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

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE TREVON WILLIAMS-DUGAN,

Defendant and Appellant.

C068395

(Super. Ct. No.
CM033236)

Defendant Kyle Trevon Williams-Dugan appeals the sentence imposed following his plea of no contest to second degree robbery. (Pen. Code, § 211.)¹ He contends the trial court abused its discretion in denying him probation, as it did not properly credit the section 1203.03 recommendation. We find no abuse of discretion and affirm.

¹ Undesignated statutory references are to the Penal Code.

FACTUAL BACKGROUND² AND PROCEDURAL HISTORY

On October 20, 2010, Joseph Teree saw an advertisement for a video game station. He called the number listed in the ad and arranged to meet a woman in a specified alley. Shortly after he arrived, defendant and another man, Jeffrey Taplin, came into the alley. Defendant produced what appeared to be a black semiautomatic handgun and said, "Give me all your fucking money and cell phone or I'm going to kill you." Teree, in fear for his life, handed over \$180, two credit cards, other identification and his cell phone.

Defendant was charged with second degree robbery (§ 211) and making a criminal threat (§ 422). It was further alleged defendant had personally used a firearm. (§ 12022.53, subd. (b).) Defendant pled no contest to second degree robbery with the understanding the maximum sentence was five years in prison and a fine. The remaining count and the enhancement allegation were dismissed.

In evaluating defendant's suitability for probation, the probation officer reviewed California Rules of Court, rule 4.414.³ The probation officer noted the crime was very serious, defendant inflicted emotional injury on the victim, defendant was an active participant in the crime, the victim was lured to

² The factual basis of the plea is based on the prosecutor's statement and the probation report.

³ Undesignated rule references are to the California Rules of Court.

the scene of the crime, defendant acted in collusion with at least two other people and demonstrated sophistication or professionalism in the commission of the offense. On the other hand, defendant did not have a significant criminal record, except for vehicle code violations, he expressed remorse for his involvement in the crime, was willing to abide by the terms and conditions of probation and would likely be able to comply with them.

The probation report included numerous letters of support, character references and a job offer. The "raft of letters of character reference . . . generally portray [defendant] as an intelligent, motivated, caring person who would not engage in this type of behavior." In defendant's statement to the probation officer, he expressed remorse for being "involved in a situation where the victim was frightened and deprived of his property. However, the defendant claims that he was not involved in a robbery in any capacity" In essence, defendant claimed he was in the wrong place at the wrong time. The arresting officer noted at the time of questioning, defendant was evasive and declined the opportunity to turn himself into law enforcement. The arresting officer recommended the mid-term sentence.

The probation officer was disturbed that defendant's version of the crime was significantly at odds with the reports. He concluded "[o]ne is left with the impression that the defendant has not been forthcoming regarding his involvement in the instant offense, and that he has neither accepted

responsibility for his actions, nor been genuinely remorseful." Considering all these factors, the probation officer concluded defendant was unsuitable for probation and recommended state prison.

The court found a just disposition required a diagnosis and recommendation under section 1203.03 and ordered a psychological evaluation. As part of the section 1203.03 evaluation, Associate Warden Kraft reported defendant had been programming well while in custody and had expressed remorse for his behavior. Defendant reported he had a painting job available if he was released and he planned to attend school. He also indicated he was willing to comply with any court orders. In recommending defendant be sentenced to prison rather than granted probation, Kraft noted defendant had a criminal history prior to the instant offense, his criminal behavior was a significant threat to public safety, and he had not demonstrated a realistic plan for bettering his life or accepting responsibility for his actions.

Dr. Krause also evaluated defendant. He reported defendant did not appear to have any underlying mental illness, substance abuse problems or disability that would excuse or explain his criminal conduct. Defendant appeared to show a high level of insight, determination and ability, and had a good recognition of past mistakes and responsibilities. The behaviors underlying the robbery did not appear to be part of a pervasive pattern of violence, defendant did not have an extensive criminal history and he showed no signs of criminal versatility. Accordingly,

weighing the risks of reoffending versus defendant's likelihood of success on probation, Dr. Krause concluded defendant appeared to be an acceptable candidate for probation.

