

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE SANTIBANEZ,

Defendant and Appellant.

B285741

(Los Angeles County
Super. Ct. No. LA082737)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Martin Larry Herscovitz, Judge. Affirmed.

Elizabeth H. Eng, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Santibanez appeals from the trial court's revocation of his probation. The trial court revoked Santibanez's probation when Santibanez failed to inform his probation officer within 48 hours of leaving his residential drug program (after having been terminated from an earlier program for taking methamphetamine), misleading his probation officer by saying that "everything was okay" at the program even though he had not returned to the program, and failing to keep his probation officer apprised of his new address upon leaving the residential program. We affirm.

PROCEDURAL BACKGROUND

Santibanez was charged with three counts: burglary (Pen. Code, § 459)¹ and two misdemeanor counts of petty theft involving two different victims (§§ 484, subd. (a) and 490.1). The information charged that the burglary violated section 462, subdivision (a), and qualified as a violent felony under section 667.5, subdivision (c) because a person was present in the residence at the time of the burglary.

On October 20, 2016, pursuant to an open plea to the trial court, Santibanez pled nolo contendere to all three counts and admitted there was a person present in the residence during the burglary. At that time, the trial court told Santibanez that despite the People's recommendation to sentence him to two years in prison, the trial court would "take a chance" and put him on probation. The trial court reasoned that he was doing so because Santibanez had "a bad drug issue" and only a misdemeanor record. The trial court ordered Santibanez to

¹ Undesignated statutory citations are to the Penal Code.

appear for his probation and sentencing hearing on December 1, 2016.

On December 1, 2016, the trial court continued the hearing to January 17, 2017 upon defense counsel's representation that counsel was still looking for a residential drug treatment program for Santibanez.

On January 17, 2017, after defense counsel represented that the Royal Palms residential program was available for Santibanez, the trial court ordered defendant to complete a one-year residential treatment program at Royal Palms and to return for a probation and sentencing hearing on January 31, 2017. That hearing was continued to February 15, 2017, after defense counsel represented that Santibanez was still trying to enroll in the Royal Palms residential program. Santibanez failed to appear on February 15, 2017. Upon defense counsel's representation that Santibanez had enrolled and was in residence at Rena B Recovery Home, the trial court issued, but held a bench warrant and continued the probation and sentencing hearing to March 8, 2017.

On March 8, 2017, the trial court recalled the bench warrant, and selected a low term of two years on the burglary count, but stayed execution of sentence and put Santibanez on formal probation for three years, including one year in a residential drug treatment program at Rena B Recovery Home. As further conditions of probation, the trial court ordered Santibanez not to use drugs and that if he left the latter program "voluntarily or involuntarily," he had to report to probation within 48 hours of leaving the program.

The trial court ordered Santibanez to return on September 8, 2017 for a progress report and sentencing on the

misdemeanor counts. Santibanez waived all back time credits and time spent in any rehabilitation program.

On April 17, 2017, the trial court reviewed a letter indicating Santibanez had been terminated from the Rena B. Recovery Home because he had tested positive for methamphetamine, but that defendant may have enrolled in the Los Angeles Transition Center. Because Santibanez had been ordered to report to the probation department within 48 hours of leaving a residential program, the trial court continued the hearing to determine whether Santibanez had done so after being terminated from the Rena B residential program. The trial court set a nonappearance progress report for May 31, 2017 and at that hearing, the probation department reported Santibanez was a resident of the Los Angeles Transition Center since April 10, 2017.

On September 8, 2017, Santibanez initially failed to appear, causing probation to be revoked and a bench warrant to issue, which was recalled when Santibanez appeared later on that day. The trial court reviewed the probation department report; the minute order states that the report informed the trial court that Santibanez had been terminated from the Los Angeles Transition Center on August 5, 2017 “as AWOL.” The minute order reflects that the probation report indicated that on August 17, 2017, when Santibanez went to the probation department, he “failed to report that he had walked away from the program.” The minute order for September 8, 2017 also references that “defendant indicates to the court he completed the program and is now working.” The trial court summarily revoked probation and remanded Santibanez into custody pending a probation revocation hearing. The trial court set a

probation violation hearing for September 18, 2017 to allow defense counsel to bring witnesses to the hearing. That hearing was continued to October 13, 2017.

On October 13, 2017, the People called a witness from the Los Angeles Transition Center and Santibanez's supervising probation officer. The former testified that the program allowed Santibanez to go to work and return at night when Santibanez expressed concern about the program's cost. He also testified that Santibanez had left the program on or about August 5, and was terminated after he did not return. On cross-examination, he testified that he had tried to call Santibanez when Santibanez did not return to the program.

Santibanez's supervising probation officer testified Santibanez had gone "AWOL" and did not so inform the officer when Santibanez reported to him on August 17, 2017. On cross-examination, the supervising probation officer stated that on August 17, 2017, he did not ask Santibanez whether he was working, and further testified that Santibanez had told him that "everything was okay" at the program.

Santibanez called his wife, who testified about the financial hardship imposed by the residential treatment program because Santibanez's benefits had been "cut off," and the program was "blackmailing" him by raising the monthly rates. She further testified that her husband had not walked away from the program. Santibanez testified at the probation revocation hearing as well. He disavowed leaving the program, but stated in July, he had discussed his discomfort with the program with his probation officer, who said only the judge could change the program.

The trial court found Santibanez in violation of the terms and conditions of probation because he violated the trial court's specific order to report to probation if he left the residential program "voluntarily or involuntarily," and misled the probation officer "into thinking that everything was okay at Los Angeles Transition House when in truth . . . he was no longer there and not intending to go back."

The trial court also observed that Santibanez violated a condition of his probation in failing to advise his probation officer of his address after Santibanez left the transition house. Furthermore, Santibanez had been terminated from his first residential program when he used methamphetamine without his attorney's having so informed the trial court. As the trial court observed, "[i]f this was the defendant's first or only violation and there was some dispute with the program—I'm not tending to believe him—but since he misled the probation officer, and this was the second program after washing out of the first program, the defendant is certainly in violation of his probation . . . and his probation is revoked."

The trial court then imposed the previously suspended two-year prison sentence on the burglary count and dismissed the misdemeanor counts in the interests of justice, among other orders.² Once again, the trial court commented that "despite the

² Initially, the trial court gave Santibanez a total of 29 days custody credits for actual days (26) and good time/work time credit (3) based on the assumption that he had been remanded into custody only on September 18, 2017. Thereafter, the abstract of judgment apparently was amended to reflect a total of 41 days custody credits (36 actual days and 5 days of good time credit) because Santibanez had actually been remanded into custody on September 8, 2017.

presumptions of state prison on a residential burglary,” the trial court had placed Santibanez on probation “trying to get him the help that he cried out for.” The trial court observed that “defendant has proven to the court that he’s not a candidate for probation any longer.”

On October 16, 2017, Santibanez filed a notice of appeal.

DISCUSSION

We appointed counsel to represent Santibanez on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On April 23, 2018, we advised Santibanez that he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied appellate counsel for Santibanez has fully complied with the responsibilities of counsel and no arguable issue exists. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.