

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREN DEE ABLEMAN,

Defendant and Appellant.

G045687

(Consol. with G045688)

(Super. Ct. Nos. 07WF1654 and  
07WF1844)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Karen Dee Ableman appeals from a 12-year suspended sentence imposed after she violated probation. The thrust of her argument is that the trial court abused its discretion by failing to exercise discretion in imposing the suspended sentence. *People v. Howard* (1997) 16 Cal.4th 1081, 1095 makes it clear that where a sentence is imposed but suspended, the court lacks jurisdiction to alter the sentence. In her reply brief defendant argues the court should have reinstated probation. Considering defendant's history, the court's decision to impose the suspended sentence cannot be characterized as an abuse of discretion. We therefore affirm the judgment.

## FACTS

In 2008, defendant pleaded guilty and admitted all allegations in two cases, three counts in one and two counts in the other. The cases involved the sale and transportation of methamphetamine, false presentation to a peace officer, and possession of marijuana. She admitted to three prior convictions of Health and Safety Code sections 11378 and 11379 and having served four prison terms. The court imposed concurrent 12-year sentences in both cases and then suspended execution of the sentences. It granted defendant formal probation for three years on a number of conditions. The court explicitly told defendant a number of times and in a variety of ways that, should she violate probation, she would go to prison for the 12-year term.

Before the three-year probation period had expired, defendant violated conditions of her probation by possessing contraband materials, including a bundle containing methamphetamine. After denying defendant's motion to vacate and withdraw her guilty plea, the court conducted the hearing on the probation violation and found defendant had violated probation. The court ordered the suspended sentences imposed, less certain credits.

## DISCUSSION

Defendant argues that the court abused its discretion in ordering the previously stayed sentence imposed in that it “failed to make an impartial appraisal of whether appellant’s probation violation merited imposition of the twelve-year sentence to prison, and thus failed to exercise its discretion as required by both California law and the due process clause [of the U.S. Constitution].” But *People v. Howard, supra*, 16 Cal.4th at 1081 makes it clear that the court had no such discretion. The court held “if the court has actually imposed sentence, and the defendant has begun a probation term representing acceptance of that sentence, then the court has no authority, on revoking probation, to impose a lesser sentence at the precommitment stage . . . . [The defendant] did not contest the validity of the sentence the court imposed when granting probation. No good reason exists for allowing her to do so once the court revoked her probation.” (*Id.* at 1095.)

After being confronted with the *Howard* case in the respondent’s brief, defendant, without referring to that case, argues in her reply brief that the court should have reimposed probation rather than impose the previously suspended sentence. But considering defendant’s drug-related history, including five convictions (the three prior ones and the two here), the four prior prison terms, we cannot conclude the court erred in not reimposing probation.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.