendant and Appellant.

A143982

(Contra Costa County
Super. Ct. No. 05-131655-3)

MEMORANDUM OPINION¹

After defendant pleaded no contest to several drug-related charges and admitted several penalty-enhancing circumstances, the trial court, on April 1, 2014, sentenced defendant to 12 years, 8 months in state prison. The trial court, however, suspended execution of this sentence and placed defendant on three years of “formal felony probation.”

One of defendant’s probation conditions required him to “complete Delancey Street which is a two-year residential program.” Failure to complete the full two-year program, warned the trial court, would result in defendant having to serve his full prison term.

Just two weeks later, the county probation department filed a petition to revoke probation, alleging defendant had, on April 9, 2014, been untruthful during interviews with Delancey Street staff and, as a result, had been terminated from the program.

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

When the petition came before the trial court, defendant’s counsel repeatedly requested a hearing on the probation violation. The trial court denied a hearing, viewing the matter as a “sentencing issue, not a probation violation issue.” It proceeded to execute the previously imposed 12 year, 8 month prison sentence. Defendant then appealed.

“An order revoking probation is appealable as an order made after judgment affecting a defendant's substantial rights.” (*People v. Coleman* (1975) 13 Cal.3d 867, 871, fn.1.)

It has long been settled that a court may not revoke probation without first holding a hearing. (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782; *People v. Vickers* (1972) 8 Cal.3d 451, 457-461.) The attorney general concedes defendant should have received a hearing. All agree the order executing sentence should be reversed.

Accordingly, the order executing sentence is reversed. On remand, the trial court shall conduct a probation revocation hearing.

The parties are invited to stipulate to an expedited issuance of remittitur. (See Cal. Rules of Court, Rules 8.272(c)(1), 8.366(a).)

Banke, J.

We concur:

Humes, P.J.

Dondero, J.