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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRONE MAURICE HOOKS,

Defendant and Appellant.

C068585

(Super. Ct. No.  
MCRDCRF090001738)

Defendant Tyrone Maurice Hooks pleaded no contest to corporal injury to a spouse/cohabitant/child's parent (Pen. Code, § 273.5, subd. (a)).<sup>1</sup> On April 7, 2009, the trial court suspended imposition of sentence and placed defendant on three years' formal probation. As conditions of probation, the trial court imposed a 60-day term in county jail with credit for time served, ordered defendant serve 16 hours in the adult work program, and prohibited defendant from the using or possessing alcohol.

On June 23, 2010, defendant admitted violating his probation by driving a motor vehicle after consuming alcohol, and his probation was revoked and reinstated on the

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

same terms and conditions previously imposed, with the added condition he serve an additional 30 days in the adult work program.

On April 22, 2011, a second petition for revocation was filed alleging defendant violated his probation on April 12, 2011, when he was “failed from the Adult Work program . . . .” Following a contested hearing on May 24, 2011, the trial court sustained the allegation. On June 22, 2011, the trial court revoked and reinstated defendant’s probation on same terms and conditions, with the added condition defendant serve 90 days in county jail, with “discretion to release to the work release program . . . or the Home Electronic Confinement program . . . .”

Defendant appeals, contending the probation conditions requiring him to “serve 32 days in the adult work program are unconstitutionally vague because [he] did not have fair warning that he would violate his probation if he worked less than eight hours per week.” In the alternative, he asserts there is no substantial evidence supporting the trial court’s finding that he failed the adult work program. In addition, he claims he is entitled to 30 days of actual custody credit plus 30 days of conduct credit. We shall conclude defendant’s probation was not revoked because he failed to work eight hours a week; and thus, we need not consider his claim that he lacked sufficient notice of any such requirement. We shall further conclude there is ample evidence to support the trial court’s finding defendant failed the adult work program. Finally, we shall decline to address defendant’s claims regarding custody and conduct credits as premature.

#### FACTUAL AND PROCEDURAL BACKGROUND

We dispense with the facts of defendant’s crime because they are unnecessary to resolve this appeal.

Defendant’s probation officer, Robin Gale, testified at the contested hearing. He first met with defendant on March 12, 2010. Gale directed defendant to sign up with the adult work program no later than March 18, 2010; defendant signed up on March 31, 2010. Gale next met with defendant on December 15, 2010. Defendant advised Gale he

had various issues that could interfere with his participation in the adult work program, including a son with cerebral palsy, a blind father, and his own hip condition. Gale directed defendant to report to the adult work program no later than December 23, 2010, bring a doctor's note concerning his own medical issue to that meeting, and discuss his obligations and limitations with the coordinator of the program. Defendant reported to the program on February 16, 2011.

The coordinator of the adult work program, Elizabeth South, testified she first met with defendant on the underlying case on July 6, 2010. Defendant advised her that he did not think he could participate in the adult work program because he had a special needs child and "bad hips." South assured him she had a worksite that could handle his physical restrictions but advised him she would need a note from his doctor detailing those limitations. Defendant returned with a doctor's note seven months later on February 16, 2011. At that time, South assigned defendant to Second Time Around Thrift Store, one of the few light duty worksites that allow people to work in two (as opposed to four) hour increments. South told defendant he had one week "to contact the worksite and schedule his days," and he must complete his workdays by December 31, 2011. She further advised him that after "three no-shows the worksite would send his paperwork back, and [South] would give it to his probation officer; that it was a court order and it would be a probation violation." South did not receive regular reports from worksites; she does not "hear from the worksite until they've completed or they've failed."

On April 12, 2011, South received the following information from defendant's worksite: defendant "had signed up and worked February 24th, one hour; February 28th, two hours; March 1st, three hours; and he had not been back to the worksite since." South took that information to Gale, who filed the underlying revocation petition.

Defendant testified it was his understanding that he had until December 31, 2011, to complete the work program, and it was his intention to do so. He explained that on

March 11, 2011, a second son dislocated his shoulder in a car accident, and on March 14, 2011, he advised his worksite supervisor he “needed to take time off because [his] son couldn’t move his shoulder.” His worksite supervisor told him, “[I]f you take too much time, I will need a replacement.”

