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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SANDOR BONILLA, Defendant and Appellant.	B225177 (Los Angeles County Super. Ct. No. PA041815)

APPEAL from an order of the Superior Court of Los Angeles County. Charles L. Peven and Daniel B. Feldstern, Judges. Affirmed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Shawn McGahey Webb and David Glassman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Sandor Bonilla appeals from an order revoking and reinstating his probation. He asserts numerous grounds, including lack of jurisdiction, insufficiency of evidence, and abuse of discretion. We affirm.

BACKGROUND

1. Plea and grant of probation

In August of 2004, defendant was charged with assaulting a peace officer (Pen. Code, § 245, subd. (c); undesignated statutory references are to the Penal Code) and battery upon a custodial officer (§ 243.1), based on a March 18, 2003 incident at Pitchess Honor Ranch.[1] The pre-plea probation report contained no information about defendant's immigration status. On October 18, 2004, defendant pleaded nolo contendere to the battery charge and was placed on formal probation for a period of three years on conditions including serving 180 days in jail (with credit for 110 days), keeping his "probation officer advised of [his] residence and work and home telephone numbers at all times," obeying all laws and orders of the court, reporting to a specified probation office "within 1 business day after release from custody," and paying a $20 court security assessment and a $200 restitution fine.

2. 2005 summary revocation of probation

The probation officer subsequently reported to the trial court that defendant "has never reported," "was deported to Mexico on 06/08/2005," and had not paid anything toward "fines and fees" or "restitution." The report recommended that the court revoke defendant's probation and issue a bench warrant for his arrest. The trial court placed the case on calendar for August 18, 2005, for "modification of probation." According to defense counsel's statements at a subsequent hearing, the clerk of the court notified defendant of the hearing, but neither defendant nor defense counsel appeared. The court

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[1] Defendant was apparently in custody for his February 26, 2003 conviction of violating Health & Safety Code section 11352, subdivision (a) in Los Angeles Superior Court case No. LA042209, for which he was granted probation on terms and conditions including serving 180 days in jail.

summarily revoked defendant's probation and issued a no bail bench warrant for defendant's arrest.

3. 2010 formal revocation of probation

On April 23, 2010, defendant appeared with counsel at a hearing on the bench warrant. The court recalled and quashed the warrant, but denied bail. Counsel argued vigorously that defendant's probation had expired because the trial court knew at the time of the summary revocation that he had been deported, and thus his failure to appear at the August 2005 hearing was not willful. The trial court rejected that argument, set the case for a probation violation hearing on May 12, 2010, and ordered preparation of a new probation report.

The new probation report prepared for the May 12, 2010 hearing revealed that defendant had been arrested by the Border Patrol in El Paso on February 15, 2006, charged with a federal offense described in the report as "inadmissible alien/removal proceedings" in case number "EP-06CR-424," then convicted as charged on July 16, 2006, and sentenced to 57 months in federal prison and a fine. Defendant had a new immigration hold with a charge of violating title 8 of the United States Code section 1325. The probation report indicated that the prior deportation proceedings had been initiated on November 19, 2004. The report stated, "It is not known when the defendant returned to [the] United States (or California for that matter), but he did not contact the probation department before his arrest for the instant probation violation matter." Defendant was arrested on the bench warrant by the sheriff's department on April 22, 2010, "at the inmate reception center." The report further noted that defendant had "never reported to the probation department" and had "contributed no monies toward[] liquidation of his court ordered financial obligation." Defendant also had a probation violation pending in case No. LA042209.

The probation report recommended modifying defendant's probation to be without supervision, given his "imminent" deportation.

The probation report stated that the information set forth in the report was obtained by searching electronic records maintained by both the probation department and other agencies and "statements from the supervision officer." The final page of the report lists the databases upon which "an automated search" was conducted to obtain that information. The copy of the probation report in the appellate record was not signed by the named probation officers or the judge, but bears the following notation at the bottom of each page: "Probation Department's Official Copy – Date Prepared: 05/10/2010."

