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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Siskiyou)

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN RAY COONS,

Defendant and Appellant.

C064421

(Super. Ct. No.
MCYKCRF070001318)

Defendant Martin Ray Coons appeals from orders of the Siskiyou County Superior Court (trial court) entered January 13, 2010, finding him in violation of two conditions of his probation, and, on March 2, 2010, ordering him to serve 90 days in county jail after which probation was to be terminated as unsuccessful. Defendant contends the trial court erred in sustaining the two alleged probation violations and imposing

additional jail time because the violations were not willful. We disagree and shall affirm the trial court's orders.

FACTS AND PROCEDURAL HISTORY

In June 2007, defendant, who lives in Medford, Oregon, was driving in Siskiyou County when he was stopped by a sheriff's deputy for a traffic violation. A vehicle check showed the vehicle was stolen and defendant was arrested. Defendant was searched and methamphetamine was found in his pocket.

In July, defendant was charged with vehicle theft and offenses related to his possession of methamphetamine. On March 26, 2008, defendant pleaded guilty to possession of methamphetamine conditioned upon his being placed on Proposition 36 probation (Pen. Code, § 1210.1 et seq.) and the remaining charges being dismissed. The matter was referred to the probation department and sentencing was set for April 23, 2008.

On April 23, 2008, the court accepted defendant's plea, suspended imposition of sentence and placed defendant on Proposition 36 probation for three years on various conditions, including that he follow the reasonable instructions of the probation officer and not leave the state of California without written permission from the probation officer. Because defendant lived in Medford, Oregon, which his counsel described as being "about an hour away" from Yreka where the case was being prosecuted, the court permitted defendant to have his probation supervised in Oregon, pursuant to procedures set forth for supervising out of state prisoners set forth in the

Interstate Compact for Adult Offender Supervision (Interstate Compact) (Pen. Code, § 1180 et seq.).

On September 29, 2009, defendant admitted violating his probation by failing to appear at four court ordered hearings in California. The admission was conditioned upon defendant being terminated from Proposition 36 probation and being placed on formal probation with 120 days to be served in county jail. The matter was set October 27, 2009, for sentencing.¹ Defendant remained in custody.

On October 16, 2009, the court granted defendant's request to be released on his own recognizance and ordered him to return on October 27, 2009. On October 26, the court received a note from a doctor stating defendant had been hospitalized and would be in the hospital for three to five additional days. The matter was continued to December 1.

On November 19, 2009, the probation department filed a "Memo" with the court requesting a warrant for defendant's arrest. The memo stated that prior to defendant's release from jail on October 16, probation officers Leigh Moore and Susan George contacted defendant in jail and informed him that he could not leave California without obtaining a valid travel permit and without initiating paperwork for the Interstate Compact. The memo further alleged that on November 6 defendant

¹ Oregon also discontinued its supervision of defendant and demanded that he be returned to California.

telephoned Moore from Oregon explaining that he had been in the hospital. Moore informed defendant that he was in violation of his probation and that he was to report to the probation department no later than November 9. Defendant reluctantly agreed to do so, but as of November 17 defendant had not reported as directed.

On December 1, 2009, defendant appeared for sentencing on the September 29 admissions and for arraignment for having new violations of probation. Defendant denied the violations, the matter was continued for a hearing to January 13, 2010, and defendant was permitted to reside in Oregon pending the hearing.

On January 13, 2010, following a contested hearing, the court sustained the probation violation allegations and continued the matter for sentencing until March 2.

On March 2, 2010, the court terminated defendant's Proposition 36 probation. The court then placed him on formal probation conditioned upon his serving 210 days in jail for the probation violations with credit for 132 days already served (88 actual plus 44 conduct) after which probation was to be terminated as unsuccessful.²

² Appellate counsel sought and received an additional 44 days of conduct credit pursuant to the increased rate for calculating presentence conduct credits provided by the amendments to Penal Code section 4019, effective January 25, 2010.

Probation Violation Hearing

At the probation violation hearing conducted on January 13, 2010, Deputy Probation Officer Leigh Moore testified that prior to defendant's release from jail on October 16, 2009, she and Deputy Probation Officer Susan George contacted defendant in the jail and informed him that he was to report to the probation department upon his release from custody, and he was not to leave California without first meeting with the probation department. Moore next heard from defendant on November 6, 2009, when he called and said he was in Oregon and that he had been hospitalized and had not been able to contact her until that day. Moore told defendant he was in violation of his probation and that he was to report to the probation department no later than November 9, 2009. He did not report as directed.

Moore further testified that during the November 6 conversation she told defendant he would have to obtain a permit to return to Oregon and that the application would take about two months during which time he would be required to remain in California. When defendant told her he had no place to stay in California, she suggested he stay in a homeless shelter.

