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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AZAHEL PANFILO FLORES,

Defendant and Appellant.

B229858

(Los Angeles County
Super. Ct. No. BA341121)

APPEAL from an order of the Superior Court of Los Angeles County. Rand Steven Rubin, Judge. Affirmed with instructions.

Tamara Zivot, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Jaime L. Fuster and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Azahel Panfilo Flores appeals from a trial court order revoking his probation and imposing a criminal conviction assessment fee (Gov. Code, § 70373) on him. We agree that the criminal conviction assessment fee was erroneously imposed and strike it from the judgment. In all other respects, the order is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Information

An information filed by the Los Angeles County District Attorney on June 23, 2008, charged defendant with inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a))¹ and further alleged that defendant had been convicted of one prior serious or violent felony within the meaning of the Three Strikes Law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Defendant pled not guilty and denied the special allegations.

November 5, 2008, Trial Court Proceedings

The trial court denied defendant's motion to strike the prior conviction allegation. Subsequently, on November 5, 2008, defendant withdrew his previously entered not guilty plea and entered a plea of nolo contendere and admitted the strike allegation. The trial court exercised its discretion pursuant to section 1385 to dismiss the strike and sentenced defendant to the upper term of four years in state prison, suspended execution of the sentence, and ordered defendant to serve three years of formal probation with certain terms and conditions, including that he serve 365 days in county jail and pay various fines. At that time, the trial court advised defendant: "If you . . . leave this country or are deported from this country, you will report to the probation office within 48 hours of your return." Defendant accepted the terms and conditions without objection.

November 5, 2009, Trial Court Proceedings

A supplemental report prepared on October 30, 2009, indicated that defendant initially reported to probation on May 5, 2009, and that he was in compliance with the terms of his probation. At an appearance held in defendant's presence on November 5,

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

2009, the trial court continued the original terms and conditions of probation and ordered a further supplemental report.

March 10, 2010, Trial Court Proceedings

A supplemental probation report prepared on March 4, 2010, alleged that defendant was in violation of the terms of probation requiring that he obey all laws and abstain from the use of alcoholic beverages. The report alleged that defendant had been arrested on January 23, 2010, for driving under the influence and being an unlicensed driver. The case was dismissed pursuant to section 1385 on January 27, 2010. The report recommended that defendant serve a 30-day jail term.

On March 10, 2010, defendant admitted that he was in violation of probation. The trial court revoked and reinstated the grant of probation with the additional condition that he serve an additional 95 days in Los Angeles County Jail. The trial court advised defendant: “If you leave the country, you shall not reenter the United States illegally. If you do return, report to the probation officer within three (3) days, and present documentation which provides you are in the U.S. legally.”

June 4, 2010, Trial Court Proceedings

In a report dated June 4, 2010, the probation officer notified the trial court that defendant had been deported on March 16, 2010. Defendant failed to appear at a hearing on June 22, 2010, and the trial court revoked defendant’s probation. A bench warrant was issued.

October 20, 2010, Trial Court Proceedings

On October 20, 2010, defendant appeared in the trial court after being picked up on the bench warrant. The trial court ordered a supplemental probation report.

November 4, 2010, Supplemental Probation Report

In a supplemental probation report prepared on November 4, 2010, the probation officer informed the trial court that defendant had last reported to probation on January 12, 2010, had made payment to restitution, owed \$3,488 toward the cost of probation services, had failed to comply with the condition that he complete a 52-week domestic violence program, had been deported on March 16, 2010, was arrested on the

bench warrant, was the subject of an immigration hold, and had “re-entered the country illegally.”