At the outset of the May 12, 2010 hearing, the trial court indicated that the alleged probation violations the court was considering were "failure to obey all laws" based upon the July 2006 federal conviction for illegally entering or being in the United States, "along with failure to report to probation, notwithstanding the fact that he was deported sometime shortly after he was placed on probation." The court stated it would receive the probation report prepared for that day's hearing as evidence. Defense counsel objected and argued at length that the report was inadmissible multiple-level hearsay and that its receipt violated "the separation of powers" because the prosecutor did not request that the court admit the report. The court agreed that the report was hearsay, but noted that the court was allowed to consider the contents of a probation report, and the statements in the report regarding defendant's conviction and failure to report to probation were "very generally reliable statements." The court further noted that defendant could testify or present other evidence to refute the report.

Defense counsel argued, "We don't even have proof that he's the person that didn't report to probation or that he's the person that pled guilty. . . . [W]e can't assume that he's here illegally, that he's here legally, that he was deported, that he was not deported, that he did report or that he didn't report." The court further explained that although some types of statements in probation reports were not sufficiently reliable, for example, a probation officer's statement relating a witness's statement that defendant had shot someone, "there are other things that are in probation reports that the court can review and find reliable, such things as convictions of new offenses. And in this

particular case the probation officer reports that the defendant was arrested on February 15th of 2006. He was charged with being an inadmissible alien slash removal proceedings. There's a case number EP dash 06 CR dash 424. The probation officer also reports here that the defendant was convicted, as charged, on July 16, 2006. . . . The report also indicates that upon that conviction, he was sentenced to six to seven [*sic*] months in federal custody. The court views that information as reliable enough so that I feel comfortable in relying on that report."

Defense counsel argued that there was no evidence that defendant was ever free from custody while in the United States in order to be able to report to probation. The court again invited the defense to put on evidence and offered to continue the hearing to enable the defense to do so; defense counsel refused, insisting that there was no evidence before the court showing defendant violated his probation, "so we believe that we have won the probation violation hearing." The court found defendant "in violation of probation for failing to obey all laws and failing to report as required to probation. The court has read and considered the contents of the probation report dated May 12th, 2010, and deems the information in the report reliable." The court agreed to continue the matter for about three weeks to give the defense an opportunity to file an extraordinary writ petition. No such petition was filed.

On June 2, 2010, the trial court revoked and reinstated defendant's probation on the same terms and conditions with the following modifications: Defendant was ordered to serve 365 days in jail, with credit for 84 days; defendant was ordered to report to his probation officer within 48 hours after release from custody "in this case"; defendant was ordered not to reenter the United States illegally if he was deported or left the country, but if he did reenter the United States, he was ordered to report to his probation officer within 72 hours after his return and show proof that he was lawfully within the United States; if defendant was deported or left the United States, he was ordered to notify his probation officer and the court of his address and telephone number outside of the United States within 72 hours of his deportation or departure; and he was ordered to "continue to

pay" his financial obligations to the court and the probation department while outside of the United States. Defendant stated that he understood and agreed to these modifications.

4. Post-appeal summary revocation

After defendant filed the instant appeal, he was again deported and again found in violation of his probation for failing to comply with the condition that he notify the court and the probation department of his address and phone number outside of the United States.

DISCUSSION

1. 2005 summary revocation

Section 1203.2, subdivision (a), provides, in pertinent part: "At any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter, . . . if any probation officer . . . has probable cause to believe that the probationer is violating any term or condition of his or her probation . . . the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . . The revocation, summary or otherwise, shall serve to toll the running of the period of supervision."

Defendant contends that the 2005 summary revocation of his probation was void, and thus did not toll the running of his probationary period under section 1203.2, subdivision (a) because (1) the federal deportation order divested the trial court of jurisdiction, pursuant to the supremacy clause of the federal Constitution and (2) his failure to appear or report was not willful and thus did not constitute probable cause to believe he violated his probation. We disagree.

Although "[t]he federal government's power over immigration issues is supreme" (*People v. Jacinto* (2010) 49 Cal.4th 263, 272), the trial court did not purport to regulate immigration in any way or order defendant to violate any federal law, for example, by

ordering him to reenter the United States illegally to appear at the summary revocation hearing. Defendant has cited no authority supporting his assertion that federal immigration law preempts state law regarding supervision of persons released on probation or the trial court's power to revoke probation.

