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

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLI JEAN STUART,

Defendant and Appellant.

F069109

(Super. Ct. No. VCF278278B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Sarah J. Jacobs, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Kane, Acting P.J., Detjen, J. and Smith, J.

Appellant Billi Jean Stuart pled no contest to receiving a stolen motor vehicle (count 2/Pen. Code, § 496d, subd. (a))<sup>1</sup> and was placed on probation. On appeal, Stuart contends the trial court violated her right to due process and abused its discretion when it violated her probation because: (1) the court did not provide her with a full hearing prior to doing so; and (2) the evidence failed to establish that her violation of probation was willful. We affirm.

### **FACTS**

On January 6, 2013, Stuart and Michael George were found in possession of a stolen motor vehicle, social security card, and birth certificate.

On January 28, 2013, the district attorney filed a complaint that charged George with several charges and Stuart with receiving a stolen motor vehicle (count 2), felony receiving stolen property (count 3/§ 496, subd. (a)), and misdemeanor receiving stolen property (count 6).

On February 5, 2013, Stuart pled no contest to count 2 in exchange for the dismissal of the remaining counts against her. After Stuart waived the preparation of a probation report and time for sentencing, the court placed her on probation for three years on the condition she serve 180 days in jail. The court granted her a stay of execution until March 11, 2013, so she could sign up for the Day Reporting Center (DRC) program.

On March 11, 2013, Stuart failed to remand herself into custody at the DRC and the court subsequently issued a warrant for her arrest.

On May 1, 2013, Stuart failed to appear in court and the court revoked her probation because she failed to report to the DRC.

On June 6, 2013, Stuart appeared in court. After she admitted violating her probation, the court reinstated probation on the condition she serve an additional 30 days

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

for a total of 210 days. The court stayed execution of sentence until July 15, 2013, to allow Stuart time to enroll in the DRC program.

On July 19, 2013, the court issued an arrest warrant for Stuart after she failed to report to the DRC.

On August 7, 2013, Stuart was arraigned on a violation of probation and was appointed counsel.

On August 23, 2013, Stuart failed to appear in court. She also called and advised the court that she could not get a ride.

On August 26, 2013, Stuart appeared in court and admitted violating her probation by failing to report to the DRC. The court revoked Stuart's probation and reinstated it on the condition she serve an additional 20 days in custody for a total of 230 days. The court stayed the execution of sentence until October 7, 2013, to allow Stuart time to enroll in the DRC program.

On October 16, 2013, Stuart was given permission at the DRC to miss three days so she could appear in court and ask that her case be transferred to Fresno County. Stuart, however, did not appear in court during those three days. She also never reported back to the DRC program.

In a letter dated November 1, 2013, that was forwarded to the court on November 12, 2013, Stuart stated that she had unsuccessfully attempted to put herself on the walk-in calendar three times. Stuart also stated that she believed she had a conflict of interest with the DRC because she was involved in a personal injury case against a sheriff's deputy and she requested a transfer of her probation to Fresno County.

On November 21, 2013, the court issued an arrest warrant for Stuart.

On January 24, 2014, Stuart appeared in court after apparently managing to get herself on the walk-in calendar for that day. When the court asked Stuart to explain why she did not report to the DRC, Stuart stated that she reported to the DRC "until an incident occurred there." According to Stuart, the district attorney was pursuing criminal

charges against a deputy in a case in which she was the victim and some things related to that case occurred at the DRC program. Stuart also attributed her failure to complete the DRC program to the court's failure to respond to her letter and to her probation officer's failure to respond to numerous phone calls made by Stuart and Stuart's DRC advocate.

At the court's request, Stuart showed the court all the documents she had with her including a copy of the letter she wrote to the court. The court then appointed counsel for her and stated:

“This lady does nothing that she's supposed to do. It's hard to feel one bit of sympathy, and no, you're not going to be allowed to do your time in a program. It is just very difficult for me to consider giving you a new remand date.

“Actually, I am [because] I'm [going to] put a state prison sentence over your head if you don't remand.

“All right. Here's what I'm going to do: I'm going to recall the bench warrant in this matter, release the defendant on her own recognizance. [¶]...[¶]

“All right. I am finding her in violation of probation. I'm sentencing her now to two years in state prison which I'll suspend, reinstate her on probation, same terms, same conditions.

“She's to serve 230 days in custody, credit for 27 actual plus 13 plus 13. So she'll get credit for 53 days.

“Her new remand date will be March 24th, 7:00 a.m., and I can tell you, Ms. Stuart, you fail to remand or you walk away from DRC, I don't care what your excuse, you're going to prison for two years.”

## **DISCUSSION**

### ***The Alleged Denial of Due Process Protections***

Stuart contends the court abused its discretion when it found she violated her probation because it did so without providing her certain due process protections including a hearing. We disagree.

