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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. TODD ALLEN MARSHALL, Defendant and Appellant.	C068600 (Super. Ct. No. 07F9046)

After pleading no contest to furnishing a minor with marijuana and annoying or molesting a child, defendant Todd Allen Marshall was granted three years of formal probation. Defendant was subsequently found in violation of his probation and sentenced to prison. On appeal, defendant contends there was insufficient evidence he willfully violated his probation. We disagree and affirm the judgment.

BACKGROUND

Underlying Offense

Defendant and three minors (two girls and one boy) were in the tennis court area of Shasta High School. Defendant loaded a

pipe with marijuana and took turns smoking the marijuana with the minors.

After smoking the marijuana, defendant initiated a game of "truth or dare," during which he asked one of the minor girls (who was developmentally disabled) to take off her clothes. The girl refused so defendant took his penis out of his pants and asked her to touch it. Then, despite her telling him to stop, defendant put his hands down the girl's pants, penetrating her vagina with his finger.

In April 2008 defendant pleaded no contest to furnishing a minor with marijuana (Health & Saf. Code, § 11361, subd. (a)) and annoying or molesting a child (Pen. Code, § 647.6, subd. (a)). In exchange for his plea, the court suspended imposition of sentence and placed defendant on formal probation for three years.

First Petition for Revocation of Probation

In November 2010 the Shasta County Probation Department (department) filed a petition to revoke defendant's probation, alleging defendant violated his probation by failing to meaningfully participate in and complete a recognized adult sex offender treatment program. The department also alleged defendant violated his probation by failing to keep his probation officer informed of his whereabouts on a daily basis.

Second Petition for Revocation of Probation

In January 2011 the department filed a second petition to revoke defendant's probation. The department alleged numerous violations: (1) defendant failed to inform the law enforcement

agency with which he last registered within 10 days of relocating; (2) defendant failed to provide his probation officer with a copy of his registration paperwork; (3) defendant failed to keep his probation officer informed of his whereabouts on a daily basis; and (4) defendant violated probation by ignoring his probation officer's instruction not to have contact with Melissa Hicks without the officer's written permission.

Probation Revocation Hearing

Rick Presta, owner and operator of the Cedar Rose Program, a recognized sex offender treatment program, testified at defendant's probation revocation hearing. Presta testified that defendant formerly participated in the Cedar Rose Program following a referral from the department in 2008.

Presta terminated defendant from the program in November 2010 for failing (in Presta's opinion) to make "meaningful progress" in the treatment program. Presta explained that defendant "had been . . . ignoring the directives of the program, he ignored the directives of his [probation officer] in the areas of -- of not having contact with a certain individual, and in the area of seeking mental health treatment." This was not the first time defendant had been terminated from the program.

In Presta's opinion, defendant was suicidal and needed mental health treatment. In fact, on at least five separate occasions, Presta told defendant to go to the Shasta County Mental Health Department and get treatment. Defendant, nevertheless, failed to do so. Defendant apparently went to the

Shasta County Mental Health Department but, according to Presta, "from what I understand they did not accept him for treatment. I don't have any documentation to that effect. That's just my understanding."

Defendant's probation officer, Susan Vonasek, also testified. She informed the court that defendant had not updated his Penal Code section 290 registration with the department since he registered as a transient in November 2010. She also said that on four occasions defendant had failed to inform her of his whereabouts in violation of her instructions.

Vonasek also testified that she specifically instructed defendant not to contact Melissa Hicks. During an inspection of defendant's phone on January 6, however, Vonasek discovered a phone call between defendant and Hicks that lasted over 14 minutes. Hicks admitted to initiating the call, and she asked Vonasek to lift the "no contact" directive.

At the conclusion of the hearing, the trial court found by a preponderance of the evidence that defendant failed to meaningfully participate in and complete a recognized adult sex offender treatment program. The court also found by a preponderance of the evidence that (1) defendant failed, on a few occasions, to keep Vonasek informed of his whereabouts on a daily basis; (2) defendant failed to provide Vonasek with a copy of his registration paperwork; and (3) defendant had contact with Hicks in violation of Vonasek's directive that defendant not have contact with Hicks without Vonasek's written

permission. Accordingly, the court revoked defendant's probation.

DISCUSSION

Defendant contends the trial court's order revoking his probation was unsupported by substantial evidence and was thus an abuse of discretion.

Under Penal Code section 1203.2, subdivision (a), "a court is authorized to revoke probation 'if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation . . . .'" (*People v. Rodriguez* (1990) 51 Cal.3d 437, 440, fn. omitted (*Rodriguez*).)

The prosecution must establish a violation of probation by a preponderance of the evidence, and we review the court's determination on appeal for an abuse of discretion. (*Rodriguez*, *supra*, 51 Cal.3d at pp. 444-445.) "'[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. . . .'" (*Id.* at p. 443.) The court's discretion will not be reversed unless it was arbitrary or capricious. (*People v. Chandler* (1988) 203 Cal.App.3d 782, 788.) It is defendant's burden to establish an abuse of discretion. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)

Defendant argues the court revoked his probation primarily because he willfully failed to meaningfully participate in a sex offender treatment program. He further contends that determination was not supported by substantial evidence because

"[t]here was no evidence offered at [defendant's] hearing that [defendant] had been offered services at Shasta County (only to later decline)." We are not persuaded.

Contrary to defendant's claim on appeal, his failure to meaningfully participate in the Cedar Rose Program was well-established by the evidence. Presta told defendant no fewer than five times to get mental health treatment for his suicidal ideations. Defendant failed to get the treatment. Even if we accept defendant's interpretation of the testimony (i.e., that he once tried to get treatment but was rejected), his claim fails. First, he had to be repeatedly told to get treatment before he even attempted to do so. Second, after his effort to obtain treatment failed, he made no additional efforts to obtain treatment. Third, this was not defendant's first termination from the Cedar Rose Program. This lackadaisical approach to obtaining treatment in no way qualifies as "meaningful" participation in a sex offender treatment program.

Moreover, defendant's failure to obtain mental health treatment was not the only reason he was terminated from the Cedar Rose Program. Defendant also was terminated for failing to follow the probation officer's directive not to have contact with Melissa Hicks.

Furthermore, while defendant's failure to meaningfully participate in and complete a sex offender treatment program was the "most concerning" of defendant's probation violations, it certainly was not the only one. In addition to numerous reporting violations, defendant's contact with Melissa Hicks

also violated the terms of his probation. Thus, there was more than sufficient evidence to support the trial court's decision to revoke defendant's probation and sentence him to prison. We find no error.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

HULL, J.

ROBIE, J.