

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

STANLEY CARL JARED,

Defendant and Appellant.

G045976

(Super. Ct. No. 09NF2811)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Vickie Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Hart J. Levin, 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, Steve Oetting and Michael P. Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

*

*

*

Defendant Stanley Carl Jared appeals from the order revoking his probation after a contested violation hearing. He admits he violated the terms of his probation by failing to complete a sexual offender program, but contends he “did demonstrate that he can be a productive member of society while” on probation, and the trial court abused its discretion in revoking probation and imposing a prison sentence. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

Anaheim Police Officer Lucelia Sandoval testified at Jared’s February 2010 preliminary hearing that on August 13, 2009, she visited Jared’s Anaheim apartment. Fullerton police had advised her Jared had been registering as a transient sex offender since 2006, and last registered with Fullerton six days earlier, on August 7, 2009. Sandoval obtained Jared’s lease, which showed he and others had rented an Anaheim apartment on December 1, 2008. Jared admitted living in Anaheim without registering as a sex offender with Anaheim police. Jared directed Sandoval to his dresser, where she found a syringe with 20 cubic centimeters of a liquid containing methamphetamine, and a broken glass drug pipe. Jared admitted “he had loaded [the syringe] to use it.”

An information charged Jared with failing to register as a sex offender (Pen. Code, §§ 290, subd. (b), 290.018, subd. (b)),¹ possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and possession of a hypodermic needle or syringe (Bus. & Prof. Code, § 4140, repealed by Stats. 2011, ch. 738, § 2). It also alleged he had previously suffered four serious or violent felonies within the meaning of the “Three Strikes” law, including November 1982 convictions for committing a lewd act on

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

a child (§ 288, subd. (a)), and 1993 convictions for criminal threats (§ 422) and aggravated assault (§ 245, subd. (a)(1)).

In July 2010, Jared pleaded guilty to the charges. The trial court dismissed the prior conviction allegations in the interest of justice (§ 1385), and granted him probation on various terms and conditions. One condition required him to “Cooperate with [his] probation officer in any plan for psychological, psychiatric, alcohol, and/or drug treatment.”

In July 2011, Jared’s probation officer, Steven Berry, filed a petition alleging Jared had violated the treatment condition of probation. In the petition and his accompanying report, the probation officer noted Jared’s case had been assigned to the department’s sex offender unit. Sex offender probationers are managed using a “Containment Model” comprised of intensive supervision, specialized sex offender treatment, and polygraph examinations. According to the report, “Supervision is closely coordinated with treatment providers, the polygraph examiner and local law enforcement. The goal is to provide proactive supervision and ongoing risk assessment, to allow for intervention during high-risk conduct prior to recidivism, thereby reducing victimization of the community.”

At the time of his indoctrination to probation in August 2010 and repeatedly thereafter, Jared advised the probation officer he desired contact with his six-year-old granddaughter. Based on his score of five on the Static-99 state-authorized risk assessment tool for sex offenders, which placed him in the “medium/high category for” committing another sex offense, and his interest in having access to his granddaughter, the probation officer required Jared to enroll in a sex offender therapy program. The probation officer also cited Jared’s guilty plea to possession of

methamphetamine, noting drug use is often a trigger to reoffend sexually. According to the probation officer, in order for Jared to gain “access to his granddaughter, he had to be in . . . sex offender therapy, for at least a year” and his therapist had to agree Jared could visit the child.

In September 2010, the probation officer referred Jared to a program and directed him to enroll by September 13. He also placed Jared on GPS monitoring due to his transiency and interest in his granddaughter. Jared initially claimed “he did not have enough money to enroll in treatment.” The probation officer extended the deadline to enroll, informing Jared “many probationers collect aluminum and scrap metal to pay for the program.”

In November 2010, Jared told the probation officer he refused to enroll in a sex offender program and would discuss the matter with his attorney. He felt he did not need to enroll, later explaining he had been falsely accused of molesting his nephew in 1982 and only pleaded guilty to get out of jail. According to the probation officer, at their initial meeting in August Jared did not take responsibility “for any of his prior arrests or convictions.” After consulting with Jared’s lawyer, Berry and Jared agreed Jared would submit to a “specific disclosure” polygraph examination. If he passed the exam, the probation officer would drop the requirement for a sex offender program.

In December 2010, before taking a polygraph, Jared enrolled in a sex offender treatment program. But when asked to discuss his prior sex offenses, he insisted no offenses had occurred and asserted his victim was a liar. It was “against his rights to admit to something that he didn’t do.” The therapist terminated him from the program.

In April 2011, Jared submitted to a polygraph exam. According to the probation officer, Jared “failed every question that was asked.” The polygraph questions

included: ““As an[] adult, have you ever had sexual contact with any minors,”” ““As an adult, have you ever touched a child in a sexual way,”” and ““As an[] adult, have any minors touched your penis, over or under your clothing.”” Confronted about his responses, Jared said he “failed the polygraph exam because he was not feeling well that day.” The probation officer arranged a second polygraph, which Jared also failed.