The trial court found defendant in violation of his probation, and revoked and reinstated his probation on the same terms and conditions previously imposed, with the added condition he serve 90 days in county jail. The court found defendant (1) had no intention of completing the work program, (2) could not complete the work program by December 31, 2011, as directed; and (3) had failed to show up at least three times, and thus, was not entitled to have until December 31, 2011, to complete the program. The court explained it had “ordered [defendant] more than two years ago to do 16 hours. It [has] yet to be done. And then in June, almost a year ago, [it] ordered him to do another 30 days, which has yet to be done. Probation was very flexible with him. They gave him a half year to show up with medical notes. They didn’t give it, he took it. Then they find him a job, very flexible job, that offers that he can do a two-hour shift. He’s told if he fails to show up three times, that job site will eliminate him from their workforce. In other words, they would declare him as failed. . . . He showed up three days in succession at the end of February and the beginning of March, worked a total of six hours, one, two and then three, and that’s it. Hasn’t done anything. If he’s going to work two hours a day, five days a week, that’s ten hours. They’re asking that he work at least eight hours, and it would take 30 weeks for him to do that and he has to have it done by the end of December. He’s not going to be able to do that. . . . [H]e’s got too many excuses and not enough time. [¶] . . . [¶] We no longer care about the December 31st date. . . . Yes, he had [until] December 31st, but no, he didn’t if he was going to miss dates. And he was missing dates right and left now.”

## DISCUSSION

### I

#### The Trial Court Properly Revoked Defendant's Probation for Failing the Adult Work Program

Defendant initially contends the “[p]robation’s directives regarding the adult work program” are unconstitutionally vague because he was not given “fair warning that he would violate his probation if he worked less than eight hours per week.” This contention fails because the record does not support a finding that defendant’s probation was revoked because he failed to work eight hours per week. To the contrary, the trial court based its ruling on the following findings: defendant had no intention of completing the adult work program; defendant could not complete the adult work program by December 31, 2011, as directed; and defendant failed the work program by failing to show up at least three times. While the trial court observed that “[t]hey’re asking that he work at least eight hours” in concluding that defendant would be unable to complete the work program by December 31, 2011, it did not base its ruling on defendant’s failure to work eight hours a week. Because defendant’s probation was not revoked because he failed to work eight hour a week, we need not address his contention that he did not have notice of any such requirement.

Alternatively, defendant contends the trial court abused its discretion when it revoked his probation for failing the adult work program. More specifically, he argues “there is not substantial evidence that [he] failed the adult work program.” He is mistaken.

At all relevant times, section 1203.2, former subdivision (a) (as amended by Stats. 1989, ch. 1319, § 1, p. 5305),<sup>2</sup> provided in pertinent part: “the court may revoke and

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<sup>2</sup> As part of the criminal justice realignment, the Legislature recently amended section 1203.2. The portion of subdivision (a) quoted above now reads in pertinent part as follows: “the court may revoke and terminate the supervision of the person if the interests

terminate . . . 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 . . . .” Trial courts have very broad discretion in determining probation violations, and only in extreme cases should an appellate court interfere with the discretion of the trial court. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) Proof that a probationer has violated the conditions of probation need be made only by a preponderance of the evidence. (*Id.* at p. 442.) On appeal, we consider “whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.)

Substantial evidence supports the trial court’s determination that defendant failed the adult work program. The evidence adduced at the hearing showed that South advised defendant that he would be in violation of his probation after “three no-shows” at the worksite. Defendant reported to the worksite on February 24, 28, and March 1, 2011, and worked a total of 6 hours. Thereafter, he never returned, and the worksite “failed” him on April 12, 2011.

Defendant claims “there is no evidence that [he] was scheduled to work three times and failed to show up.” He is mistaken. On February 16, 2011, South told defendant he had one week “to contact the worksite and *schedule his days . . . .*” (Italics

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of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision . . . .” (§ 1203.2, subd. (a), as amended by Stats. 2012, ch. 43, § 30.) This change in the statutory language has no effect on the issue presented in this case.

added.) Defendant contacted the worksite, began work on February 24, 2011, and worked a total of three days over the course of a week. The trial court was entitled to infer that defendant scheduled his days as instructed and was scheduled to work beyond that first week. Such an inference is supported by defendant's testimony that he advised his worksite supervisor on March 14, 2011, that he needed to "take time off" to care for his son.

