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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.

ANTONIO ALDACO,

Defendant and Appellant.

G050013

(Super. Ct. No. R00405)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Kimberly Menninger, Judge. Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney
General, Peter Quon, Jr., and Susan Miller, Deputy Attorneys General, for Plaintiff and
Respondent.

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INTRODUCTION

In April 2011, defendant Antonio Aldaco was convicted of unlawful possession of a controlled substance. After he was released from prison seven months later, he was placed on postrelease community supervision (PRCS). Since then, Aldaco's PRCS has been revoked and reinstated six times for various drug-related and reporting violations. With each revocation of Aldaco's PRCS due to his violations of its terms and conditions, the trial court imposed increasing lengths of jail time before reinstating his PRCS on the same terms and conditions.

Aldaco appeals from the order granting the Orange County Probation Department's (the department) sixth petition to revoke his PRCS. (Pen. Code, § 3455.) (All further statutory references are to the Penal Code unless otherwise specified.) Aldaco challenges two of the trial court's four findings regarding his violations of the terms and conditions of his PRCS.

We affirm. Even if we were to assume the two challenged findings were unsupported by sufficient evidence, or otherwise constituted error, any such error was harmless. Our review of the record shows the trial court could and would have found Aldaco in violation of the terms and conditions of his PRCS, revoked his PRCS, and imposed a 180-day jail term, based on its findings (unchallenged by Aldaco) that he tested positive for multiple illicit substances on two occasions and was also found in possession of drug paraphernalia.

BACKGROUND

In April 2011, Aldaco was convicted of violating Health and Safety Code section 11350, subdivision (a), and was sentenced to a 16-month prison term. In November 2011, he was "released on community supervision" set to expire on November 23, 2014.

In April 2012, the department filed a petition to revoke Aldaco's PRCS, alleging he had violated its terms and conditions by engaging in drug-related offenses in violation of Health and Safety Code former sections 11377, subdivision (a), 11350, subdivision (a), and 11364.1, subdivision (a). At the hearing on the petition, Aldaco admitted having violated the terms and conditions of his PRCS. The trial court found him in violation of his PRCS, ordered him committed for 90 days in Orange County jail, and reinstated his PRCS on the same terms and conditions. Aldaco was ordered to report to the department within 24 hours of his release from jail.

In September 2012, the department filed a second petition for revocation of Aldaco's PRCS, alleging Aldaco violated its terms and conditions by failing to comply with all directions of his probation officer and by using illicit substances. The second petition alleged: "According to the probation records Mr. Aldaco last reported to his probation officer on 7/19/12. He was directed to enroll in residential drug treatment by the following Friday, 7/27/12. Mr. Aldaco enrolled in the Phoenix House on 8/1/12, however he left the program on 8/6/12 and failed to report to his Probation Officer thereafter. . . . [¶] . . . [¶] According to Probation records, Mr. Aldaco was drug tested on 7/19/12, and his results were returned by Redwood Toxicology: positive for opiates." At the hearing on the petition, Aldaco admitted violating his PRCS as alleged in the second petition. The court found Aldaco in violation of his PRCS, ordered him committed for 120 days in jail, and reinstated his PRCS on the same terms and conditions. The court ordered Aldaco to report to the probation department within 24 hours of his release from jail.

In December 2012, the department filed a third petition for revocation of Aldaco's PRCS which alleged in part: "[O]n 12/19/12, a home compliance check was conducted at the offender's residence. Upon entering the home, I immediately observed the offender move very quickly towards the back door of the residence, appearing to be attempting to flee. The offender was contacted and asked, 'Do you have anything that

would be illegal, any drugs, needles, or anything that would stick me, poke me, or hurt me?’ The offender stated, ‘NO.’ During a search, a small amount of heroin was located in his left front pocket. This was later weighed and tested to be 1/2 gram of heroin. I asked again, ‘Is there anything else that I’m going to find to be illegal or anything that you should not have?’ The offender stated, ‘No.’ While speaking to the offender, my coworker, Deputy Probation Officer Tracy Duran, located a hypodermic needle to the left of the back door, where the offender was seen attempting to flee. The offender later admitted to Officer Duran that he, ‘used’, because he could not speak with his girlfriend, who is currently on probation and in a residential treatment facility. The offender was arrested and transported to Orange County Jail on his PCS violation.”