The probation officer directed Jared to enroll in a probation department approved sex offender counseling program no later than May 23, 2011. On May 23, Jared began sex offender treatment with Dr. Paul Lingren. On July 7, after six weekly sessions, Lingren terminated Jared from the program because he denied committing a sex crime, rationalized his failures in life, projected blame for failures on other people, and was “not taking responsibility.” The probation officer recommended terminating Jared’s probation because he “appears to no longer be a suitable candidate for . . . supervision.”

Berry acknowledged Jared was “doing great” at the board and care home where he lived at the time of his arrest. Jared met regularly with Berry three times a month and did not miss appointments. Berry regularly tested Jared for drugs during the first six months of probation and “never got a dirty test.” The probation officer performed regular searches but did not find “contraband or any evidence of” contact with minors.

At the violation hearing conducted in October 2011, Jared testified and mostly agreed with Berry’s testimony. He described various counseling sessions and activities at his group home, where he was a trusted member and “training to take over the program of the house.” He had participated in sex offender treatment, including the “Focus” program, at the time of his original offense in 1982. He was told he successfully completed treatment. It was “basically the same thing” Berry wanted him to go to now.

He “took a plea” in 1982 for molesting his six-year-old nephew and “the consequences that go along with it” because “[i]t was in the best interests for the court and, you know, for me.” He denied he was actually guilty, however: “I gave him . . . touched him when I gave him a bath. . . . Other than that it was not sexual.” He provided excuses as to why he had failed to register as sex offender on the current and a former occasion. Although in 1993 he pleaded guilty to spousal abuse, false imprisonment, and assault with a deadly weapon, he minimized his conduct in the incident. When asked if he threatened his wife, he replied “my demeanor and my attitude . . . I was distracting her, probably threatened her, but, as for physically threatening her, no.” He did “block the door” twice but “the only thing I really wanted to do was talk to her.” He had two steak knives, “but those were actually toward me and not toward anybody else.” He took “the deal” for “time served.” He suffered from congestive heart failure, breathing problems and high blood pressure, and he believed the numerous medications he took “would impede a lie detector test,” explaining the medications made him “jittery.”

The parties stipulated to admit evidence from the program coordinator of Jared’s group home. Jared was “outstanding,” “cooperative,” “popular,” “respectful,” “very reasonable,” and “making steady progress in the program.” The program director would leave Jared in charge whenever the director was unavailable. Jared would be “accepted immediately back into the home” if released.

The trial court concluded Jared was “in denial about all his cases,” and it was “his denial of his acts . . . that is what makes him dangerous” and “because he is in denial that he so desperately needs the therapy which he doesn’t want to take.” The “sex therapy” was “the most important part of his rehabilitation” but “is one of the main things that he didn’t do.” The court found Jared violated probation, and sentenced Jared to the

middle term of two years in prison for failing to register, and imposed a consecutive eight-month term for possession of methamphetamine.

II

DISCUSSION

Section 1203.2, subdivision (a), provides the trial court may revoke and terminate probation “if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her [probation].” We review the court’s decision revoking probation for an abuse of discretion; the court’s factual findings are reviewed for substantial evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445; *People v. Galvan* (2007) 155 Cal.App.4th 978, 981-982.) In making its determination, the trial court has “very broad discretion.” (*Rodriguez*, at p. 443; *People v. Urke* (2011) 197 Cal.App.4th 766, 773.) The court, however, may not act arbitrarily or capriciously in exercising its discretion and must base its determination on the facts before it. (*People v. Smith* (1970) 12 Cal.App.3d 621, 626 [court may abuse its discretion in revoking probation if a probationer is in technical violation only and has a valid excuse or if he did not willfully violate probation]; *People v. Zaring* (1992) 8 Cal.App.4th 362, 375.)

Jared concedes he violated probation by failing to successfully complete a sex therapy program. He also concedes the trial court had “discretion to revoke his probation and sentence him to prison.” But he contends the record demonstrates he “is capable of rehabilitation and reform,” “he can be a productive member of society while” on probation, and given that he “had actually attended a sex therapy program similar to the one he attended and successfully completed for his 1982 offense,^[2] the court should

² Jared’s testimony concerning his completion of the Focus program after the 1982 offenses is unclear. At one point, he stated he “didn’t successfully finish the

have reinstated probation to give him an opportunity to complete the program.” He emphasizes he has not committed any sex offenses since 1982.

Jared suffered convictions for sexually abusing his six-year-old nephew in 1982. His performance on the Static-99 and his failure to pass two polygraph examinations in the current case suggests he has an unresolved proclivity toward sexual abuse of minors. He failed to register as sex offender on two occasions. As the trial court noted, Jared was “in denial about all his cases” and “his denial of his acts” was “what makes him dangerous.” Successful rehabilitation required sexual offender therapy, but his failure to admit to prior abuse prevented him from progressing or benefitting from sexual offender therapy. Because he consistently denied committing sex offenses, it was pointless to reinstate probation and allow him another opportunity to attend a program he could not complete. The evidence supports the trial court’s conclusion Jared was not a suitable candidate for probation because he persistently failed to accept responsibility for his sexual and other criminal behaviors. The trial court did not abuse its discretion by revoking and not reinstating Jared’s probation.

program.” Apparently, a common feature of sexual offender programs is that the offender must admit his crime. Jared testified he did not admit guilt as part of that 18-week program.

III
DISPOSITION

The order is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.