Revocation of probation based upon a deported probationer's failure to report to probation has been the subject of several published appellate cases in California, none of which held that federal immigration law preempted state law regarding supervision of persons on probation or revocation of probation. For example, in *People v. Campos* (1988) 198 Cal.App.3d 917, 923, the court stated, "A defendant who is deported while on probation may be found in violation of that probation for failure to report to the probation department although his deportation makes it impossible for the defendant to fulfill this condition of his probation." *People v. Galvan* (2007) 155 Cal.App.4th 978, 983, upon which defendant heavily relies for other arguments asserted on appeal, did not conclude that the trial court's power to revoke probation was preempted, but instead held that where a probationer was deported immediately upon release from jail, his failure to report to his probation officer within 24 hours of his release was not a *willful* violation supporting revocation.

We further note that at the time of the summary revocation proceeding in 2005, the information before the trial court indicated that defendant had been deported on June 8, 2005. When defendant was granted probation on October 18, 2004, he was ordered to serve 180 days in jail and had credit for 110 days. With full credits under the provisions of section 4019 then in effect, defendant would have been released around December 2, 2004, more than six months before his deportation. (*People v. Caceres* (1997) 52 Cal.App.4th 106, 110.) (Nothing in the record before us indicates that defendant received any additional time in jail for his prior narcotics conviction in case No. LA042209 that would have extended his jail confinement.) Thus, even assuming the trial court would have presciently applied the rationale underlying *Galvan*, instead of following *Campos* (the then-controlling authority), it appeared from the record before the

trial court at that time that defendant had been out of custody for some months before he was deported, yet failed to report to probation within one business day of his release, as required by his probation conditions. Accordingly, the probation report and prior court records provided the trial court with ample probable cause to believe that defendant had violated his probation conditions. The summary revocation was proper under section 1203.2, subdivision (a), and tolled the running of defendant's probationary period. "Because of this tolling, the hearing on the violation, the court's ruling, and the imposition of sentence may all occur even after the probationary period would otherwise have expired." (*People v. Burton* (2009) 177 Cal.App.4th 194, 199.)

2. 2010 formal revocation

Defendant challenges the 2010 revocation and reinstatement of his probation on several grounds, principally the admissibility and sufficiency of the probation report.

At a formal probation revocation hearing, a defendant has, among other rights, a right to be heard and to present evidence, and "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 489 [92 S.Ct. 2593]; *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782 [93 S.Ct. 1756] (*Gagnon*); *People v. Arreola* (1994) 7 Cal.4th 1144, 1152–1153.)

But the defendant's confrontation right at a probation revocation hearing arises from due process, not the confrontation clause (*People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411), and it is "not absolute. Confrontation may be denied if the trier-of-fact finds and expresses good cause for doing so." (*People v. Winson* (1981) 29 Cal.3d 711, 719.) Due process does not prohibit the "use where appropriate of the conventional substitutes for live testimony, including affidavits, depositions, and documentary evidence." (*Gagnon*, *supra*, 411 U.S. at p. 782, fn. 5.) Documentary evidence must be accompanied by reasonable indicia of reliability to be admissible. (*People v. Maki* (1985) 39 Cal.3d 707, 715–717.) The trial court has discretion to

determine the existence of such indicia of reliability. (*People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066.)

In *People v. Gomez* (2010) 181 Cal.App.4th 1028 (*Gomez*), we concluded that the probationer's due process confrontation right was not violated, and the trial court at a probation violation hearing properly admitted as evidence a probation report that, based upon a review of "'electronic probation records,'" stated that the defendant had not reported to probation or complied with other conditions of his probation. (*Id.* at pp. 1032–1033, 1039.) We explained that the probation violations reported "were 'more routine matters such as the making and keeping of probation appointments, restitution and other payments, and similar records of events of which the probation officer is not likely to have personal recollection and as to which the officer "would rely instead upon the record of his or her own action."' [Citations.] Any testimony by [the probation officers] would necessarily have been based upon an examination of the probation department's records. For this reason, their demeanor while testifying would not have been helpful in determining the truth of the facts they reported: defendant's failure to report to probation, pay restitution, attend counseling, and provide proof that he was employed. Nor would cross-examination of either officer have been likely to elicit any facts pertinent to the inquiry facing the trial court." (*Gomez*, at pp. 1038–1039.)