The probation officer reviewed the section 1203.03 evaluation and concluded "no new information was uncovered." Accordingly, the probation officer continued to recommend sentencing defendant to a state prison term.

Defendant filed a statement of probation eligibility and mitigation. He contended probation was the suitable sentence, as he had no significant criminal history, the offense was less serious than a typical robbery, the offense did not involve physical violence and defendant was young at the time of the offense. The statement also analyzed the other factors found in rule 4.414.

At sentencing, the trial court noted it had read and considered the original probation report, the section 1203.03 diagnostic evaluation, the supplemental probation report and defendant's statement of probation eligibility and mitigation. The trial court indicated its intention to follow the probation department's recommendation and then heard argument from counsel.

Defendant again argued for probation relying on his youth, the lack of injury to the victim, and his claim that Taplin was the lead perpetrator and beneficiary of the crime. He also argued he had significant support mechanisms in place to assist him on probation. Defendant reiterated that he was remorseful and taking responsibility for the offense. He also noted the

positive attributes reflected in the section 1203.03 evaluation; he noted that he was appropriate in his listening and communication, tolerant of personal feedback and constructive criticism, had been programming well in prison, and, was remorseful and committed to staying out of trouble. Defendant argued he had the aptitude and attitude to comply with probation.

The court denied probation based on the "nature, seriousness, and circumstances of the crime as compared to other instances of the same crime, and the fact that the crime was carried out in a manner that demonstrated criminal sophistication and professionalism. [¶] In those regards, the Court would note that the victim was lured to this robbery by this ruse to sell a PlayStation. That the defendant colluded with others to cause that to happen. I considered the defendant's lack of a prior criminal record. I've also considered carefully all of the support that he has which is numerous and impressive. [¶] I was not persuaded by the defendant's expression of remorse. It appears to me that he continued to minimize his culpability to the probation department. And I never got a sense that he really was accepting responsibility from his the [sic] [section] 1203.03 or the subsequent probation report either. [¶] Therefore, for all of those reasons, the Court is denying probation. And I would note that any one of those reasons, standing alone, would be sufficient reason to justify and warrant a denial of probation

in this case.” The court sentenced defendant to a term of three years.

DISCUSSION

The sole contention on appeal is that the trial court abused its discretion in denying defendant’s request for probation because it failed to “credit the section 1203.03 diagnostic evaluation and other evidence that [defendant] was remorseful and accepting responsibility.” We are not persuaded. Rather, the record reflects the court considered all the relevant factors and evidence, including the section 1203.03 evaluation and defendant’s expressions of remorse, but did not find them persuasive.

“A denial of a grant of probation generally rests within the broad discretion of the trial court and should not and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner. [Citation.]” (*People v. Edwards* (1976) 18 Cal.3d 796, 807.) “Under the abuse of discretion standard, ‘a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’ [Citation.]” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.)

The primary considerations in deciding to grant probation are: “the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss

to the victim; and the needs of the defendant.’ (Pen. Code, § 1202.7.)” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see also rule 4.414.) The section 1203.03 recommendation provides information relevant to the consideration of some of those factors, particularly the prospects for reintegration of the offender into the community, enforcement of conditions of probation and the needs of the defendant. That recommendation should be considered by the trial court in pronouncing sentence, but it is not entitled to any greater weight than other factors, and the trial court is in no way bound by it. (*People v. Tang* (1997) 54 Cal.App.4th 669, 683.)

Here, the court considered the relevant factors, relating to defendant and the offense. The court expressly noted defendant’s lack of a prior criminal record and his significant support. The court properly balanced these factors against the fact that defendant planned this robbery, which involved an elaborate pretext involving at least two other people, defendant used what appeared to be a firearm during the offense and threatened to kill the victim. These are appropriate considerations on which to deny probation. The trial court was not required to accept Dr. Krause’s conclusions about the sincerity of defendant’s expressions of remorse. Moreover, the record reflects that even if the trial court had believed defendant’s expressions were genuine, it would not have granted defendant probation. Based on this record, we cannot find an abuse of discretion.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

DUARTE, J.