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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRENT THOMAS BISSONNETTE,

Defendant and Appellant.

G048932

(Super. Ct. No. 12CF1116)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Steven D. Bromberg, Judge. Affirmed.

Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney
General, Charles C. Ragland and Robin Urbanski, Deputy Attorneys General, for
Plaintiff and Respondent.

* * *

Brent Thomas Bissonnette appeals from a postjudgment order terminating Proposition 36 probation (Pen. Code, § 1210.1; all statutory references are to the Penal Code unless indicated) after he violated the terms of his probation by, among other things, possessing firearms. For the reasons expressed below, we discern no abuse of discretion and affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A felony complaint filed April 17, 2012, charged Bissonnette with possessing methamphetamine on April 14, 2012. (Health & Saf. Code, § 11377, subd. (a).) Bissonnette pleaded guilty, and the trial court found him eligible for probation and drug treatment under section 1210.1 (Proposition 36 [Substance Abuse and Crime Prevention Act of 2000]). The court suspended imposition of sentence and placed Bissonnette on probation on various terms and conditions, including that he “not own, use, or possess any type of dangerous or deadly weapon including any firearm or ammunition” and that he “disclose [his] probation terms on the request of any probation officer . . . or at the request of any peace officer.”

In May 2013, the probation officer filed a petition (the second one) alleging Bissonnette violated probation by violating the law, possessing a firearm, and failing to disclose to law enforcement he was on formal probation. At the violation hearing on July 9, 2013, Juan Rodriguez testified he was a deputy probation officer assigned to the sheriff’s tactical weapons team. On the evening of May 21, 2013, Rodriguez, his partner Andy Fuentes, and two Santa Ana police officers conducted a probation compliance check at Bissonnette’s Santa Ana residence. Bissonnette initially refused to open the door, and claimed he was not on probation. While refusing to admit the officers,

Bissonnette looked over his shoulder and screamed to someone that he was “going to let them in.” After gaining entry, officers found video surveillance equipment trained on the front door area. They also found a television monitor in a bedroom that provided a view of the front door, and they discovered a woman hiding in the bedroom closet. As the woman stepped from the closet, an unloaded .22-caliber “rifle fell out of the closet and landed [at the officers’] feet.” Fuentes found an unloaded .22-caliber Ruger handgun in a box under the bed and “[l]ots of ammunition.” The officers also found Bissonnette’s identification card, probation paperwork, men’s clothing, and broken drug pipes in the room. Bissonnette previously had stated his “father used to own weapons, and they might still be in the room.”

Bissonnette’s sister Regina Plum testified she owned the residence, but it previously belonged to her father until his death in February 2007. Her father, a licensed security officer, owned a .38-caliber firearm. After he died, Plum moved her mother into the home and removed her father’s gun because her children would be there. But she did not conduct a “full sweep” of the home to remove any firearms that her father may have left there. At the time of the probation search, Bissonnette lived in the house by himself because Plum temporarily had relocated her mother to her nearby home after her mother had knee surgery. Bissonnette had lived there since December 2012, and did not know if the firearms found during the search belonged to her brother.

Bissonnette testified the guns were found in his mother’s bedroom, but he and his girlfriend Dorothy stayed in the small bedroom. Bissonnette claimed he “opened up the door right away” after he heard the officers knock and identify themselves. The officers said they were looking for “Richard,” and Bissonnette told them there was no such person living there. He eventually opened the locked screen door, and claimed he

knew nothing about the firearms. Bissonnette acknowledged his identification and other belongings were in the room where the firearms were found, explaining he was “reorganizing things.” He had “found bullets . . . laying around everywhere,” and assumed the guns belonged to his father. Bissonnette asserted he had never owned or used guns.

The court found Bissonnette violated probation, sustaining all three counts of the petition. The court terminated probation and imposed the two-year midterm sentence, awarding Bissonnette 106 days of actual custody credit and 106 days of work and conduct credits.

II

DISCUSSION

The Trial Court Did Not Abuse Its Discretion in Terminating Probation

Bissonnette contends the trial court abused its discretion by terminating probation because “his mere constructive possession of the firearms” posed no risk to society, there was no evidence that he planned to use them in any crime, and the “court could have simply revoked probation and reinstated it on condition that he serve some additional jail time.”

Penal Code section 1210.1, subdivision (a) provides that “any person convicted of a nonviolent drug possession offense shall receive probation.” The court “shall require participation in and completion of an appropriate drug treatment program” and “appropriate drug testing as a condition of probation.” The “court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.” (Pen. Code, § 1210.1.)

Section 1210.1, subdivision (f)(2) provides: “If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. . . .” (See *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1376 [“Proposition 36 permits the court to revoke a defendant’s probation if a non-drug-related probation violation is proved”]; *People v. Dagostino* (2004) 117 Cal.App.4th 974, 988 [a defendant who violates a non-drug-related condition of probation loses the grace granted to probationers otherwise subject to Proposition 36 and the trial court has full range of options otherwise available in a probation revocation proceeding, including imposing a term of incarceration].)

We review the trial court’s decision to revoke probation for abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443, 445.) “Although a court may not act arbitrarily or capriciously in revoking probation [citation], its discretion in this matter is very broad.” (*People v. Breaux* (1980) 101 Cal.App.3d 468, 475; *People v. Urke* (2011) 197 Cal.App.4th 766, 773 [trial court’s discretion should not be disturbed absent a showing of abusive or arbitrary action and defendant bears the burden of demonstrating an abuse of the trial court’s discretion].) A trial court acts within its discretion where it finds a probationer willfully violated the terms of probation. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981-982.)

Here, Bissonnette violated probation by possessing firearms and denying he was on probation to officers during a compliance check. As the trial court observed: “It’s the guns. When you start putting drugs and guns together, you know what happens to people, they wind up in this courtroom in trial. That’s what happens with guns. And that’s what makes this violation more egregious than anything else.” The court concluded Bissonnette had been less than forthcoming about his knowledge of the guns, noting there was no evidence his deceased father had possessed .22-caliber weapons, and the evidence showed Bissonnette’s identification and drug-program paperwork were found in the room with the guns, and he was “the only one living there.” Bissonnette also deployed a video surveillance system, which the probation officer believed “reflected [an] intent to evade probation supervision,” and called out to his girlfriend before he let the officers into the house. The record supports the trial court’s implicit finding Bissonnette willfully violated his probation.

The trial court obtained and reviewed a current probation report, which disclosed Bissonnette was on parole for drugs at the time he committed the current offense. Bissonnette admitted he had been using methamphetamine on and off since high school, and had served two prison terms. Both his mother and sister advised the probation officer that Bissonnette “picks the wrong people to be with.” Bissonnette also failed to provide a doctor’s letter explaining his need for prescription pain medication, the use of which had caused him to be discharged from a drug treatment program.

Before the sentencing hearing, the court stated it did not “like putting people in jail or in prison for drugs,” but that Bissonnette “refused to cooperate with probation and refused to participate. He can give you all the reasons and excuses in the world as to why it’s not happening.” The court suggested Bissonnette might benefit from

the Delancey Street intensive two-year drug treatment program, but Bissonnette rejected this suggestion at the sentencing hearing.

Bissonnette's abject failure to comply with his probation conditions warranted the termination of his probation. Based on the record before us, the court's imposition of a two-year prison term did not constitute an abuse of discretion; the court's decision simply did not exceed the bounds of reason. (*People v. Giminez* (1975) 14 Cal.3d 68, 72.)

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.