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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

HERBERT RONALD FIGURA,

Defendant and Appellant.

F068142

(Super. Ct. No. PAR000021)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Benjamin Ramos, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Peña, J. and Smith, J.

Defendant Herbert Ronald Figura contends insufficient evidence supported revocation of his parole because the record established he should have been discharged from parole before the alleged violation occurred. Because defendant has now been discharged from parole, we dismiss the appeal as moot.

FACTS

On August 9, 2004, defendant was convicted of assault with force likely to produce great bodily injury (former Pen. Code, § 245, subd. (a)(1)).¹ He was sentenced to eight years in prison. On July 22, 2010, after six years, he was released on parole. If defendant had not violated parole, his parole would have expired on July 22, 2013.

Defendant, however, did commit various parole violations before he committed the current one. His parole violation disposition log (the log) lists (1) a December 6, 2010 violation for using marijuana and disturbing the peace, for which he was returned to custody for five months; (2) a June 16, 2011 violation for having contact with a prohibited person, for which he was returned to custody for 12 months; (3) an April 9, 2013 violation for absconding and having contact with a prohibited person, for which he was returned to custody for 80 days; and (4) a May 11, 2013 violation for vandalism, battery, resisting arrest, and using alcohol, for which he was returned to custody for 70 days.

Defendant signed the notice and conditions of parole (CDC form 1515), on October 7, 2010, following his six-year prison term. He later re-signed and dated the same document on June 8, 2012, December 18, 2012, and what appears to be May 8, 2013.²

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

² This document was not discussed at the hearing, but was admitted as part of the parole revocation packet.

At some point, his parole expiration date (the controlling discharge date) was changed to August 2, 2014.

At the parole revocation hearing held on August 9, 2013, Parole Agent Lee³ testified that defendant was most recently released from jail on June 20, 2013, and was required to report in person to his parole agent the next day, but failed to do so. The parole department filed an absconder's warrant. On July 11, 2013, defendant was arrested for causing a disturbance at the district attorney's office. According to the report filed by defendant's parole agent, defendant had not contacted parole between June 20, 2013, and July 11, 2013.

On cross-examination, Lee explained that although the log did not list a parole violation occurring between defendant's release on June 16, 2012, and the violation on April 9, 2013, it was apparent that a violation had occurred because the April 9, 2013 violation was listed as "Absconding, Prohibited person," which demonstrated that, at that time, defendant was unavailable for supervision and therefore a warrant on him was already outstanding. Thus, Lee explained, sometime after his release on June 16, 2012, and before April 9, 2013, defendant had violated parole.

The trial court found the absconding allegation proven by a preponderance of the evidence and it sentenced defendant to 100 days in jail.

DISCUSSION

³ Lee was the court liaison and notification agent, not defendant's parole agent. Lee's function was to inform parolees who had been arrested and placed in custody of their charges.

Defendant argues that because there was no evidence he committed a parole violation during the six months after his release on parole on June 16, 2012, the Board of Parole Hearings (the Board) should have discharged him from parole after that period, unless it found, and stated in writing, good cause to retain him on parole.

Defendant asserts that the log contains no entries for parole violations occurring within six months of his release on parole on June 16, 2012, and that the record contains no evidence that the Board found good cause to retain him on parole. Thus, he explains, because he should not have been on parole when the current alleged violation occurred, it did not amount to a violation. As a result, the parole violation for absconding was not supported by substantial evidence.

For legal authority, defendant relies predominantly on section 3001, subdivision (a):

“[W]hen any person ... has been released on parole from the state prison, and has been on parole continuously for *six months* since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections and Rehabilitation recommends to the Board of Parole Hearings that the person be retained on parole and the board, for good cause, determines that the person will be retained.”
(§ 3001, subd. (a), italics added.)

Defendant mentions section 3000.09 as requiring the supervising parole agent to review and make a recommendation on whether to discharge the offender.

The People respond that the record established, and the trial court found by a preponderance of the evidence, that defendant had been on continuous parole since July 22, 2010, and that his parole expiration date had been extended to August 2, 2014. Furthermore, the People state, Lee testified that he believed defendant had suffered a parole violation between June 6, 2012, and April 9, 2013. Accordingly, the People assert that sufficient evidence established that defendant was still on parole at the time of his current parole hearing.

Defendant replies that the new expiration date of August 2, 2014, was not based on any documentary evidence in the record establishing that the Board reviewed defendant's case and found good cause to retain him on parole.

We conclude, however, that we need not resolve the evidentiary and statutory issues because defendant was discharged from parole on October 1, 2014,⁴ and therefore the appeal is moot.

Defendant objects, arguing that the case is not moot because his record will bear two improper parole violations if we do not resolve this case in his favor. This is irrelevant, however, in light of his prior parole violations.

DISPOSITION

The appeal is dismissed as moot.

⁴ We take judicial notice of an external movement document from the Merced Parole Department that states defendant was discharged from parole on October 1, 2014.