At the hearing, Aldaco admitted violating his PRCS as alleged. The trial court found him in violation of his PRCS, ordered him committed to 140 days in jail, and further ordered that “[a]ll Prior Terms Remain.”

In May 2013, the department filed a fourth petition for revocation of Aldaco’s PRCS. That petition alleged that on two different occasions, Aldaco tested positive for opiates. The petition further alleged that during one “home compliance check,” a hypodermic needle was located in his bedroom, and during a second home compliance check, Aldaco attempted to flee out of the back of his house. It also alleged Aldaco initially reported to the health care agency, but failed to return to the agency for a referral into a residential treatment program as directed. On another occasion, Aldaco was directed to report to his probation officer the next day to receive a referral for a residential treatment program. Although Aldaco initially complied and admitted he had used heroin two days earlier, he failed to enter a treatment program or otherwise report to his probation officer.

Aldaco admitted violating his PRCS as alleged in the fourth petition. The trial court found him in violation of his PRCS, ordered him committed to 150 days in jail, and reinstated his PRCS on the same terms and conditions.

In August 2013, the department filed a fifth petition for revocation of Aldaco's PRCS. The petition alleged that during an unannounced home compliance check, officers from the department searched Aldaco and found a hypodermic needle and a small amount of a black tar-like substance in his left front pocket. Aldaco admitted the items were his and stated that a second hypodermic needle was in the garage; the officers recovered the hypodermic needle. The fifth petition further alleged that Aldaco had tested positive for the presence of methamphetamines.

Aldaco admitted the fifth petition's allegation as to his possession of the hypodermic needles and the black tar-like substance. The trial court found Aldaco in violation of his PRCS and found good cause to revoke his PRCS. The court ordered him committed for 180 days in jail, and further ordered his PRCS reinstated on the same terms and conditions. Aldaco was ordered to report to the department within 24 hours of his release from jail.

On March 3, 2014, the department filed the sixth and most recent petition for revocation of Aldaco's PRCS. The sixth petition alleged: "According to Probation records, on 2/13/14, the offender failed to report to the Probation Officer. [¶] According to Probation records, on 2/5/14, the offender submitted a substance abuse test that was positive for the presence of Amphetamines/Methamphetamines, Opiates, and morphine. On 2/6/14, the offender submitted a substance abuse test that was positive for the presence of Amphetamines/Methamphetamines, Opiates, Codeine, Hydromorphone, and Morphine. [¶] According to Probation records, on 2/6/14, the offender was referred to the Day Reporting Center (DRC) for drug treatment. However, he never reported for indoctrination into the program. [¶] According to records of the La Habra Police Department, on 2/11/14, during a home compliance check with the Orange County Probation Department, four hypodermic needles and a black tar like substance [were] found in the offender's room on his bed. He was found to be in violation of section 11364 HS; 11350 HS (DR#14-714). The offender was not home at the time;

however, access to the home was granted by the offender's father who is the owner of the home. [¶] According to records of the La Habra Police Department, on 2/26/14, during a home compliance check, a hypodermic needle and a small black tar like substance wrapped in plastic [were] located on the offender's dresser. The La Habra Police Department was notified and Police Officers were dispatched to the scene. The offender stated to officers that the hypodermic needle and the small black tar like substance wrapped in plastic [were] his. Subsequently, the offender was arrested for 11350(a) HS and 11364.1 HS (DR#14-961)."

Aldaco filed a motion to dismiss the sixth petition to revoke his PRCS, which the trial court denied. Aldaco does not challenge the court's ruling on his motion to dismiss in this appeal.

Following an evidentiary hearing on the sixth petition, which included the testimony of Orange County Deputy Probation Officer Reuben Ramirez, the court found the allegations of the petition true except for the allegation that a hypodermic needle and a small black tar-like substance were found on Aldaco's dresser during the home compliance check on February 26, 2014.

The trial court found Aldaco in violation of his PRCS and ordered him committed for 180 days in Orange County jail. The court ordered Aldaco to report to the department within 48 hours of his release from jail, and again reinstated his PRCS on the same terms and conditions.

Aldaco appealed.

DISCUSSION

I.