The applicable standard of proof for probation revocation is a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) Trial courts have broad discretion to determine whether a defendant has violated probation and whether, as a result, to revoke probation. (*Id.* at pp. 443, 445.)

a. Admissibility and sufficiency of probation report

Defendant's sufficiency of evidence claim is principally a challenge to the trial court's admission of, and reliance upon, the May 2010 probation report. He argues that that the statements in the report were inadmissible multiple-level hearsay, the report was unsigned, and admission of the statements in the report violated his right to confront witnesses. He also argues that the report did not show that his failure to report to the

probation department was willful. Because we conclude that the trial court properly found defendant in violation of his probation on the ground that he failed to obey all laws, as shown by defendant's 2006 federal conviction, we need not address defendant's arguments pertaining to revocation based upon the alternative ground of failure to report to the probation department.

As noted, the copy of the probation report in the appellate record is designated as the "Probation Department's Official Copy," and is unsigned. But sections 1203 and 1203.2, which address the preparation of probation reports, do not require that a probation report be signed. Defendant cites no authority requiring a signature on a probation report, and we have found none. The report was not anonymous: It listed the names and telephone numbers of the deputy probation officer who prepared the report and the supervising deputy probation officer who approved it. Section 1203, subdivision (b)(1) requires a probation officer preparing a probation report "to investigate and report to the court . . . the prior history and record of the person." The trial court was entitled to presume that the deputy probation officers listed on the report had performed their official duty in this regard, whether or not the copy of the probation report in the court's possession was signed by those officers. (Evid. Code, § 664.) Accordingly, we consider the absence of signatures on the copy in the appellate record to be, at most, an anomaly, not an impediment to the trial court's consideration and admission of the report. In addition, because defendant did not object at the violation hearing that the report was unsigned, he forfeited this ground.

Defendant's hearsay and confrontation claims have no merit. Although the probation report's statements regarding defendant's federal conviction were hearsay, a probation officer's report of a defendant's prior convictions is a conventional substitute for live testimony. Probation reports are considered to be inherently reliable. (*People v. Evans* (1983) 141 Cal.App.3d 1019, 1021.) Trial courts routinely receive and rely upon such hearsay in making sentencing decisions based upon probation reports. Defendant argues that the report was unreliable because it "involved an alleged prosecution *by the*

federal government for immigration violations *in Texas*, something that is not even remotely within the personal knowledge or even the collective personal knowledge of anyone at the probation department." (Emphasis in original.) But the same lack of personal or "collective personal" knowledge is true with respect to a probation officer's report of any conviction, no matter where it was sustained. The probation officer would discover and then report such a conviction based upon his or her review of databases, such as those cited in the May 2010 probation report. As in *Gomez* and the cases cited therein, testimony by the probation officer regarding such a conviction would be limited to recounting that he or she queried those databases, and, "[f]or this reason, [the probation officer's] demeanor while testifying would not have been helpful in determining the truth of the facts . . . reported." (*Gomez*, *supra*, 181 Cal.App.4th at pp. 1038–1039.) Alternatively, the prosecutor could have obtained and introduced a certified copy of the federal judgment of conviction against defendant, which would also have precluded any cross-examination.

We also note that, while assailing the trial court's reliance upon certain hearsay statements in the May 2010 probation report, defendant relies heavily upon other hearsay statements in the same report, as well as in the August 18, 2005 report and the post-appeal October 2010 probation report, for his claims that he was deported and it was thus impossible for him to report to probation. Defendant fails to explain why the hearsay statements upon which he relies, which were ultimately dependent upon a statement by an agency or officer of the federal government, are admissible and reliable, but the hearsay statement regarding his federal conviction for illegal reentry is inadmissible and unreliable.

We further note with respect to the reliability of the report of defendant's federal conviction that the conviction was a matter of public record. Its existence, basis, date, and all other pertinent details can be readily ascertained by viewing not just the databases accessible to the probation officer, but also the federal judiciary's publicly accessible Internet-based Public Access to Court Electronic Records (PACER) system, which "is an

electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts" (<http://www.pacer.gov/>). A probation officer, superior court judge, court employee, defense counsel, or anyone else with access to the Internet can use PACER to view the docket in defendant's federal case and individual documents, such as the judgment against defendant. In addition, defendant appealed his federal conviction, and both Westlaw and West's Federal Appendix reporter include the unpublished decision of the Fifth Circuit of the United States Court of Appeals in the case of *United States v. Sandor Owen Bonilla-Estrada*, arising from the Western District of Texas (encompassing El Paso) in case number 06-CR-424. (According to the original probation report, defendant used "Estrada" in two of his six aliases.) The appellate opinion reflects that defendant was convicted by guilty plea "for illegal reentry following removal" pursuant to title 8 of the United States Code section 1326, subdivision (b), and sentenced to 57 months in prison. The conviction was affirmed on appeal. (*United States v. Bonilla-Estrada* (5th Cir. Dec. 14, 2007, No. 06-50998) 258 Fed. Appx. 708 [2007 WL 4370891].)

