

NOT TO BE PUBLISHED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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

JACQUELINE MARIE RIDDLE,

Defendant and Appellant.

C069760

(Super. Ct. No.
CM027452)

Defendant Jacqueline Marie Riddle appeals from an order of the Butte County Superior Court revoking her probation and imposing a previously stayed five-year prison term. Defendant contends the trial court abused its discretion in finding she had violated the original terms of her probation. Disagreeing, we affirm the judgment.

PROCEDURAL AND FACTUAL HISTORY

On May 15, 2008, in exchange for the dismissal of another count against her, defendant pleaded no contest to grand theft and admitted the service of two prior prison terms. On June 24,

2008, defendant was sentenced to state prison for five years (three years for the theft plus two years for the service of two prior prison terms), execution of sentence was stayed and defendant was placed on probation for five years.

On August 19, 2008, defendant admitted being in violation of probation by testing positive for methamphetamine. Defendant was ordered to enroll in a drug treatment program, which she did, and three months later probation was reinstated on the original terms and conditions.

On December 2, 2009, defendant admitted being violation of probation by failing to report to her probation officer. Probation was reinstated conditioned upon, inter alia, service of 120 days in county jail.

On July 1, 2010, defendant admitted violating her probation by testing positive for methamphetamine and marijuana. On August 24, defendant was released from custody on her own recognizance, conditioned upon her residing in a drug treatment program pending further disposition of her case. On March 24, 2011, the court reinstated probation and ordered defendant into a drug treatment program.

On August 4, 2011, defendant admitted violating her probation by testing positive for methamphetamine. On November 3, 2011, the court imposed the previously stayed five-year prison term.

DISCUSSION

Defendant contends the trial court abused its discretion in failing to reinstate probation and imposing the state prison

term because she was, as she readily admitted, having difficulty breaking her methamphetamine addiction and her violations neither hurt anyone other than herself nor did they endanger society.

The People's initial response is that defendant has forfeited her claim because "she did not object when the court imposed the state prison sentence or argue that the court abused its discretion in doing so." In any event, the People continue, the claim lacks merit.

Defendant's argument is not forfeited because she argued for a reinstatement of probation essentially on the same grounds she repeats on appeal. However, we conclude the court did not abuse its discretion in imposing the state prison term.

"[Penal Code] [s]ection 1203.2, subdivision (a), authorizes a court 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. [Citation.] "When the evidence shows that a defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period. [Citations.]" [Citation.]' [Citation.] The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. [Citations.] [¶] We review a probation revocation decision pursuant to the substantial evidence standard of review [citation]" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772-773.)

At the commencement of the sentencing hearing, the trial court stated it had read defendant's original probation report, two supplemental probation reports, and letters and memoranda from defendant, the probation department, defendant's counsel, and a drug treatment facility. The court declined to reinstate defendant's probation because she had been on probation but was unsuccessful, her prior convictions and sustained petitions as a juvenile were numerous and of increasing seriousness, she was on parole when the instant crime was committed, and she is clearly addicted to a controlled substance.

The trial court's decision is supported by record. Defendant violated the conditions of her probation four separate times. She has five prior felony convictions, 11 misdemeanor convictions, four parole violations, and two additional probation violations. Against this record, defendant claims she is trying to beat her methamphetamine addiction and some failure must be expected. Defendant's position is not well taken. The bottom line is that it is utterly clear from the record that defendant cannot beat her addiction problem while on probation. Defendant needs institutionalized treatment and the court so recognized. Consequently, there was no abuse of discretion by the court in failing to reinstate defendant's probation.

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

RAYE, P. J.

BLEASE, J.