Defendant also argues "[t]here is no evidence that [he] willfully violated his probation conditions" because "[f]amily obligations prevented him from working between March 2 and April 11." Again, we disagree. The evidence showed defendant was required to care for his son, who has cerebral palsy, when he was sick and could not attend school. The evidence also showed defendant's other son dislocated his shoulder on March 11, 2011, and was unable to move his shoulder. Those facts do not establish defendant was unable to work a two-hour shift at anytime from March 2 to April 11, 2011.

This case is unlike *People v. Zaring* (1992) 8 Cal.App.4th 362, cited by defendant, where the trial court summarily revoked a defendant's probation and sentenced her to state prison after she was 22 minutes late to an 8:30 a.m. court appearance because her ride fell through at the last minute due to a child care problem. (*Id.* at p. 366, 375-376.) In reversing the defendant's sentence, the Court of Appeal concluded "the [defendant] was confronted with a last minute unforeseen circumstance as well as a parental responsibility common to virtually every family. Nothing in the record supports the conclusion that her conduct was the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court. However, as a result of last minute circumstances, the appellant was approximately 22 minutes late to court, having driven some 35 miles from her home to the courtroom. Collectively, we cannot in good conscience find the evidence supports the conclusion that the conduct of appellant, even

assuming the order was a probationary condition, constituted a willful violation of that condition.” (*Id.* at p. 379, fns. omitted.)

In contrast here, defendant’s prior disregard of probation directives along with his failure to return to work for over a month, provided ample evidence to support a finding that his failure to report to the worksite between March 2 and April 11, 2011, was due, at least in part, to his irresponsibility and lack of respect for the orders and expectations of the court and its officers. As the trial court explained at the sentencing hearing, it had “ordered [defendant] more than two years ago to do 16 hours. It [has] yet to be done. And then in June, almost a year ago, [it] ordered him to do another 30 days, which has yet to be done. Probation was very flexible with him. They gave him a half year to show up with medical notes. They didn’t give it, he took it.” In short, substantial evidence supports the trial court’s finding defendant failed the adult work program by failing to show up at the worksite at least three times and that the violation was willful.<sup>3</sup>

## II

### Defendant’s Claim That He Is Entitled to Additional Days of Credit Is Premature

Defendant also contends he is entitled to 30 days credit for time served under section 2900.5 and 30 days of conduct credit pursuant to recent amendments to section 4019. As we shall explain, his request is premature.

Section 2900.5, subdivision (a) provides in pertinent part: “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, credited to the period of confinement pursuant to Section 4019, and days served in home detention . . . , shall be credited *upon*

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<sup>3</sup> Because we conclude the trial court’s finding defendant failed the adult work program is supported by substantial evidence, we need not consider whether the trial court’s additional findings--that defendant had no intention of completing, and could not complete, the program by December 31, 2011--are supported by substantial evidence.

*his or her term of imprisonment . . . .*” (Italics added.) As the trial court correctly observed, defendant has yet to be sentenced to a term of imprisonment. If and when that occurs, “[i]t shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section.” (§ 2900.5, subd. (d).)

Accordingly, we find defendant’s claim, which would require us to calculate the number of days to be credited to a term of imprisonment that has yet to be imposed, premature.

Our conclusion is bolstered by the following circumstances. Defendant is seeking credit for the following dates he spent in custody: February 24 to March 4, 2009; March 9 to May 27, 2009; June 24, 2010; and May 24, 2011. On June 22, 2011, however, the trial court ordered him to serve an additional 90 days in the county jail. Any additional time served, will presumably result in additional credit. Moreover, the record reveals that on a third petition for revocation of probation was filed on January 30, 2012. The outcome of that petition is not known.

#### DISPOSITION

The June 22, 2011, order revoking and reinstating defendant’s probation is affirmed.

BLEASE, Acting P. J.

We concur:

MURRAY, J.

HOCH, J.