Even before the availability of computerized databases, a probation report's citation of out-of-state convictions was deemed a proper basis for probation revocation. In *People v. Natividad* (1963) 222 Cal.App.2d 438, the appellate court concluded that the defendant's probation was properly revoked upon the report of the probation officer that after the defendant was released from jail, he sustained convictions in a different county in California, Virginia, and Nevada. (*Id.* at p. 442.)

Accordingly, we conclude that the trial court properly admitted the probation officer's May 2010 report and relied upon the statement in that report reflecting defendant's 2006 federal conviction as evidence that defendant violated his probation by failing to obey all laws, specifically by illegally reentering or attempting to reenter the United States following removal (that is, deportation) in violation of title 8 of the United States Code section 1326, subdivision (b). The trial court's admission of that report and

reliance upon it did not violate defendant's due process confrontation right. (*Gomez, supra*, 181 Cal.App.4th at p. 1039.)

Defendant had a full and fair opportunity to introduce evidence to show he had not suffered this conviction or to otherwise cast doubt upon the accuracy of the probation officer's report. But defendant failed to make any attempt to do so, and he rejected the trial court's offer to continue the violation hearing to allow defendant to subpoena the probation officer or marshal other evidence for his defense. Absent any contradictory evidence, the probation officer's report of defendant's 2006 conviction constituted substantial evidence to support the trial court's conclusion that defendant violated his probation. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848–849.)

b. Laches and fairness

Citing *United States v. Hamilton* (9th Cir. 1983) 708 F.2d 1412 (*Hamilton*), defendant contends that laches and principles of fundamental fairness precluded the trial court from revoking defendant's probation on the basis of his 2006 federal conviction. We disagree, and further note that defendant forfeited this claim by failing to raise it in the trial court.

In *Hamilton*, "The district court had notice at least three years prior to the revocation hearing that Hamilton had not completed twenty-two days of his scheduled 120 day jail term." (708 F.2d at p. 1414.) Hamilton himself brought this to the court's attention through a "petition to reschedule the remaining portion of the sentence." (*Ibid.*) But "the district court took no action, either to rebuke the petitioner or to reschedule his term. The probation officer likewise took no action." (*Id.* at pp. 1414–1415.) The appellate court held, "In light of appellant's efforts to bring the matter to the court's attention, the petitioner's default with respect to the jail sentence can no longer be considered a valid basis for revoking his probation. Revocation of probation after unreasonable delay or under circumstances inherently misleading to the probationer is an abuse of discretion." (*Id.* at p. 1415.) The court further explained, "We do not hold that under appropriate circumstances a probation officer or district court may not wait to

assess the cumulative effect of several violations before initiating a revocation proceeding. [Citations.] We also do not suggest that revocation proceedings should be an automatic reaction to technical or minor violations simply to preserve the government's position. [Citations.] At some point, however, violations of which the district court has been apprised and upon which the probationer has sought corrective action become stale or are waived as a basis for revoking probation. [Citations.] Three years is beyond that point under the circumstances of this case." (*Id.* at p. 1415.)

The trial court's reliance in 2010 upon defendant's 2006 federal conviction is in no sense comparable to the situation in *Hamilton*. Nothing in the record indicates that defendant at any time brought, or attempted to bring, his federal conviction to the attention of the trial court or the probation department. As far as the record reveals, the conviction was discovered after defendant was arrested on April 22, 2010, on the bench warrant issued in 2005. The probation revocation hearing was conducted 20 days later on May 12, 2010. This was not an unreasonable delay. Accordingly, the 2006 conviction was not a "violation[] of which the [] court has been apprised and upon which the probationer has sought corrective action," and was neither "stale" nor "waived as a basis for revoking probation."

