Filed 7/11/19 P. v. Martin CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE, Plaintiff and Respondent, v. BRANDEN SCOTT MARTIN, Defendant and Appellant.	C087538 (Super. Ct. No. 62160142)

Following a contested hearing, the trial court found true an allegation that defendant Branden Scott Martin willfully violated a condition of his parole by failing to complete a polygraph examination. On appeal, defendant contends the court's finding was not supported by substantial evidence. We disagree and affirm the judgment.

BACKGROUND

The California Department of Corrections and Rehabilitation filed a petition for revocation of parole, alleging that defendant was on parole following a conviction of

violating Penal Code section 288, subdivision (a),[1] and violated a condition of his parole by failing to complete a mandatory sex offender polygraph examination. Among defendant's parole conditions, he was required to take a polygraph to facilitate his treatment program at New Beginnings Sex Offender Treatment. During the hearing on the petition, defendant's parole agent testified that when defendant showed up for the examination, he informed the examiner that he was having chest pains and anxiety. He told the examiner that "his chest pains and anxiety are limited to polygraph exams and parole proceedings." The examiner declined to conduct the examination due to defendant's comments about his health and told defendant that he needed to provide documentation of his health condition to his parole agent. Defendant did not do so.

Defendant was scheduled for treatment the following month, and the parole agent arranged for a polygraph exam without informing defendant ahead of time, to reduce his pre-exam anxiety. He again claimed he was experiencing chest pain. While defendant's parole agent did not believe him, the examiner again declined to conduct the examination because of defendant's claim of distress and advised him to seek medical attention. He went to the emergency room but was released the same day; he returned to the parole office with documentation of a panic attack.

Defendant was scheduled to take polygraph examinations seven times while on parole in California, but he only completed one. On several occasions, he would hold his breath or purposely manipulate his breathing so that the examiner could not correctly score his polygraph. Prior to his transfer to California, defendant completed a polygraph in Wisconsin that showed he was in violation of the conditions of his parole. Defendant testified he suffered from "[a]nxiety and depression as well as a disorder called Ehlers-

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[1] Further undesignated statutory references are to the Penal Code.

Danlos" that caused him anxiety about taking polygraphs and dealing with authority figures.

The trial court ruled, "Based upon the evidence that I've heard here today, it is clear to me that [defendant], for any number of different reasons, but nonetheless, has failed to complete the polygraph examinations. So he is in violation of the terms and conditions of parole." The court directed defendant to serve 180 days in the county jail and ordered his parole reinstated under the same terms, noting, "This is the second and third violation of failure to complete a polygraph examination."

DISCUSSION

Defendant contends that the court's finding of a parole violation was not supported by substantial evidence.[2] He argues that he did not *willfully* fail to comply with the polygraph examination parole condition because he presented himself for the examinations and was turned away by the examiner. We disagree.

We will uphold a trial court's finding of a parole violation when it is supported by substantial evidence.[3] (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) Here, substantial evidence supports the trial court's decision. As a condition of his parole,

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[2] The Attorney General argues that defendant's claim on appeal is moot because he has already completed his parole violation term. Defendant argues that the parole revocation may be used as part of a future sentencing determination and future parole violation terms. The Attorney General relies on *People v. DeLeon* (2017) 3 Cal.5th 640, where during the pendency of the defendant's appeal, he completed the jail term imposed for the parole violation *and* he was discharged from parole. As a result, the court reasoned that it "could offer no relief regarding the time he spent in custody or the parole term that has already terminated." (*Id.* at p. 645.) This case is distinguishable because defendant is still on parole. Additionally, this parole violation could be a factor in determining the length of defendant's parole or future parole-violation terms, which is an adverse consequence of the parole violation. (See § 3000, subd. (b)(6).) Accordingly, we reach the merits.

[3] Parole and probation revocation hearings are equivalent for the purpose of our review. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.)

defendant was required to enroll in and complete a sexual offender treatment program and "agree to polygraph examinations while on parole supervision." The record demonstrates that defendant was physically capable of taking polygraphs because he had previously completed two prior examinations. The record further shows that defendant had an incentive to avoid taking polygraphs because he faced adverse consequences during a prior examination in Wisconsin, which resulted in a parole violation and his return to California.

During his first failed examination, the examiner advised defendant that he needed to provide documentation of his health condition to his parole agent. Defendant never presented any documentation. During the hearing, he claimed that he suffered from anxiety about taking polygraphs and dealing with authority figures but again failed to present medical documentation or testimony to support this claim. Further, as we have described, defendant had a history of thwarting the scoring of his examinations by holding his breath and otherwise manipulating his breathing. Although defendant disputes the accuracy of this testimony, we review the record in the light most favorable to the judgment and conclude that there was abundant evidence of a pattern of willful violations. Accordingly, there was substantial evidence that defendant's conduct, in failing to comply with the polygraph examination requirement, was willful.[4]

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[4] To the extent defendant suggests he never actually agreed *to take* the polygraphs, but rather that he only agreed *to agree* to take them, we agree with the Attorney General that this argument is unreasonable and add our observation that it is also spurious.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Murray, J.