A trial court has very broad discretion to determine whether a probationer has violated probation. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) “Such discretion ‘implies that in the absence of positive law or fixed rule the judge is to decide a question by his view of expediency or of the demand of equity and justice.’” (*Id.* at p. 445.) We may only interfere with a trial court’s revocation in a very extreme case. (See *People v. Michael W.* (1995) 32 Cal.App.4th 1111, 1119.) If the record shows the probationer violated the terms and conditions of his or her probation, there is no abuse of discretion in revoking probation. (*People v. Nelson* (1967) 257 Cal.App.2d 282, 285-286.) Proof of facts supporting the revocation of probation may be made by a preponderance of the evidence. (*People v. Rodriguez, supra*, 51 Cal.3d at p. 447.)

The minimum requirements of due process for a probation revocation hearing are: “(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a “neutral and detached” hearing body ...; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 964-965.)

The proceedings here occurred before a “neutral and detached” hearing body, i.e., the court. Additionally, neither Stuart nor her counsel objected to the fact that Stuart did not receive written notice of the alleged probation violation. Absent an objection, we will not imply inadequate notice from a record that is silent as to exactly how Stuart received notice of the alleged probation violation. (*People v. Baker* (1974) 38 Cal.App.3d 625, 629 (*Baker*).

Further, any failure to disclose evidence against Stuart or to allow her to confront witnesses against her were moot because the court found that she violated her probation based on her admitted failure to continue reporting to the DRC. Additionally, the court

allowed Stuart to explain why she stopped reporting to the DRC and present to the court any documents she wanted the court to consider. Stuart responded by verbally elaborating on the reasons why she stopped reporting to the DRC and by presenting documents to the court. Stuart could have requested a continuance if she needed time to present other witnesses and/or evidence, but she did not. Thus, the record discloses that she had the opportunity to be heard and to present evidence.

Moreover, there was no need to provide Stuart with a written statement of the evidence relied on or reasons for her probation being revoked because the transcript of the hearing serves as the required written statement. (*Baker, supra*, 38 Cal.App.3d at p. 630.) Thus, the probation revocation procedures employed by the court did not deny Stuart her right to due process.

#### ***Stuart's Violation of Probation was Willful***

Stuart relies on this court's opinion in *People v. Zaring* (1992) 8 Cal.App.4th 362 (*Zaring*) to contend the evidence is insufficient to sustain the court's finding that she violated her probation because it failed to establish that her violation was willful. We reject this contention.

“A court may revoke 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....’ (§ 1203.2, subd. (a).) ‘As the language of section 1203.2 would suggest, the determination whether to ... revoke probation is largely discretionary.’ [Citation.] “[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence.” [Citation.] However, the evidence must support a conclusion the probationer's conduct constituted a willful violation of the terms and conditions of probation. [Citation.]” (*People v. Galvan* (2007) 155 Cal. App. 4th 978, 981-982.) “The terms ‘willful’ or ‘willfully,’ as used in penal statutes, imply ‘simply a purpose or willingness to commit the act ...,’ *without regard to motive*, intent to injure, or knowledge of the act's prohibited character.

[Citation.] The terms imply that the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.] Stated another way, the term ‘willful’ requires only that the prohibited act occur intentionally.” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438, italics added.)

It is clear from Stuart’s letter to the court and her statements at the January 24, 2014 hearing that she made a deliberate decision to stop reporting to the DRC. Stuart attempted to blame her conduct on an alleged conflict of interest she had with the sheriff’s department involving a deputy at the DRC, on the probation department’s failure to return her calls, and on the court’s failure to respond to her letter. However, she did not explain how any of these circumstances prevented her from participating in the DRC program or why, from October 16, 2013, through January 24, 2014, she made only four attempts to place herself on the court’s walk-in calendar. Based on these circumstances and Stuart’s other irresponsible conduct in this matter, including her two previous failures to report to the DRC, the trial court could reasonably have concluded that her failure to continue reporting to the DRC after October 18, 2013, was willful.

Stuart misplaces her reliance on *Zaring, supra*, 8 Cal.App.4th 362 to argue otherwise. In *Zaring*, trial court revoked a defendant’s probation after she arrived 22 minutes late for a court appearance because she unexpectedly had to take her child to school first, due to her babysitter’s illness. (*Id.* at p. 376.) In reversing the order we determined “that the appellant was confronted with a last minute unforeseen circumstance as well as a parental responsibility common to virtually every family. *Nothing in the record supports the conclusion that her conduct was the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court....*” (*Id.* at p. 379, italics added.) “Collectively, we cannot in good conscience find the evidence supports the conclusion that the conduct of [the] appellant, ... constituted a willful violation of [the probationary] condition.” (*Ibid.*, fn. omitted.)

*Zaring* is inapposite because Stuart's failure to continue reporting to the DRC was not the result of any last minute circumstances over which she had no control. Instead, as discussed above, it resulted from a deliberate decision to stop reporting that Stuart made without any satisfactory justification. Thus, we also reject Stuart's claim that the evidence was insufficient to establish that she willfully violated her probation.

**DISPOSITION**

The judgment is affirmed.