December 2, 2010, Probation Violation Hearing

The trial court held a formal probation violation hearing on December 2, 2010. After the formal hearing, the trial court found defendant to be in violation of probation. Specifically, the trial court found: “I think the facts for a probation violation hearing are sufficient[.] That he was again deported and reentered illegally. [¶] I do have report sequence No. 4 prepared June 4, 2010, that indicates that he was deported by immigration services. I think it’s sufficient for the violation.” Thus, the trial court revoked probation and ordered execution of the previously suspended four-year sentence. It also ordered defendant to pay various fines, including a \$30 criminal conviction assessment fee (Gov. Code, § 70373).

Appeal

This timely appeal ensued.

DISCUSSION

I. *Revocation of Probation*

A. Standard of Review

Probation revocation is indistinguishable from parole revocation in terms of the requirements of due process. (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782; *Morrissey v. Brewer* (1972) 408 U.S. 471, 488–489 (*Morrissey*) [state parole revocations require observance of certain specified minimal due process requirements, including holding an informal factual hearing, written notice of alleged parole violations, an opportunity to be heard and present witnesses, and a decision by a neutral hearing officers].) Thus, a probationer is entitled to the procedural safeguards outlined in *Morrissey* once he has been arrested. (*People v. Vickers* (1972) 8 Cal.3d 451, 458–459.)

A trial court has broad discretion in determining whether to revoke probation, and we will uphold the trial court’s decision when it is supported by substantial evidence that a condition of probation has been violated. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443; *People v. Kurey* (2001) 88 Cal.App.4th 840, 848.)

B. Analysis

Defendant argues that his due process rights were violated in connection with the claimed violation of probation. Specifically, he contends that he did not receive adequate notice that the prosecution would be relying upon his unlawful entry as a basis to revoke his probation.

Preliminarily we consider whether defendant preserved this issue for appeal. Because defendant did not object on the grounds of inadequate notice, this argument has been forfeited. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 967.)

Defendant claims that his failure to object did not “waive the issue” because “[b]y the time the due process violation became apparent, the evidentiary portion of the hearing had been completed and the witnesses had been excused.” By neglecting to cite legal authority or the record on appeal, defendant has not met his burden on appeal. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Our analysis could stop here.

Setting this procedural hurdle aside, defendant is still not entitled to reversal. The probation report dated November 4, 2010, expressly alleged that defendant violated probation by reentering the country illegally. A formal hearing was held in December 2010. At the hearing, the prosecution elicited testimony concerning defendant’s deportation and illegal reentry as grounds for a violation, and defendant’s counsel defended against that allegation. Defendant was afforded notice and an opportunity to respond, and thus due process was satisfied. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 546.)

Moreover, the trial court did not abuse its discretion in finding defendant in violation of probation. Defendant was subject to two conditions of probation: (1) that he “obey all laws”, and (2) that if he were deported, he not reenter the country illegally. Having evidence that defendant had been deported and was subject to a “no bail” immigration hold, the trial court could reasonably infer that defendant did not reenter the country legally and thus was in violation of his probation. (*People v. Campos* (1988) 198 Cal.App.3d 917, 921 [illegally entering the United States after deportation is violation of probation under implicit condition that defendant obey all laws].)

In urging us to reverse, defendant relies heavily upon *People v. Galvan* (2007) 155 Cal.App.4th 978, 983 (*Galvan*) and claims that he did not willfully violate the conditions of probation. *Galvan* is inapplicable. The trial court did not base the violation of probation upon a failure to report or other potential bases mentioned in the hearing record. Rather, it based its decision upon defendant's illegal reentry into the United States. And, there is no evidence that defendant's illegal reentry into the United States was involuntary or otherwise under circumstances beyond defendant's control.

II. *Criminal Conviction Assessment Fee*

Defendant argues that the trial court erred in imposing a Government Code section 70373 assessment upon him following the revocation of his probation. The People concede that we should strike this fee. We agree, and instruct the clerk of the superior court to prepare a new abstract of judgment that deletes this fee.

DISPOSITION

The matter is remanded with instructions to modify the judgment by striking the \$30 fee assessed under Government Code section 70373. In all other respects, the order is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