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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

REECE PETER HOLLIDAY,

Defendant and Appellant.

D060508

(Super. Ct. No. SCN279332)

APPEAL from a judgment of the Superior Court of San Diego County,
Timothy M. Casserly, Judge. Affirmed.

On February 15, 2011, Reece Peter Holliday was convicted of one count of burglary of an inhabited dwelling in which a person was present. (Pen. Code,¹ §§ 459, 460, 667.5, subd. (c)(21). On April 19, 2011, Holliday was sentenced to five years'

¹ All statutory references are to the Penal Code unless otherwise noted.

formal probation. Holliday was released on probation on April 20, 2011, and arrested for potential probation violation on April 27, 2011.

On August 8, 2011, following an evidentiary hearing, Holliday was found to have violated his probation. On August 31, 2011, Holliday was sentenced to the low term of two years.

On appeal, Holliday first claims that he did not violate his probation. Second, Holliday claims that he did not receive proper notification of the alleged claims of violation in accordance with due process. As we explain, we conclude that the trial court properly held that Holliday violated his probation conditions and that he received proper notification of the allegations. The judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND²

The trial court in this matter found that Holliday violated his probation in two distinct ways, each discussed in turn.

A. Violation of Conditions 7 and 14

In sum, conditions 7³ and 14⁴ mandate that Holliday must comply, cooperate and take all prescribed medication as directed by his probation officer.

² We view the evidence in the light most favorable to the judgment. (See *People v. Osband* (1996) 13 Cal.4th 622, 690.) Certain portions of the factual and procedural history related to Holliday's claims of alleged error are discussed *post*, in connection with those issues.

³ Condition 7a requires that Holliday take psychotropic medications if prescribed.

On April 27, 2011, Holliday met with his psychiatrist who informed him that he intended to prescribe injective medications to Holliday, but did not actually prescribe them at that time. Prior to meeting with this probation officer, Holliday threw away his pill medication in the lobby of the probation office. Holliday thereafter told his probation officer that he preferred herbal medications, had a fear of needles, and would not accept the injections.

The trial court found that the above actions constituted a probation violation.

B. Violation of Condition 6a

Condition 6a of Holliday's probation agreement requires that he obey all laws.

On April 24, 2011, Holliday and his mother attended a gathering at a relative's home in Thousand Oaks. At some point during the evening, Holliday's mother was told by a third party that Holliday had been masturbating in front of two children. She located and confronted Holliday immediately and was told by Holliday that he took his clothes off in front of the children because the children asked him to. Holliday's mother did not see what occurred and the children were not present when she confronted Holliday.⁵

⁴ Conditions 14b and 14c require in relevant part that Holliday submit to injective medications as agreed upon by the probation officer and mental health professions. Further, Holliday must cooperate with MIO program guidelines as directed by his probation officer and with agency and partnerships.

⁵ According to the probation officer that interviewed Holliday's mother, Holliday's mother stated that she had seen Holliday masturbating in front of the children and that they touched his genitals. Holliday's mother later unequivocally denied making that statement.

When confronted by his probation officer, Holliday claimed that the children had done something inappropriate but he did not believe he had done anything wrong.

The court found that the above conduct constituted a probation violation.

DISCUSSION

Appointed counsel has filed a brief summarizing the proceedings below. Counsel presents no argument for reversal but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel and Holliday refer to two possible, but not arguable, issues: (1) whether Holliday's probation was properly revoked in accordance with violating the above mentioned conditions and (2) whether Holliday received proper notice of the alleged violation in accordance with due process. We granted Holliday permission to file a brief on his own and he has responded with a supplemental brief.

A. Standard of Review and Governing Law

Section 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.⁶ (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 (*Rodriguez*.) "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.]" (*People v. Johnson* (1993) 20 Cal.App.4th 106, 110.) The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. (*Rodriguez, supra*, 51 Cal.3d at p. 447; *People v. Stanphill* (2009) 170 Cal.App.4th 61, 72.) "Probation revocation proceedings are not a part of a criminal prosecution, and the trial court has broad discretion in determining whether the probationer has violated probation." (*People v. DeGuzman* (1995) 33 Cal.App.4th 414, 419.)

⁶ Section 1203.2, subdivision (a) provides: "At any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter, or of a person released on conditional sentence or summary probation not under the care of a probation officer, if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such 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, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses. However, probation shall not be revoked for failure of a person to make restitution pursuant to Section 1203.04 as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the running of the probationary period."

We review a probation revocation decision pursuant to the substantial evidence standard of review (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681), and great deference is accorded the trial court's decision, bearing in mind that "[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. [Citations.]" (*People v. Pinon* (1973) 35 Cal.App.3d 120, 123.)

"The discretion of the court to revoke probation is analogous to its power to grant the probation, and the court's discretion will not be disturbed in the absence of a showing of abusive or arbitrary action. [Citations.]" (*People v. Silva* (1966) 241 Cal.App.2d 80, 84.) "Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense. [Citation.]" (*People v. Vanella* (1968) 265 Cal.App.2d 463, 469 (*Vanella*)). " [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.) And the burden of demonstrating an abuse of the trial court's discretion rests squarely on the defendant. (*Vanella, supra*, 265 Cal.App.2d at p. 469.)

B. Analysis

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738 has disclosed no reasonably arguable appellate issues. Competent counsel has represented Holliday on this appeal. In the supplemental

brief filed by Holliday, Holliday raises the issue of proper notification and insufficient evidence of probation violation.

As mentioned above, giving high deference to the trial court's decision, we conclude that there was sufficient evidence to support the court's determination that Holliday violated his probation. Moreover, we conclude that there was sufficient notice to put Holliday on notice of the alleged violations as to allow him to prepare and defend against such allegations. (*See People v. Mosley* (1988) 198 Cal.App.3d 1167, 1173-1174.) In fact, the trial court ruled that sufficient notice was given because the facts and allegations regarding the incident and potential violation were set forth in all of the pre-hearing arrest and probation reports provided to Holliday as part of the alleged violation. Holliday has provided no credible evidence that he did not receive proper notification or that the evidence supporting a revocation of probation was improper.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.