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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Shasta)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE SPYRO VERONIKIS,

Defendant and Appellant.

C070619

(Super. Ct. Nos. 07F8667, 10F38)

On February 13, 2008, defendant George Spyro Veronikis pleaded guilty to possession of codeine (Health & Saf. Code, § 11350, subd. (a)) and was placed on three years of Proposition 36 probation in Shasta County case No. 07F8667.

On August 13, 2008, defendant was charged in Tehama County case No. NCR74864 with felony evading an officer (Veh. Code, § 2800.2, subd. (a)), misdemeanor driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd.

(a)), and misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).<sup>1</sup> Defendant pleaded guilty to felony evading. The trial court imposed a three-year state prison term, stayed execution of sentence, and placed defendant on five years of formal probation with 270 days in county jail.

On February 20, 2009, defendant admitted violating his probation in Shasta County case No. 07F8667 based on the Tehama County offense. The trial court terminated defendant's Proposition 36 probation and converted it to formal probation.

On November 24, 2009, defendant admitted violating his probation in Shasta County case No. 07F8667 by being intoxicated in public. (§ 647, subd. (f).) Probation was reinstated subject to a 30-day work program.

Tehama County case No. NCR74864 was transferred to Shasta County in December 2009. The case was designated Shasta County case No. 10F38.

On April 15, 2011, defendant admitted violating probation by shoplifting from a Macy's (Pen. Code, §§ 837/488), and pleaded no contest to misdemeanor driving under the influence of alcohol or drugs (Veh. Code, § 23152) in Shasta County case No. 10CTR8325. On July 21, 2011, sentencing was continued so defendant could participate in a substance abuse program.

On August 26, 2011, Shasta County filed a probation revocation petition alleging defendant violated probation by: (1) being discharged from rehabilitation for relapsing; (2) after his readmittance, being discharged for unsatisfactory compliance; (3) failing to notify probation of his whereabouts after discharge; and (4) failing to submit a written monthly report following April 29, 2011. The first two allegations were dismissed. Following a contested hearing, the trial court sustained the fourth allegation and found

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

insufficient evidence to sustain the third allegation. The trial court revoked probation in both cases, executed the previously stayed three-year state prison term in case No. 10F38, and imposed a consecutive eight-month state prison term in case No. 07F8667.

On appeal, defendant contends there is insufficient evidence to support the order revoking probation, and his sentence violated the plea agreement. We shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

We dispense with the facts of defendant's crimes as they are unnecessary to resolve this appeal.

Among defendant's probation conditions was that he "report regularly in writing or in person, at least once a month, or as directed by the probation officer."

Defendant's probation officer, Andra Hardy, testified at the contested probation violation hearing. She did not receive any monthly reports from defendant from April 29, 2011, through September 2011, when the case was assigned to another officer. Defendant met her at her office on August 15, 2011, but this did not excuse him from submitting his monthly reports.

Defendant entered a residential rehabilitation program in Vacaville on May 26, 2011. He was discharged on July 29, 2011, and readmitted on August 2, 2011.

The monthly report forms were available in the probation department lobby. Hardy normally directed her defendants to take the reports before they left, but she could not specifically recall whether she said so to defendant. It was her custom to tell probationers who leave the county, particularly if they were entering long-term programs, to take forms so that they can mail their monthly reports. It was the probationer's responsibility to take care of reporting.

The trial court found defendant failed to make monthly reports and sustained the petition.

Douglas Reid, defendant's substance abuse counselor and social worker, testified at the sentencing hearing. Defendant's attendance was perfect up until the time he was taken into custody. He continued to work on the program while he was in custody. His participation and motivation were satisfactory in every respect, and he met all of Reid's expectations. Defendant's prospects for staying clean and complying with the terms of his probation were excellent.

Citing defendant's numerous second chances, repeat offending, and probation violations, the trial court revoked probation.

## **DISCUSSION**

### **I. Sufficiency of Evidence re Violation of Probation**

Defendant contends there is insufficient evidence to support the trial court's finding that he violated his probation, and that it was an abuse of discretion to revoke probation. We disagree.

#### ***A. Reporting Requirement***

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.)

