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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER SHANNON ISON,

Defendant and Appellant.

E054356

(Super.Ct.No. FSB703563)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M. McCann, Judge. Affirmed with directions.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting, and Vincent P. LaPietra, Deputy Attorneys General, for Plaintiff and Respondent.

## I

### INTRODUCTION

In September of 2007, a complaint charged defendant and appellant Christopher Shannon Ison with assault with a deadly weapon by means likely to produce great bodily injury under Penal Code<sup>1</sup> section 245, subdivision (a)(1) (count 1); and battery with serious bodily injury under section 243, subdivision (d) (count 2). Defendant pled guilty to count 2, and the trial court dismissed count 1.

On May 20, 2008, the court granted defendant formal probation for a term of three years. On July 14, 2011, the court extended defendant's probation by two years.

On August 25, 2011, defendant filed a timely notice of appeal.

## II

### STATEMENT OF FACTS

On June 6, 2007, defendant hit an employee of Southern California Edison in the face with a brick; the employee was attempting to disconnect residential service due to nonpayment.

## III

### ANALYSIS

Defendant's sole contention on appeal is that the trial court exceeded its jurisdiction when it extended defendant's probation by two years. The People agree.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

A trial court may not extend or revoke probation after the end of the term imposed. (See *In re Daoud* (1976) 16 Cal.3d 879, 882; *People v. Tapia* (2001) 91 Cal.App.4th 738, 741, disapproved on another ground in *People v. Wagner* (2009) 45 Cal.4th 1039, 1061, fn. 10.) Revocation serves to toll the running of a term of probation. (§ 1203.2, subd. (a).) The period of time between revocation and reinstatement “cannot be counted in calculating the expiration date” of a period of probation. (*People v. DePaul* (1982) 137 Cal.App.3d 409, 415 [Fourth Dist., Div. Two].) A “summary” revocation, however, only serves to toll a period of probation if it is substantiated by a formal revocation. (*People v. Lewis* (1992) 7 Cal.App.4th 1949, 1955 [Fourth Dist., Div. Two].) “If probation is restored [absent formal proceedings] there has been in effect, no revocation at all.” (*Ibid.*; see also *People v. Tapia, supra*, at p. 741.)

In this case, on May 20, 2008, the trial court granted defendant probation for a period of three years. On July 14, 2011, the trial court extended defendant’s probation by two years—56 days *after* defendant’s probation would have ordinarily expired (May 20, 2011). The trial court would only have had jurisdiction to issue the order to extend probation if defendant’s probation had been tolled or extended by at least 56 days.

Here, there were three periods of tolling, which totaled 57 days: 32 days from December 8, 2008, to January 9, 2009; 14 days from May 22, 2009, to June 5, 2009; and 11 days from August 21, 2009, to September 1, 2009.

Defendant concedes that the first period of revocation (December 2008 to January 2009) tolled his probation. Defendant, however, contends that the summary revocation in

May of 2009 did not toll his probation. The reporter's transcript shows that defendant failed to appear at a probation review hearing on May 22, 2009. While the court did summarily revoke defendant's probation, it never formally revoked it. Instead, the court merely continued defendant on probation when he appeared at the June 5, 2009, hearing. Specifically, the court stated: "Mr. Ison, legitimate confusion. Step out of the box. You are doing a great job. I'm sorry we got crossed up on those dates. [¶] I'll see you next in court on August 21st." This, therefore, was insufficient to toll defendant's probation.

*(People v. Lewis, supra, 7 Cal.App.4th at p. 1955.)*

Moreover, the clerk's transcript does not accurately reflect the events of August 21 and September 1, 2009. On August 21, the court told defendant:

"Now, you are entitled to have a hearing to determine whether you violated your probation by noncompliance. You're going to sit in custody pending that hearing because I'm summarily revoking your probation right now, and we'll hold you without bail on that. Or you can just admit that you haven't been cooperating to the extent that you're required to cooperate in this program and we'll bring you back on September 1st and give you another chance."

Defendant admitted the violation and was remanded into custody. On September 1, the trial court told defendant to enroll in a 12-week anger management program and ordered him to return on October 6. Because defendant admitted the violation and was not in custody awaiting formal revocation, his probation was not tolled for the period of time he was in jail.

In sum, defendant's probation was not tolled for the requisite 56 days, and the trial court's order extending defendant's probation was made after defendant's probation period had expired. Therefore, the trial court's order extending defendant's probation was in excess of its jurisdiction.

IV

DISPOSITION

The case is remanded to the trial court to vacate its order of July 14, 2011, extending defendant's probation for two years. The trial court is further directed to terminate defendant's probation, effective June 23, 2011. In all other respects, the judgment is affirmed.

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MCKINSTER  
Acting P. J.

We concur:

RICHLI  
J.

CODRINGTON  
J.