Defendant testified, admitting that he had been informed by Moore that upon his release from jail he was to report to the probation department. However, defendant explained, he was released from jail on October 16, a Friday, at 6:00 p.m., the probation department was closed and he had nowhere to stay so he returned to Oregon. He was ill on the following Monday and was

admitted to the hospital on Tuesday where he remained for several days.

On November 6, 2009, he called Moore and she was "furious" about his having returned to Oregon without permission and ordered him to return by Monday, November 9. She told him he would have to get a permit to travel back to Oregon, which would take about 60 days during which time he would have to stay in California, even if he had to stay in a "men's shelter." He did not return because he had nowhere to stay in California.

DISCUSSION

Defendant contends the trial court erred when it found that he violated conditions of his probation by failing to report to the probation department and obtain a permit to travel to Oregon upon his release from county jail on October 16, 2009, and, after going to Oregon, by failing to report to the probation department no later than November 9, 2009, as directed by the probation officer because neither violation was willful. His argument is not persuasive.

A trial court may, in its discretion, revoke a defendant's probation if it has reason to believe the defendant has violated any of the conditions of his or her probation. (*People v. Urke* (2011) 197 Cal.App.4th 766, 772.) However, the evidence must support a conclusion the probationer's conduct constituting the violation was willful. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.) The burden of demonstrating an abuse of the trial court's discretion is on the defendant. (*People v. Vanella*

(1968) 265 Cal.App.2d 464, 469.) “[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.)

Defendant’s Failure to Obtain Permit to Travel to Oregon

Defendant argues his failure to comply with the directives of Probation Officers Moore and George, who directed him to report to the probation department and not to leave California without obtaining a travel permit, was not willful for two reasons. First, when he was in court on at least two prior occasions, he was clearly instructed to report to the probation department upon his release from custody. However, on October 16 when the court ordered him released on his own recognizance, the only other order given by the court was for him to return for sentencing on October 27. Neither the court nor a probation officer who was present instructed him to report to the probation department or to obtain a travel permit. Citing *People v. Hoeninghaus* (2004) 120 Cal.App.4th 1180, 1196, which states that “[A]ny ambiguity in the probation condition cannot reasonably be attributed to defendant because he did not draft it,” defendant concludes that “the ambiguity created by these circumstances, as in *Hoeninghaus*, . . . should not be interpreted against [him.]”

We see no “ambiguity.” Defendant was clearly informed by Deputy Probation Officers Moore and George shortly before he was

released on October 16 that he was to report to the probation department and not to leave California without a travel permit. There was no room for misunderstanding. It is wholly unreasonable for defendant to have concluded that these directives, which had been standing conditions of his probation, were no longer applicable simply because he was not reminded of them when he was ordered released from jail on October 16. Consequently, we see no merit in this argument.

Second, he claims his failure to report and obtain a travel permit was not voluntary because it was 6:30 p.m. on October 16, a Friday, when he was released from county jail. The probation department was closed, he had no place to stay in California for the weekend, the following Tuesday he was hospitalized, and he was not released from the hospital "until around November 6, 2009." Thus, because of "events beyond his control" his failure to comply cannot be found to have been willful. Again, we are not persuaded.

Defendant would be in a considerably better position in making the above argument if he had made any attempt whatsoever, prior to November 9, to inform the probation department of his location and the reason for his failure to report on October 16, after his release from jail. However, the record is devoid of his having put forth any such effort. Indeed, as shown below, the record suggests contact with the probation department, even if not personal, could have been made.

Defendant apparently made it home the evening of October 16. When defendant was asked at the probation revocation hearing if he had family in Oregon, he responded, "My mom, dad, sister, all my cousins, my grandmother. All of my family live in Oregon." When asked if they "provide you support, financially or emotionally or otherwise," defendant replied, "They do. My father is here with me this morning. He's been here every time. I stay with my parents" The record is devoid of any evidence that defendant made an effort to contact the probation department himself or to have any member of his family do so, prior to November 6. Given defendant's lack of effort to make any kind of contact, the trial court properly rejected defendant's argument.

Defendant's Failure to Report to Probation
Department No Later Than November 9, 2009

Defendant contends that his failure to appear as directed by Moore on November 9, 2009, was not willful because the order was unreasonable. The order was unreasonable, defendant asserts, because he would have been required to remain in California -- "without work or a place to stay -- for two months while probation processed paperwork for [him] to return to Oregon." What defendant fails to recognize is that a grant of probation is an act of clemency and not a matter of right.

(*People v. Anderson* (2010) 50 Cal.4th 19, 32.) If a defendant believes he is unable to abide by the terms of his probation, be it supervised in California or Oregon, he has a right to refuse

probation. (*People v. Renzulli* (1974) 39 Cal.App.3d 675, 679.)
Here, defendant accepted the terms of his probation. If
defendant could not live up to the terms of his probation his
remedy was to surrender himself to the authorities in California
and serve his sentence for the offense that he committed in
California.

DISPOSITION

The orders are affirmed.

We concur: BLEASE, J.

RAYE, P. J.

HOCH, J.