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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>ANETRISE EVANS,<br>Defendant and Appellant. | E055770<br>(Super.Ct.No. RIF76448)<br>OPINION |

APPEAL from the Superior Court of Riverside County. Richard Todd Fields, Judge. Affirmed.

Julie Sullwold, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Anetrise Evans appeals from an order denying her[1] motion to dismiss all charges after her assertedly successful completion of probation pursuant to Penal Code section 1203.4, subdivision (a)(1).[2] We find no error and affirm the judgment/order.

STATEMENT OF FACTS

On October 15, 1997, defendant pleaded guilty to embezzlement[3] (§ 503) and was placed on probation for an original term of 36 months. One term of probation was that

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[1] At a hearing held July 27, 2004, at which defendant was present, the trial court addressed defendant as "Miss Evans." The reporter's transcript for December 4, 2007—at which time defendant was again personally present—reflects that counsel stated to the trial court that "mental health court has been working with Mr. Evans. He's currently in a program . . . ." At subsequent hearings, defendant was generally described by female titles or pronouns, although at the last hearing on January 9, 2012, it is clear that nobody was sure of defendant's gender (defendant was not present). However, the preliminary hearing contains testimony from persons who at least viewed videotapes and spoke with a codefendant, and defendant is therein described as "she" or "Miss Evans." We note that the preliminary hearing appears to have been held solely on behalf of one Aledia Davenport, who is named as a codefendant in the complaint. Davenport and defendant are described as sisters. In a nutshell, Davenport brought merchandise to a register manned by defendant, who either did not ring up all the items or voided them after making entries. We refer to defendant as "she" based on the weight of the evidence and apologize if we are in error.

[2] All further statutory references are to the Penal Code unless otherwise indicated.

[3] The complaint alleged that she took money or property belonging to a Mervyn's store while employed by that store.

she serve 120 days in jail, weekends; another was that she make restitution to the victim in an amount to be determined.[4]

The record, which consists primarily of minute orders, is sparse. It reflects first the issuance of a bench warrant for a violation of probation on April 22, 1998, and next, the issuance of another bench warrant on April 26, 2004. The latter eventually resulted in an admission to a violation of probation term Nos. 2 and 11[5] on July 27, 2004. At that time, sentence was imposed but suspended, and probation was reinstated.

The next document in the record is a report from the work release program dated December 3, 2004, which appears to reflect a failure to appear. It also reflects two previous failures to appear. On February 10, 2005, an order was made continuing probation on the "same terms and conditions," but purporting to modify it to reinstate weekend custody "defendant having missed weekends is to resume commitment on 2/25/2005." A substantially identical minute order was entered on April 11, also directing defendant to "resume commitment on 4/29/2005"; this was apparently prompted by yet another failure to appear report dated February 28, 2005.

On June 28, 2006, the trial court entered an order revoking probation after an allegation of violation was made; again a bench warrant issued. This time it appears that defendant had moved without notifying the probation office, so that a letter directing her

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[4] The amount to be paid does not appear to be reflected in the record provided.

[5] The minute order does not number the terms and conditions recited. Probation term Nos. 2 and 11 might be the service of jail time and "report to probation officer/obey all reasonable directives," but this cannot be positively stated.

to come in to provide a DNA sample was returned to sender. The next document dated November 5, 2007, simply states that whatever proceedings were pending were taken off calendar. A minute order from November 26 indicates that the bench warrant previously issued remained outstanding.

Matters picked up on December 4, 2007, as defendant was present and again admitted violation of probation—this time term Nos. 1 and 11.[6] Probation was once more reinstated and defendant, as apparently pertinent to this appeal, was ordered to "[r]eport to and cooperate with Enhanced Collection Div. immediately or within two business days of release from custody."

On April 8, 2008, yet another allegation of violation of probation was filed, this one expressly stating that defendant still owed $1,497 on her restitution fine. (It will be noted that by this time over *10 years* had elapsed since the original fine was imposed.) Once again, defendant admitted the violation; this time the documents reflect that probation would be extended "2 years or until restitution is paid in full, whichever is sooner."[7] The outside expiration date was noted as May 8, 2010.

By December 15, 2009, however, defendant had evidently completed payment of her restitution fines as counsel requested termination of probation "per the agreement in the plea form. She's paid her fines." The People did not object and the requested order terminating probation was made. As defendant notes, the minute order indicates that her

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[6] Again, it is not possible to be certain what these terms and conditions were.

[7] Presumably, probation had been repeatedly extended, although this is not shown by the record.

attorney made an "oral motion" "to terminate probation early," and also indicates that "Per Plea Agreement probation will be terminated early upon all fines/fee pay in full . . . Motion Granted Probation Terminated Early." However, as we will show *post*, this is misleading.