GOVERNING LEGAL PRINCIPLES

Section 3451, subdivision (a) provides: "Notwithstanding any other law and except for persons serving a prison term for any crime described in subdivision (b),

all persons released from prison on and after October 1, 2011, or, whose sentence has been deemed served pursuant to Section 2900.5 after serving a prison term for a felony shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency designated by each county's board of supervisors which is consistent with evidence-based practices, including, but not limited to, supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under postrelease supervision." Section 3453 sets out the minimum conditions of PRCS, and section 3454 permits county agencies to impose additional conditions and "determine and order appropriate responses to alleged violations," including "flash incarceration" (§ 3454, subd. (b)).

Section 3455 authorizes a court, "[u]pon a finding that the person has violated the conditions of postrelease community supervision" (§ 3455, subd. (a)), to "[r]eturn the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail" (§ 3455, subd. (a)(1)), not to exceed 180 days (§ 3455, subd. (d)).

PRCS is akin to a grant of probation. Accordingly, we are guided by the principles governing probation revocation hearings. The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. Trial courts have broad discretion in determining whether probationers have violated probation. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) The substantial evidence test is the proper standard for appellate review of an order following a probation revocation hearing where the appellant claims the evidence was insufficient. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.)

II.

EVEN ASSUMING THE MERIT OF ALDACO'S CONTENTIONS OF ERROR,
ANY SUCH ERROR WAS HARMLESS.

Aldaco challenges the trial court's order finding he violated the terms and conditions of his PRCS pursuant to the sixth petition for revocation of his PRCS filed by the department. As discussed *ante*, the trial court found Aldaco violated the terms and conditions of his PRCS because (1) he tested positive for the presence of amphetamines/methamphetamines, opiates, and morphine on one occasion, and tested positive for the presence of amphetamines/methamphetamines, opiates, codeine, hydromorphone, and morphine on another; (2) during a home compliance check, four hypodermic needles and a black tar-like substance were found on Aldaco's bed in his bedroom; (3) he failed to report to his probation officer as directed; and (4) he failed to report for indoctrination into a drug treatment program to which he was referred. The court revoked Aldaco's PRCS, committed him to jail for 180 days, and reinstated his PRCS on the same terms and conditions.

Aldaco argues insufficient evidence supported the trial court's finding he willfully failed to report to his probation officer. He also argues the trial court erred by admitting hearsay evidence, which also lacked foundation, showing that he failed to report to the drug treatment program.

Aldaco, however, challenges neither the trial court's findings that on two occasions he tested positive for the presence of multiple illicit substances, nor the finding that on one occasion, hypodermic needles and a black tar-like substance were found on his bed in his bedroom. Aldaco's positive drug tests and possession of drug paraphernalia indisputably constitute violations of the terms and conditions of his PRCS, which include that he not use or possess "any intoxicants, narcotics, or other controlled

substances” or “related paraphernalia,” or otherwise violate any laws. Aldaco does not contend otherwise.

Therefore, even if we were to assume the trial court’s findings that Aldaco also violated his PRCS by failing to report to his probation officer and to the drug treatment program were erroneous, any error was harmless. Our record shows the trial court could and would have found Aldaco in violation of his PRCS and revoked his PRCS based on the drug-related incidents alone.

In his reply brief, as to the court’s finding that Aldaco failed to report to his probation officer, Aldaco acknowledges, “[w]hile the court still would have found a violation, and likely would have revoked PRCS, it is not at all clear the court still would have required [him] to serve the maximum 180 days in custody for the violation. [Citation.] This could affect the date on which PRCS terminates.” (Aldaco does not explain how a different amount of jail time would have affected his PRCS termination date, or how he was prejudiced by any error in finding he had failed to report to the drug treatment program.)

The record shows that over the course of Aldaco’s PRCS period, the trial court imposed jail sentences of increasing length with each sustained PRCS revocation petition filed by the department. Following the trial court’s finding that Aldaco violated his PRCS by testing positive for illicit substances and possessing drug paraphernalia in granting the department’s *fifth* petition to revoke Aldaco’s PRCS, the court revoked his PRCS and imposed a 180-day sentence. On this record, under any harmless error standard, we conclude the trial court could and would have ordered Aldaco to serve 180 days in custody as a result of the sixth and latest revocation of his PRCS, even if it was only based on additional positive drug tests and possession of drug paraphernalia.

DISPOSITION

The order is affirmed. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.