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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BARRIOS,

Defendant and Appellant.

B235187

(c/w B235189)

(Los Angeles County
Super. Ct. Nos. BA371671 &
LA061240)

THE COURT:*

Michael Barrios (appellant) appeals from the judgment entered following revocation of probation and imposition of a prison sentence.

On March 2, 2009, appellant pled no contest to one count of grand theft (Pen. Code, § 487, subd. (c))¹ (Los Angeles Superior Court case No. LA061240). The trial court suspended imposition of sentence and placed appellant on probation for three years, on the condition that he serve 365 days in county jail and pay restitution. The trial court imposed various fines and court fees and appellant was awarded 38 days of presentence credit.

* DOI TODD, Acting P. J., ASHMANN-GERST, J., CHAVEZ, J.

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

On October 22, 2009, appellant was found to have violated his probation. Probation was revoked and reinstated on the condition that he serve 90 days in county jail and complete a 52-week domestic violence counseling program. Appellant was given credit for an additional 39 days of presentence credit.

On June 9, 2010, appellant pled no contest to one count of corporal injury to a spouse (§ 273.5, subd. (a)) (Los Angeles County Superior Court case No. BA371671).² The trial court suspended imposition of sentence and placed appellant on probation for four years, on the condition that he serve 365 days in county jail. Appellant was awarded 68 days of presentence credit.

While on probation appellant was charged with robbery (§ 211) (Los Angeles County Superior Court case No. BA382173). Appellant's probation was revoked as a result of this new case, and he was remanded to custody. His probation violation hearing was set to trail his jury trial in the new case.

A mistrial was declared on the new charge when the jury failed to reach unanimity.³ The prosecution elected to dismiss the case and proceed on the probation violations in case Nos. LA061240, and BA371671. Following argument by counsel, the court found appellant in violation of probation based on the trial evidence. The court noted that the prosecution carried their burden of proof by a preponderance of the evidence "not by a great deal, but enough for the purpose of a probation-violation situation."

In sentencing appellant, the court declined to reinstate probation and imposed the middle term of three years in state prison for corporal injury to a spouse (Los Angeles County Superior Court case No. BA371671), and the high term of three years for grand theft (Los Angeles County Superior Court case No. LA061240). Both terms were ordered to run concurrently. Appellant received presentence custody credit of 669 days

² Count 2, which alleged a violation of a stay-away order (§ 166, subd. (c)(1)) was dismissed in the interest of justice (§ 1385.)

³ The jury was split, six jurors for guilty and six jurors for not guilty.

in total (107 actual days, 107 days of conduct credit, and 455 days previous credit). A parole revocation fine was imposed and suspended pursuant to section 1202.45.

Appellant filed timely notices of appeal and we granted appellant's request to consolidate case Nos. B235187 and B235189 on January 23, 2012, for briefing, any oral argument, and decision.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an "Opening Brief" containing an acknowledgement that he had been unable to find any arguable issues. On January 23, 2012, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

"[T]he authorities are unanimous in concluding that the standard of proof used in a criminal trial, namely the 'beyond a reasonable doubt' standard (Pen. Code, § 1096) is inapplicable to the probation revocation hearing. [Citations.] Accordingly, probation may be revoked despite the fact that the evidence of the probationer's guilt may be insufficient to convict him of the new offense." (*In re Coughlin* (1976) 16 Cal.3d 52, 56.) Even "the reversal of a conviction on appeal does not preclude the court from considering the underlying evidence in deciding whether or not to revoke probation." (*Id.* at p. 57.) The mistrial declared here when the jury failed to reach a verdict did not preclude the trial court from considering the underlying evidence in deciding to revoke appellant's probation.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.