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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL RAMIREZ GONZALEZ,

Defendant and Appellant.

B232489

(Los Angeles County
Super. Ct. No. KA090728)

APPEAL from an order of the Superior Court of Los Angeles County,
Daniel S. Lopez, Judge. Reversed.

Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr.
and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Rafael Ramirez Gonzalez appeals from the order revoking his probation and placing into effect a previously stayed three-year state prison sentence, contending the trial court abused its discretion when it revoked his probation. We conclude the revocation of probation was an abuse of discretion and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Original Charges and Gonzalez's Plea and Sentence

In 2010, Gonzalez was charged by felony complaint with possession for sale of cocaine (Health & Saf. Code, § 11351), transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)) and driving without a license (Veh. Code, § 12500, subd. (a)). Represented by appointed counsel, on June 15, 2010, Gonzalez pleaded no contest to transportation of cocaine as charged in count 2 pursuant to an oral and written negotiated agreement. In accordance with the plea agreement, the trial court imposed and stayed a three-year state prison sentence, and placed Gonzalez on three years of formal probation on condition he serve 180 days in county jail, with 52 days of presentence credits. The court also ordered Gonzalez to “[r]eport to Pomona Valley Area Office of Probation located at 1660 West Mission Boulevard in the city of Pomona within 48 hours of your release from custody.” The remaining charges were dismissed on the People’s motion.

2. Gonzalez's Subsequent Arrest and Probation Revocation Hearing

At a December 30, 2010 probation hearing, the trial court summarily revoked Gonzalez’s probation and issued a bench warrant for Gonzalez’s arrest after he failed to appear in court. According to the probation department, Gonzalez was deported to Mexico on August 13, 2010. On January 20, 2011, Gonzalez appeared in court on the outstanding bench warrant, and it was recalled. The court remanded Gonzalez to custody and set a probation revocation hearing.

A probation revocation hearing was held on March 9, 2011 before a different bench officer than the one who had originally sentenced Gonzalez. Anthony Nealy of the Los Angeles Probation Department was Gonzalez’s assigned probation officer and the sole witness at the hearing. Nealy testified, according to his records, Gonzalez never

reported to the probation department as ordered, failed to register as a narcotics offender, failed to make payments to the probation department towards his financial obligations, and re-entered the country illegally, although Nealy admitted on cross-examination that he could not verify Gonzalez's immigration status or date of his re-entry into the United States and accordingly did not know whether his entry was illegal. Nealy's records also reflected that Gonzalez was taken into custody by federal immigration authorities directly from jail on June 21, 2010, and deported on August 13, 2010.

Gonzalez did not testify or present other evidence in his defense.

Following argument by counsel, the trial court expressly found Gonzalez in violation of probation by failing to report to probation as ordered, failing to register as a narcotics offender and failing to pay the mandatory fines and fees imposed by the court. The court revoked probation and ordered into effect the previously stayed three-year state prison sentence.

DISCUSSION

A trial court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation" (§ 1203.2, subd. (a).) "As the language of section 1203.2 would suggest, the determination whether to . . . revoke probation is largely discretionary." (*In re Coughlin* (1976) 16 Cal.3d 52, 56.) "[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439.) Nonetheless, the record must support a conclusion the probationer's conduct amounted to a willful violation of the terms and conditions of probation. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) "Where a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant's conduct was not contumacious, revoking probation and imposing a prison term are reversible error." (*Ibid.*) In reviewing the sufficiency of the evidence to support the finding of a willful violation of probation, we view the evidence in the light most favorable to the

People and presume in support of the judgment the existence of every fact the court could reasonably deduce from the evidence. (See *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.)