About two years later, defendant filed a motion to set aside her plea and dismiss the complaint under section 1203.4. The People objected on a form, which pointed out her violations of probation (or some of them), and also asserted that she had "committed new crimes in Mohave in 2004 while on probation in this matter." At the hearing on January 9, 2012, the trial court stated that it was "not inclined to grant the motion. This is one of the more terrible probationers I've seen . . . [y]ou know, this probation started in 1997." It then proceeded to recite the history of warrants and violations, which we have set out *ante*, and concluded that "the defendant clearly did not fulfill all the terms of probation for the period thereof, nor was this an early termination of probation . . . it was determinate that when the restitution was paid in full, or two years, which is sooner. [*Sic*] So there was no early termination." The trial court also declined to exercise its discretion in defendant's favor. It denied the motion, and this appeal followed.

DISCUSSION

Section 1203.4, subdivision (a)(1), provides that a court shall order the original charges dismissed if the defendant has "fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this

section, . . ." Wisely, defendant does not contend that she qualifies under the "fulfilled the conditions of probation for the entire period of probation" or that the trial court should have exercised its discretion in her favor; she does argue that she is entitled to relief because she was discharged from probation "prior to the termination of the period of probation." (*Ibid*.)

The purpose of section 1203.4 is to provide a special benefit to an individual who successfully completes probation, and to encourage the probationer to comply with the terms of his or her probation. (*Doe v. California Dept. of Justice* (2009) 173 Cal.App.4th 1095, 1114; *People v. Covington* (2000) 82 Cal.App.4th 1263, 1270.) It is woefully apparent that the statute was ineffective at achieving the latter goal, and that it would be quixotic to reward defendant for over 10 years of either recalcitrance or, at best, indifference. However, if the terms of section 1203.4 apply, relief is mandatory. (*People v. Mgebrov* (2008) 166 Cal.App.4th 579, 584; *People v. Chandler* (1988) 203 Cal.App.3d 782, 788.)

We agree that the fact that the trial court repeatedly extended the term of her probation does not mean that she cannot qualify for "early termination." (*People v. Butler* (1980) 105 Cal.App.3d 585, 588.) And, because fulfilling the terms and conditions of probation and receiving early termination are separate bases for relief, defendant's poor performance similarly does not disqualify her. (*Id.* at p. 587.) However, we agree with the People that her probation was not terminated early.

As noted *ante*, the December 15, 2009 minute order does refer to "early" termination of probation. However, the reporter's transcript—all 20 lines of it—contains no such reference. We quote the pertinent exchanges:

"THE COURT: The matter is on calendar—added on for some reason?

"[DEFENSE COUNSEL]: Yes. It's to terminate probation per the agreement in the plea form. She's paid her fines.

"THE COURT: Okay.

"[DEFENSE COUNSEL]: And probation should be terminated.

"THE COURT: Any objections, [prosecutor]?

"[THE PROSECUTOR]: No objections, your Honor.

"THE COURT: All right. Probation is then ordered terminated at this time."[8]

Thus, the trial court was simply not asked to terminate defendant's probation *early*, and there is no indication that it intended to do so. Insofar as there is a conflict, we find the transcript of the oral proceedings more credible and reflective of what the trial court actually ordered. (See *People v. Stevens* (2001) 92 Cal.App.4th 11, 13, fn. 1.) The references in the minute order to "early" termination we believe reflect only the clerk's misunderstanding of the record.

On May 8, 2008, the trial court told defendant that "your probation will terminate either after two years, or upon full payment of the restitution . . . ." We agree with the

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[8] In her reply brief, defendant cites to the December 15, 2009 reporter's transcript as confirming that the termination was "early." As our quotation makes clear, it does not. Nowhere is the word "early" or any related word or synonym employed by anyone.

People that this reflects alternative termination dates and that the earlier date for termination does not constitute an "early" date within the meaning of section 1203.4. The trial court's general authority to grant a defendant an early discharge from probation is provided by section 1203.3, which reads in part: "The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held." Obviously, this is intended as a reward for speedy rehabilitation; the court may also grant an early termination where it is convinced that the probationer is simply unable to comply with the mandated terms. (See *People v. Butler*, *supra*, 105 Cal.App.3d at p. 587 [probationer who had not made restitution was discharged early from probation after the court reviewed a medical report showing probationer to be totally disabled and unable to earn money].) Here, the trial court's order in 2008 was designed in the least onerous manner to allow defendant still more time to comply with the restitution order—that is, so that she would be free of probation as soon as she completed payment.[9] As the trial court recognized when it terminated probation, having paid her fines she was entitled to be discharged; the order was not a discretionary act in recognition of her good conduct or other factors. She paid her fines

[9] The form of the trial court's order, as we hold here, also prevents defendant from claiming the benefits of section 1203.4, which, as we have indicated, her abysmal performance on probation does not deserve. We do not know whether the form of the order was intended to have this consequence but, if so, we commend the trial court for its sensible shrewdness.

and probation therefore terminated; the trial court's formal order was ministerial in nature.

DISPOSITION

Accordingly, the trial court correctly found that there was no "early" termination of probation and correctly refused to grant defendant relief under section 1203.4. The judgment/order is affirmed.

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HOLLENHORST
Acting P.J.

We concur:

McKINSTER
J.

MILLER
J.