Defendant notes that the probation officer could not remember whether she specifically told defendant to take forms with him to the residential treatment facility, although it was her practice to do so. He infers that the residential program, located in Vacaville, was “a ‘lockdown’ environment, from which appellant was not allowed to leave.”<sup>2</sup> Defendant claims that he was thus incapable of complying with the reporting requirement. Relying on *People v. Zaring* (1992) 8 Cal.App.4th 362 (*Zaring*) and *People v. Buford* (1974) 42 Cal.App.3d 975 (*Buford*), defendant contends this amounts to a failure of proof that his violation was willful. While a trial court may not revoke probation unless the evidence supports a conclusion that the probationer's conduct constituted a willful probation violation (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295), neither the facts nor his cases support defendant’s contention.

Although Hardy could not remember whether she in fact gave the forms to defendant, it was her habit to do so for probationers in defendant’s situation. This was admissible as habit evidence, and supports an inference that Hardy acted in accordance with her custom by giving defendant the reporting forms. (Evid. Code, § 1105; *People v. Hughes* (2002) 27 Cal.4th 287, 337 [habit evidence admissible “ ‘to prove conduct on a specified occasion in conformity with the habit or custom’ ”].) The trial court could reasonably conclude that defendant had the necessary forms and was capable of submitting written reports. Furthermore, defendant’s inference that reporting was impossible because he could not access the reports or the probation department is contradicted by his meeting Hardy in person on August 15, 2011, during the time he was failing to submit reports.

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<sup>2</sup> While there was no evidence at the hearing regarding the nature of the treatment facility, Hardy did not expect defendant to report in person while he was in the Vacaville facility.

Both *Zaring* and *Buford* are inapposite. In *Zaring*, the court found that the defendant had not willfully violated her probation when she was confronted with last-minute, unforeseen circumstances and her conduct did not show irresponsibility or disrespect for court orders. (*Zaring, supra*, 8 Cal.App.4th at p. 379.) In *Buford*, the sentencing judge told defendant simply to “ ‘bear in mind’ ” section 290’s registration requirement while directing defendant’s probation officer to ensure his compliance with it. (*Buford, supra*, 42 Cal.App.3d at p. 986.) Defendant’s probation was later revoked for failing to register, despite the absence of evidence the probation officer followed the court’s directive. (*Id.* at p. 987.) *Buford* reasoned, “[t]o revoke [the defendant’s] probation for his noncompliance with section 290, while excusing the noncompliance of the sentencing court, the jail officials, and/or the probation officer constituted an abuse of discretion.” (*Ibid.*) By contrast, defendant was informed that he had to report, and had the means to do so. Substantial evidence supports the implied finding that his violation was willful.

### ***B. Counselor Reid’s Testimony***

Defendant also contends that it was an abuse of discretion to revoke probation because the trial court did not give enough credence to Reid’s testimony regarding defendant’s compliance with his substance abuse rehabilitation program and the nature of the alleged violation.

Section 1203.2, former subdivision (a) provides a court may revoke 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 are granted great discretion in revoking probation and we will not interfere with the trial court’s decision to revoke probation absent an abuse of discretion. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.)

As previously detailed, defendant was given an extraordinary number of opportunities to avoid state prison, even after repeated reoffending and probation violations. Notwithstanding his recent, commendable performance on probation, defendant had no margin for error. It was not an abuse of discretion to revoke probation.

## **II. Alleged Sentencing Error**

Defendant contends the three-year eight-month sentence violated the terms of his plea agreement, which limited his sentence to three years. His contention is frivolous.

His claim is based on the following statement from the trial court on April 15, 2011, when defendant admitted violating probation and pleaded no contest to an unrelated misdemeanor: “You also understood you’ll be admitting your violations of probation, and the promise there is that should you be sentenced to state prison, the People won’t seek a consecutive sentence on the second felony, so your one and only prison sentence would be three years in state prison, or if the Court were to reinstate probation, then you could be placed back on probation with some appropriate jail sentence.”

Defendant argues that his sentence violates this promise, and thus deprives him of due process of law.

Defendant overlooks the very next statement from the trial court: “Of course, if you are later placed on probation and later violate your probation, then you’re back to facing three years eight months; do you understand that?” Defendant replied that he understood.

Defendant’s sentence is consistent with the trial court’s second statement. He was placed on probation instead of a state prison sentence, and later had his probation revoked. Under the terms of the plea agreement, his sentence was three years eight months. As this was the term imposed, there was no violation of the plea.

**DISPOSITION**

The judgment is affirmed.

\_\_\_\_\_ BUTZ \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.

\_\_\_\_\_ DUARTE \_\_\_\_\_, J.