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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY RALPH ABRARIA,

Defendant and Appellant.

C069615

(Super. Ct. No.
MCYKCRBF090000434)

After revoking and reinstating defendant Gregory Ralph Abraria's probation multiple times, the trial court revoked and terminated his probation and sentenced him to state prison. On appeal, defendant claims the trial court abused its discretion in revoking his probation because the evidence did not show a "willful violation." We disagree and shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant's Conduct

On June 29, 2009, defendant pled no contest to three of seven charged counts: assault with a deadly weapon by means likely to produce great bodily injury (Pen. Code,¹ § 245, subd. (a)(1)), corporal injury to a spouse/cohabitant/child's parent (§ 273.5, subd. (a)), and misdemeanor obstructing or delaying a peace officer (§ 148, subd. (a)(1)). On August 12, 2009, the trial court sentenced defendant to five years in prison and stayed execution of the sentence, placing defendant on a five-year term of felony probation.

Violations of Probation

In October 2009, defendant was charged with a violation of his probation (VOP) for his use of alcohol and drugs; the trial court revoked and reinstated his probation in March 2010, with additional conditions.

On March 17, 2011, defendant's probation officer filed a VOP alleging defendant failed to provide proof of enrollment in a batterer's treatment program by the deadline, failed to report to the probation office for an appointment three days prior, and failed to provide a current address.

¹ Further undesignated statutory references are to the Penal Code.

On April 12, 2011, defendant successfully petitioned the court for release on his own recognizance while awaiting his VOP hearing, based on his promise to stay within a five-mile radius of the town of Yreka, immediately meet with his probation officer, and comply with all of the existing conditions of his probation. At the hearing, defendant's attorney represented that although defendant had previously been confused because he also had a pending Child Protective Services (CPS) case that required urine testing and thought one could count toward the other, he was "very clear now that he need[ed] to maintain dual contact" and "keep the CPS responsibilities and the criminal court system responsibilities jiving with each other." Defendant was present in custody in court when this representation was made.

Defendant's probation officer, Susan George, established a testing schedule for defendant; starting April 13, 2011, he was to test three times weekly. On April 26, 2011, George sought a warrant for defendant's arrest and filed a second VOP, alleging that he had failed to test on six occasions since April 13, 2011, and had absconded. George filed a third VOP on April 29, 2011, alleging that defendant refused to provide a urine sample after his arrest on April 28, 2011.

Probation Violation Hearing

On June 16, 2011, the court held a hearing on defendant's three pending VOPs. At the hearing, the People presented evidence that defendant was aware that he was required to test every Monday, Wednesday and Friday, and that he was not testing regularly for CPS. Specifically, George left defendant a voicemail on April 15, 2011, reminding him of his responsibility to test. He left George a return message, informing her that he was having a "lazy day" at the park, and asking that he not be required to test that day. George went on vacation for a week on April 15; she had no message from defendant upon her return, and he had not tested in her absence.

George further testified that on February 28, 2011, defendant informed George that because of his finances, his instructor had extended his payment deadline for the batterers' treatment program. However, defendant ultimately failed to provide actual proof of enrollment by March 7, 2011. As for defendant's alleged failure to provide George with his current address, she testified that on one occasion, defendant gave her only the name of a highway, but not a town or building number. On another occasion, he was not staying in the hotel room he reported.

Correctional officer Paul Grove testified that when officers brought defendant into custody on April 28, 2011,

defendant was "agitated" and would not test until he had an attorney present. Although the station provided a telephone, he did not call an attorney. This, effectively, was a refusal. George testified that defendant's conditions of probation did not allow him to refuse testing.

Defendant testified on his own behalf at the hearing. He testified that George had not given him definite dates for completing his probation obligations and that he had transportation problems and difficulty getting in touch with George. He attempted to keep George apprised of his location, but it was sometimes impossible, and because he had no money and was homeless, he had to walk to Tulelake from Yreka after promising not to leave the area. It took him two days, during which he was out of contact with George. He described rigorous testing requirements for his CPS case and explained that he declined to test when taken into custody because he was "confused."

In argument, defense counsel posited that defendant's violations were not willful; he was naive and confused, and lacked the resources to meet probation requirements. The trial court found that the People had proved all of the allegations by a preponderance of the evidence and defendant had violated his probation. On October 27, 2011, after noting defendant's probation report recommended denial of reinstatement and lifting

the stay of execution on the five-year prison sentence previously imposed and hearing defendant's statement and argument from counsel, the court revoked and terminated defendant's probation, ordering execution of the five-year prison sentence.

DISCUSSION

Defendant contends the trial court abused its discretion when it found he had willfully violated his probation.

I

The Law

In a probation revocation proceeding, the People need only prove a willful violation by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 446-447 (*Rodriguez*).) On appeal, our inquiry is to determine whether, upon a review of the evidence in the light most favorable to the People, any rational trier of fact could have found a willful violation of probation. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) Thus, "[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[.]" (*Rodriguez, supra*, 51 Cal.3d at p. 443.)

II

Analysis

Here, defendant argues that he "should not have had his probation revoked because the orders of the Probation Department [were] not conveyed in a manner that he could understand." Relying in part on *People v. Zaring* (1992) 8 Cal.App.4th 362, 378-379 (*Zaring*) and *People v. Buford* (1974) 42 Cal.App.3d 975, 985-987 (*Buford*), defendant argues that where difficulties such as defendant's financial status, confusion and lack of transportation exist, the totality of the circumstances must be considered in determining whether he was willfully noncompliant. Defendant adds that the People made no showing that he "was not doing his best to comply, within the limits of his understanding and resources[,] " with his conditions of probation.

Zaring and *Buford* were two of the extreme cases predicted by *Rodriguez, supra*. In *Zaring*, the trial court revoked the defendant's probation for being 22 minutes late to court. (*Zaring, supra*, 8 Cal.App.4th at pp. 366-367, 375, 377.)

In *Buford*, there was scant evidence that the defendant's probation officer made any meaningful effort to contact the defendant regarding his conditions of probation and later noncompliance. (*Buford, supra*, 42 Cal.App.3d at pp. 978, 984-985, 987.) There, the appellate court held that revoking

probation based on so little evidence of willful violation was an abuse of discretion. (*Buford, supra*, at p. 985.)

The facts of this case are vastly distinguishable from *Zaring* and *Buford*. Here, although defendant testified that he had extreme financial and transportation difficulties and was confused about his testing requirements, the trial court was not required to accept defendant's testimony as true, and instead could credit the copious amounts of evidence described *ante* that tended to show defendant's multiple instances of noncompliance were willful. As the People note in their briefing, the trial court had previously questioned defendant's credibility and it was entitled to do so again, as the finder of fact.

Here, as we have summarized *ante*, the People presented a great deal of evidence, for the most part uncontradicted, of multiple instances of defendant's blatant disregard for his conditions of probation. Viewed in the light most favorable to the trial court's order revoking probation, the record reveals ample evidence that the People proved defendant's multiple willful violations of probation by a preponderance of the evidence. The trial court did not abuse its discretion when it so found.

DISPOSITION

The judgment is affirmed.

_____ DUARTE _____, J.

We concur:

_____ ROBIE _____, Acting P. J.

_____ MAURO _____, J.