Our review in this case is guided by *People v. Galvan* (2007) 155 Cal.App.4th 978, in which the trial court stayed execution of sentence and placed defendant Galvan on probation, which included 365 days in county jail. (*Id.* at p. 980.) Among Galvan's probation conditions was that he contact a probation officer within 24 hours of his release from custody. (*Id.* at pp. 980-981.) Galvan was deported to Mexico following his release from jail and never reported to the probation officer. (*Id.* at p. 981.) The trial court issued a bench warrant for Galvan's arrest for failing to appear at a probation hearing. (*Ibid.*) The following year, Galvan was arrested in the United States. After a probation revocation hearing, the trial court revoked Galvan's probation for failing to report to his probation officer, and ordered into effect the previously stayed state prison sentence. (*Id.* at pp. 981-982.)

On appeal, our colleagues in Division Three reversed, explaining that a trial court's decision to revoke probation is discretionary, but must be based on evidence supporting a conclusion that the probationer's conduct constituted a willful violation of the terms and conditions of probation. (*Galvan, supra*, 155 Cal.App.4th at p. 982.) The trial court abused its discretion in revoking Galvan's probation because his immediate deportation to Mexico precluded him from reporting to the probation officer within 24 hours of his release from state custody. (*Id.* at 983-984.) "We believe a reasonable person in Galvan's position would have understood [his reporting obligations] to require a personal appearance before the probation officer. . . . Galvan's deportation obviously prevented him from reporting in person. We also believe a reasonable person in Galvan's position would have assumed that, in these circumstances, the 24-hour reporting requirement would be excused." (*Id.* at p. 985.)

We agree with Gonzalez that *Galvan* is dispositive here. It is undisputed that Gonzalez, like Galvin, failed to report in person to his probation officer as ordered

because he was taken into custody by immigration authorities directly from jail and deported to Mexico. After Gonzalez was deported and while he remained outside the United States, it was reasonable for him to assume he was no longer obligated to report in person to his probation officer as ordered by the trial court.¹ The probation officer was not in a position to monitor Gonzalez's activities outside of the United States, and it does not appear that Gonzalez was informed or otherwise knew that he was required to contact his probation officer directly following his deportation by other means.² “[I]n the typical case, an illegal alien will have at best limited ties to the general community and, upon deportation, such ties to the community as do exist will necessarily be terminated. Obviously, a convicted illegal alien felon, upon deportation, would be unable to comply with any terms and conditions of probation beyond the serving of any period of local incarceration imposed.” (*People v. Sanchez* (1987) 190 Cal.App.3d 224, 231; *Galvin, supra*, 155 Cal.App.4th at pp. 984-985.)

As to Gonzalez's failure to report to his probation officer after returning to the United States, although he was arrested on or about January 20, 2011, there was no evidence as to when Gonzalez reentered the country and whether he had sufficient opportunity to contact his probation officer prior to his arrest. The trial court's revocation of Gonzalez's probation was an abuse of discretion on this record because there was a failure of proof that he had willfully failed to comply with the condition to report to his probation officer. We similarly find there was no evidentiary basis to revoke Gonzalez's probation on the ground that he willfully failed to register as a narcotics

¹ If a defendant is deported, probation is rendered ineffective: Absent a treaty allowing the probation department supervision in the foreign country, the department has no legal authority in that country to implement the necessary supervision. (See *In re Manuel P.* (1989) 215 Cal.App.3d 48, 81 (dis. opn. of Wiener, J.); *People v. Espinoza* (2003) 107 Cal.App.4th 1069, 1076.)

² The People's assertion *that*, unlike *Galvan*, “the instant case involves [Gonzalez's] failure to provide his contact information to the probation department, not his failure to report in person [to his probation officer],” is not supported by the record.

offender as ordered (see *People v. Balkin* (2006) 145 Cal.App.4th 487, 492-493 [defendant was improperly convicted of failing to register as sex offender within five days of entering Los Angeles in the absence of evidence as to when he moved to Los Angeles]), or that he willfully failed to pay the mandatory fines and fees in the absence of evidence that he had the ability to pay those fees. The trial court could not reasonably infer from either Gonzalez's failure to report to his probation officer or his undocumented immigrant status that he willfully failed to pay the previously ordered restitution fine.

DISPOSITION

The order revoking probation and ordering into effect the previously stayed three-year state prison sentence is reversed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.