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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.

BRYCE TUBB,

Defendant and Appellant.

2d Crim. No. B265780
(Super. Ct. No. YA081070)
(Ventura County)

Bryce Tubb was subject to postrelease community supervision (PRCS). (Pen. Code, § 3451.)¹ The trial court found him in violation of his PRCS conditions and granted the probation agency's petition to revoke his PRCS. Tubb contends there was insufficient evidence to support two findings the trial court made in determining that he violated his PRCS conditions. We conclude the evidence is sufficient. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, Tubb pled guilty to burglary (§ 459) and identity theft (§ 530.5, subd. (a)). He was sentenced to five years in state prison.

On June 25, 2014, Tubb was released on PRCS.

On May 28, 2015, the Ventura County Probation Agency filed a petition to revoke his PRCS. On June 11, 2015, Tubb's counsel filed a motion to dismiss the petition. The trial court denied that motion.

¹ All statutory references are to the Penal Code.

On July 6, 2015, the trial court held an evidentiary hearing on the petition to revoke PRCS. The probation agency alleged, among other things, that Tubb violated six PRCS conditions: 1) Tubb did not report to probation for his May 8, 2015, appointment; 2) he possessed methamphetamine; 3) he tested positive for methamphetamine; 4) he failed to report for a test for controlled substances on May 8, 2015; 5) he possessed identity theft information containing “multiple credit card bills and scanned checks, all in other [people’s] names”; and 6) he failed to actively participate in substance abuse treatment.

At the hearing, Deputy Probation Officer Matt Mattavich testified Tubb violated several PRCS conditions. Among other things, Tubb failed to report to probation on May 8, 2015, and he did not “make himself available” for testing for controlled substances on that date.

Tubb testified that he talked on the phone with Mattavich on May 7th. The prosecutor asked, “And he told you to report to Probation on the next day, May 8th; isn’t that correct?” Tubb responded, “No, it’s not. He asked me when my next appointment date was. I told him it was the 12th, and he said he would see me on the 12th.”

The trial court found alleged violation 2 had not been established, but violations 3, 5 and 6 were “true.” As to violations 1 and 4, the court found they were “true.” The court said as to violation 1, “I do believe . . . that on May 7th when Probation Officer Mattavich spoke to Mr. Tubb on the telephone . . . he was ordered to report the next day on May 8th, and he failed to report on May 8th.” As to violation 4, the court said that it “believes that [Tubb] was supposed to report to Probation on May 8th. He didn’t report. Therefore, he failed to test.”

The trial court granted the probation agency’s petition to revoke PRCS. It ordered Tubb to serve 180 days in the county jail with a total credit of 98 days.

DISCUSSION

Substantial Evidence

Tubb contends the evidence is insufficient to support the trial court's two findings that he failed to report to probation on May 8, 2015 (violation 1), and that he did not report for a drug test on that date (violation 4). We disagree.

In deciding the sufficiency of the evidence, we view the record “in the light most favorable” to the judgment and “presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We do not decide the credibility of the witnesses, resolve conflicts in the testimony, or weigh the evidence. Those determinations are made by the trial court. (*People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 410; *People v. Upsher* (2007) 155 Cal.App.4th 1311, 1322.)

Tubb cites to some evidence in the record and claims it undermines the trial court's findings. But the issue is not whether some evidence supports Tubb; it is only whether substantial evidence supports the judgment.

Mattavich testified that he told Tubb to report to probation on May 8th and Tubb did not report. He said Tubb also did not “make himself available” for testing for controlled substances on May 8th. That testimony supports the trial court's findings. Tubb notes that on cross-examination Mattavich said that, because May 8th was a Friday, he would not have been in the office on that date. Tubb claims Mattavich's absence on May 8th supports his position that he did not have an appointment with the probation office on that date.

But the trial court could reasonably infer that Mattavich's absence did not excuse Tubb's failure to report to probation on May 8th. Mattavich testified, “I wasn't at work that day.” But he also said if Tubb “showed up, *he would have been seen by a probation officer,*” and “he didn't show up.” (Italics added)

Tubb relies on his own testimony and notes that he said there was no appointment on May 8th; it was set for May 12th. But the trial court's decision showed that it did not find Tubb to be credible.

Tubb suggests Mattavich's written "chrono" did not support his testimony. Those notes did not contain a May 8th entry about Tubb missing an appointment. Tubb's trial counsel noted that it was not until May 13th that Mattavich first wrote about the May 8th missed appointment by Tubb. Tubb claims the trial court consequently should have given greater weight to those notes and determined that Mattavich was not credible.

But we do not weigh the evidence, resolve evidentiary conflicts or decide credibility. (*People v. Superior Court (Keithley)*, *supra*, 13 Cal.3d at p. 410.) Here the trial court resolved any conflicts in the evidence against Tubb, and we may not reweigh that evidentiary determination. (*Ibid.*) Moreover, Mattavich testified those notes indicated that he had talked to Tubb on May 7th and requested him to report "on the 8th, *and he agreed to do so.*" (Italics added) That supported Mattavich's testimony about Tubb's duty to report on that date, and it contradicted Tubb's claim about a different appointment date.

In his brief, Tubb states that "[he] may have believed that he did not have to report unless Mattavich was actually present" on May 8th. But as the People note, this claim is not consistent with Tubb's testimony, and it is speculation.

Tubb has not shown grounds for reversal. The trial court revoked his PRCS and found he violated five PRCS conditions. But Tubb challenges only two of those violations (violations 1 and 4) on appeal.

The trial court said violation 5 was "the significant violation" because Tubb went to prison for "identity theft." Tubb had a PRCS condition that prohibited him from possessing checks, identification cards, credit card information, and social security cards "in any other name except for himself." The court found that Tubb violated this condition and that Tubb has not challenged the court's findings on violation 5. In Mattavich's "written report," he referred to violation 5 and said, "It is astonishing that

[Tubb] has not learned from his past actions and continues to be in possession of other [people's] private and personal information.”

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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