

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES LEE ADAMS,

Defendant and Appellant.

C069233

(Super. Ct. No.
CM034325)

Defendant James Lee Adams pled guilty to inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)) and was placed on probation. Defendant later admitted to violating his probation, and the court ordered execution of the previously imposed four-year prison sentence. On appeal, defendant contends the trial court abused its discretion in refusing to reinstate defendant's probation. Finding no abuse of discretion, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of March 17, 2011, Chico Police Department officers responded to a restaurant parking lot after receiving a report of domestic violence. At the scene, the officers contacted Erika Westlake, the victim. Westlake, who was seven months pregnant, told the officers that defendant was her boyfriend; they had been living together for two years.

According to Westlake, defendant, who was no longer at the scene, had been "extremely drunk" that day and the two had been involved in a verbal argument after she had asked him to come home with her and he refused. The argument escalated and defendant pushed Westlake; Westlake pushed defendant back and he punched her in her left eye. Defendant then shoved Westlake to the ground.

The officers at the scene noted that Westlake's left eye was swollen; there was a small cut underneath it, and a three-to four-inch long and two-inch wide abrasion on her right forearm. The victim was later treated for those injuries at the scene by paramedics.

About an hour later, Westlake contacted law enforcement and reported that defendant was inside their apartment. Officers went to the apartment and made contact with defendant, whom they described as "extremely verbally abusive." Defendant, dressed only in his underwear, was staggering, cursing at the officers, and vomiting on himself. He was arrested for inflicting corporal injury on a cohabitant. When officers attempted to

advise defendant of his constitutional rights, he refused to listen but continued muttering: "I didn't touch that bitch."

Defendant was subsequently charged with inflicting corporal injury on a cohabitant (Pen. Code,¹ § 273.5, subd. (a)). It was further alleged that defendant had, within the meaning of section 273.5, subdivision (e)(2) and within the seven preceding years, suffered a previous conviction of section 243, subdivision (a).

Defendant pled guilty to the charged offense and, in exchange, the prosecution agreed there would be no initial state prison commitment.

The court later sentenced defendant to the upper term of four years in state prison, but found the matter to be an "unusual case" (§ 1203, subd. (e)(4)), and stayed execution of the prison sentence pursuant to the plea agreement on the condition that defendant successfully complete three years of felony probation, which included various terms and conditions.² The conditions included completion of a residential substance abuse program of at least six months in duration and service of 120 days in jail. Further, the trial court issued a domestic violence protective order, in part directing that defendant

¹ Further undesignated statutory references are to the Penal Code.

² The court also terminated probation in an unrelated case, case No. CM032374, and imposed a terminal sentence of one year, "to be served in any penal institution, to run concurrently with any other time that's being served."

"have no personal, electronic, telephonic, or written contact" with Westlake; an identical "no contact" order was also made a condition of probation. As part of his plea, defendant also agreed to waive his custody credits.

No more than two days after the plea, defendant's probation officer received a report indicating defendant had been contacting the victim by telephone while incarcerated in the Butte County Jail. The probation officer reviewed defendant's inmate log and found "at least 27" phone calls made by defendant to the victim. To conceal his activity, defendant used another inmate's "PIN" (personal identification number) to place the calls.

The probation officer also listened to one of the phone calls between defendant and the victim. In that conversation, defendant made a number of statements regarding his case, including his direction to the victim to deposit money in his jail account, as well as his intention to enroll in a treatment program where he would be permitted to call the victim at will, or at least be able to do so without fear of detection.

The Probation Department filed a probation revocation petition alleging that defendant had violated the terms and conditions of his probation by telephonically contacting the victim. Defendant admitted the charged violation. The trial court subsequently revoked defendant's probation and ordered execution of the previously imposed four-year prison sentence.

Defendant appeals with a certificate of probable cause.

DISCUSSION

Defendant contends the judgment must be reversed because the trial court abused its discretion by failing to reinstate defendant's probation. Specifically, defendant asserts the violation of probation was technical, couches the violation as minor, and claims it "should have been addressed through a few additional days in local custody."

Defendant also argues the commitment offense was minor because the victim did not suffer serious or permanent injury, because the "victim's injuries were minor," because defendant was not armed with a weapon, and because defendant's record was "minor" and "only" contained one prior domestic violence conviction. Accordingly, defendant contends, it was an abuse of discretion not to reinstate his probation.

We disagree.

The court may modify, revoke, or terminate probation if the probationer has violated any term or condition of probation "if the interests of justice so require." (§ 1203.2, subd. (b).) When considering whether to revoke probation, the court's inquiry is directed "to the probationer's performance on probation." (*People v. Beaudrie* (1983) 147 Cal.App.3d 686, 691.) "Thus the focus is (1) did the probationer violate the conditions of his probation and, if so, (2) what does such an action portend for future conduct?" (*Ibid.*) The trial court is vested with broad discretion in determining whether to reinstate probation following revocation of probation (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1315), and the trial court's

decision to revoke probation is reviewed for an abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443 (*Rodriguez*); *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) *Rodriguez* held " . . . only 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. . . ." (*Rodriguez, supra*, 51 Cal.3d at. p. 443.)

Contrary to defendant's claim, the nature of his multiple violations of probation was not minor. Defendant repeatedly and knowingly violated a critical condition of his probation (as well as the protective order) almost immediately after it was imposed. Further, defendant violated the condition "at least 27 times." His violations were intentional and serious, and demonstrated his readiness to disregard his conditions of probation. Worse, he conceived at least two different ruses to conceal his misconduct.

Moreover, we disagree with defendant's claim that the underlying crime was a "minor" offense. Defendant pushed, punched, and shoved to the ground a woman who was seven months pregnant with his child. The trial court showed clemency to defendant when it granted probation in accordance with the plea agreement; it clearly acted within its discretion by refusing to reinstate defendant's probation under the circumstances shown by this record.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

NICHOLSON, Acting P. J.

HOCH, J.