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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ETHAN ALAN GROSS,

Defendant and Appellant.

2d Crim. No. B239306
(Super. Ct. No. 2011025018)
(Ventura County)

Ethan Alan Gross appeals an order revoking his mandatory supervision (Pen. Code, § 1170, subd. (h)(5)) after pleading guilty to receiving stolen property (§ 496, subd. (a)).¹ We conclude the revocation hearing complied with due process requirements. We affirm.

FACTS

On November 3, 2011, the trial court sentenced Gross to an aggregate three-year county jail term. It found "a history of substance abuse." It entered a "split sentence" under section 1170, subdivision (h)(5) requiring Gross "to enter into and remain in the Santa Monica Salvation Army Program . . . [and] not to leave the program without permission of program staff, his probation officers, or the Court." The court suspended execution of the sentence and "released" Gross on "Mandatory Supervision

¹ All statutory references are to the Penal Code.

for 30 months." It warned him, "If you don't do this program or if you abscond from the program, when you return to Court on a warrant, you're looking at the additional time period up to three years on your sentence in this case. Do you understand?" Gross answered: "Yes, I do."

On November 4, 2011, Gross "entered the Salvation Army program." On January 17, 2012, Gross told his probation officer that he left the program on January 14th "after consuming alcohol during a furlough."

The probation department filed a "memorandum" with the trial court noting, "At this point, [Gross] is not in compliance with the Court's directive that he participate in the Salvation Army Program" "[I]t is respectfully requested that the Court direct him back to the Salvation Army Treatment Program or consider imposing the outstanding custody time."

The trial court held two hearings on the violation. At the second hearing, Gross's counsel said Gross "indicates he is going into a different program." The court asked, "What was the reason for leaving the Salvation Army program?" Gross responded: "I had no reason."

The trial court held a bench conference. There is no reporter's transcript of this proceeding.

After the bench conference, the trial court told Gross, "You are remanded to serve the sentence that was previously ordered."

DISCUSSION

Due Process

Gross contends the proceedings involving the revocation of his mandatory supervision did not comply with due process requirements. We disagree.

Before probation or a mandatory supervision may be revoked, a defendant is entitled to: 1) written notice of the "claimed violations," 2) the opportunity to "be heard in person and to present witnesses," 3) the right "to confront and cross-examine adverse witnesses," and 4) an impartial trier of fact who issues fact findings on the

evidence. (*People v. Vickers* (1972) 8 Cal.3d 451, 457.) But where a defendant admits the violation, or his or her offer of proof shows that "the only matter in issue is the legal consequences of an undisputed course of conduct," the trier of fact "may, without hearing any witnesses, rule on the matter." (*Id.* at p. 457, fn. 6.)

Gross has not shown that he was not afforded due process procedural protections. The probation department gave notice that: 1) Gross violated the provisions of his mandatory supervision by leaving the Salvation Army program, and 2) it requested the trial court to order him to return to that program or "consider imposing the outstanding custody time." The court scheduled two hearings on this matter and at each hearing Gross was represented by counsel. At the second hearing, Gross's counsel did not dispute the probation department's claim that he left the Salvation Army program, and Gross admitted he had "no reason" to leave that program.

Gross contends he was "denied" the "right to present evidence and cross-examine adverse witnesses." But he did not request to testify or call witnesses and there was no dispute as to the facts of the violation. Gross admitted to both his probation officer and the trial court that he left the program without permission. He has not shown that the court must hear witness testimony after he admitted the violation. (*People v. Vickers, supra*, 8 Cal.3d at p. 457, fn. 6.) His trial counsel made no offer of proof to show he did not leave the program, and Gross has not shown there is any evidence that refutes his admissions. He has made no claim that the facts in the probation report are inaccurate. Gross did not raise any due process issues at the hearing, and his trial counsel made no claim that the court's procedure was unfair or improper.

Moreover, we may not conclude the trial court erred because the record is incomplete. Before the court revoked the mandatory supervision, it held a bench conference. But the matters discussed are not reported and there is no settled statement. A "judgment of the trial court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent" (*People v.*

Malabag (1997) 51 Cal.App.4th 1419, 1422.) The appellant has the burden to present a complete record. (*Id.* at p. 1423.) We may not presume error from an incomplete one.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Kevin J. McGee, Judge
Superior Court County of Ventura

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