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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.

IZRAEL FIGUEROA,

Defendant and Appellant.

G051241

(Super. Ct. No. R-02635)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Kimberly Menninger, Judge. Dismissed.

Patrick Dudley, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney
General, Eric Swenson and Heidi Salerno, Deputy Attorneys General, for Plaintiff and
Respondent.

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Defendant Izrael Figueroa appeals from a postjudgment order revoking his postrelease community supervision (PRCS) and requiring him to serve 90 days in jail. He contends the order should be vacated because the trial court erred in remanding him to custody. The issue is moot because defendant has already served his jail time. The appeal is dismissed.

FACTS

Pursuant to a plea agreement, the trial court released defendant on PRCS in August 2014 after sentencing him to 16 months in state prison for being a felon in possession of a firearm, purchasing a firearm, and possessing a controlled substance. While on PRCS, defendant was arrested and charged for felony possession of methamphetamine. The court accepted defendant's guilty plea and placed him on three years of formal probation on the condition he complete drug treatment.

The probation department petitioned to revoke defendant's PRCS and recommended he receive 120 days in custody. At the hearing on the petition, defendant argued the petition was unauthorized because he had committed a nonviolent drug possession offense. The court rejected defendant's arguments, granted the revocation petition, reinstated PRCS and committed defendant to county jail for 90 days. Defendant appeals that order.

DISCUSSION

Relying on this court's opinion in *People v. Armogeda* (2015) 233 Cal.App.4th 428 (*Armogeda*), defendant contends persons on PRCS cannot be incarcerated under Penal Code section 3455 for committing nonviolent drug-related

offenses. The Attorney General responds that the appeal is moot because defendant has served his jail time and a reversal would have no practical effect. We agree.

It is not an appellate court's function to render opinions upon moot questions or abstract principles of law, or to declare rules of law that can have no effect on the matter before the court. (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1380.) “[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief.” (*Ibid.*) “[A]n action that originally was based on a judiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.” (*People v. Herrera* (2006) 136 Cal.App.4th 1191, 1198.)

Because defendant admits to having completed his jail term, this appeal is technically moot because our resolution of the issues raised by defendant can offer no effective relief to him. We cannot undo the jail time he has already served.

Defendant argues his claim of error is not moot because it “is like[ly] to reoccur on a statewide basis.” That might have been the case at the time when he was incarcerated in 2014, but *Armogeda* has now resolved the issue. In *Armogeda, supra*, 233 Cal.App.4th 428, we held that because Penal Code section 3455 was not enacted by a legislative super majority, it improperly amended Proposition 36: “As applied to nonviolent drug possession offenders and violators of drug-related conditions of postrelease community supervision, [Penal Code] section 3455, which permits the incarceration of those persons under circumstances not permitted by Proposition 36, unconstitutionally amends Proposition 36 and to that extent is invalid.” (*Armogeda*, at p. 436.)

In his reply brief, defendant maintains his appeal is not moot because he may be subject to “disadvantageous collateral consequences” (*People v. Ellison* (2003) 111 Cal.App.4th 1360, 1368-1369), such as receiving a harsher sentence including the

denial of probation or being jailed for 120 days upon a subsequent violation of PRCS, and postponing the termination of his PRCS.

We are not persuaded that the potential use of defendant's PRCS violation as a sentencing factor in future criminal proceedings suffices to constitute "collateral consequences" for purposes of a mootness analysis, at least under the facts presented here. In *Spencer v. Kemna* (1998) 523 U.S. 1 [118 S.Ct. 978, 140 L.Ed.2d 43], the court addressed whether a challenge to an order revoking the defendant's parole was moot when he had fully served the prison term imposed for the parole revocation. (*Id.* at p. 3.) In concluding the defendant's claim was moot, *Spencer* observed that while a criminal conviction entails adverse collateral legal consequences, "[t]he same cannot be said of parole revocation." (*Id.* at p. 12.) The court reasoned that it was not enough that the parole violations could be used by the parole board to deny the petitioner parole in the future. (*Id.* at p. 13.) According to the court, the violations were simply one factor that could be considered among many; the mere presence or absence of the recorded violation did not mandate a particular consequence. (*Ibid.*) Instead, the decision would necessarily be left to the discretion of the parole authority, which would likely place more emphasis on the nature of the parole violation instead of the mere fact parole had been revoked. (*Ibid.*)

Here, the challenged action concerns revocation of a term of PRCS, rather than a criminal conviction. Such a revocation does not entail the same adverse collateral consequences that accompany a criminal conviction. (See *Spencer v. Kemna, supra*, 523 U.S. at p. 12.) The revocation of PRCS, like the revocation of a period of probation or parole, is just one of many factors the court may consider in deciding whether to grant probation or to sentence a defendant in a subsequent criminal matter. (See generally Cal. Rules of Court, rules 4.414, 4.421.) Additionally, the court in any future criminal case would consider the circumstances underlying revocation of PRCS, probation, or parole. The court below apparently found the nature of defendant's PRCS revocation so

insubstantial that it decided to continue defendant's PRCS. There is no reason to believe that a sentencing court in any future criminal action against defendant would attach any greater weight to the PRCS violation. Under the circumstances, we conclude that the mere possibility defendant's minor PRCS violation might be mentioned as one of many sentencing factors in future criminal proceedings does not constitute "disadvantageous and prejudicial collateral consequences" for purposes of assessing mootness. (*People v. Delong* (2002) 101 Cal.App.4th 482, 484.)

DISPOSITION

The appeal is dismissed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.