The other cases defendant cites in support of his argument are similarly distinguishable. For example, in *United States v. Tyler* (5th Cir. 1979) 605 F.2d 851, "the probation officer had known of all three of the charges alleged for at least a year and had known of one of them for over two years. He had unsuccessfully attempted to revoke Tyler's probation almost ten months after the last of the three charges had been committed but did not allege any of the misdemeanors in that earlier petition." (*Id.* at p. 853.) The appellate court concluded that revocation on the basis of the misdemeanors violated due process: "Absent some unusual circumstance or some deception by the probationer such a lengthy delay, coupled with the probation officer's obvious decision not to file these charges in the first petition, is fundamentally unfair." (*Ibid.*, fn. omitted.) Here, defendant's probation was summarily revoked in 2005, and there were no

intervening efforts to "perfect" the summary revocation until the May 12, 2010 hearing. The record cannot support an inference that the probation officer had decided not to rely upon the 2006 conviction as a basis for revocation of probation. We further note that the record in this case presents no basis for concluding that revocation in 2010 based upon defendant's 2006 conviction was fundamentally unfair. The 2005 summary revocation tolled the running of the probationary period, and nothing indicates defendant was misled by the passage of time or any other circumstance.

c. Abuse of discretion

Defendant contends that the trial court abused its discretion by revoking and reinstating his probation because "[t]here was no showing that [defendant's] entry into the country was for a criminal or other antisocial purpose and that it was not a pure geopolitical violation, undertaken out of perceived economic necessity or to be reunited with his family." He further argues that there was no showing that "the heavy sanctions that were imposed . . . by the United States government . . . needed to be supplemented by the revocation of probation." Defendant forfeited these claims by failing to assert them in the trial court.

Even if we were to consider these claims on their merits, we would reject them. Defendant's federal incarceration punished him for his violation of federal law, not his conviction of battery upon a custodial officer in this case. Revocation of defendant's probation was "a continuing consequence of the probationer's original conviction; any sanction imposed at the hearing follows from that crime," not additional punishment for his federal offense. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 348.)

A trial court does not abuse its discretion by revoking probation if the record shows the defendant violated a condition of his probation. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 968.) An appellate court will interfere with the trial court's exercise of discretion to deny or revoke probation only in "'"a very extreme case."'" (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) This is not such a case. The evidence before the court established that defendant incurred a new conviction following the grant of

probation in this case. The probation officer had no duty to investigate and report defendant's motivation for illegally entering the county. If defendant believed there were mitigating circumstances, he should have brought them to the attention of the court. If he believed that revocation did not serve the interests of justice, he should have so argued to the court. (*People v. Coleman* (1975) 13 Cal.3d 867, 873.) He failed to do either, and we will not engage in speculation regarding defendant's motivation.

Defendant further contends that the trial court abused its discretion by (1) revoking and reinstating his probation instead of adopting the probation officer's recommendation that defendant be placed on non-reporting probation and (2) adding conditions, purportedly over defendant's objection, requiring defendant to report to his probation officer within 48 hours after release from custody and notify his probation officer and the court of his address and telephone number outside of the United States within 72 hours if he was deported or left the country. With respect to the new conditions, defendant argues he would not be able to report to probation upon release from jail because he was facing imminent deportation and the trial court "had no information to indicate that [defendant] would have an address or phone when he was released into Mexico that he would be able to report to probation or to the court, or that he would be in a position or even be able to afford to do so."

The trial court was not required to adopt the probation officer's recommendation of non-reporting probation (*People v. Welch* (1993) 5 Cal.4th 228, 234 (*Welch*)), and we cannot conclude that the court's decision to retain defendant on reporting probation was an abuse of discretion.

Defendant's claims regarding the new probation conditions are based upon the facts and circumstances of his individual case. Objection in the trial court was required to preserve them for appeal (*In re Sheena K.* (2007) 40 Cal.4th 875, 885, 889; *Welch*, *supra*, 5 Cal.4th at pp. 235–237), but defendant did not object to the new conditions. In fact, he personally agreed to them. (In support of his claim that he objected to the conditions in the trial court, defendant cites a portion of the record in which defense

counsel requested non-reporting probation.) Were we to consider the issue on its merits, we would not find that the trial court abused its discretion. If defendant were taken into federal custody or deported upon release from jail, he would not have been able to report to the probation department physically within 48 hours, but the other challenged condition provided defendant with a means of notifying the court and probation department of his deportation and how to reach him in Mexico. Nothing before the court indicated he would be unable to comply with the second challenged condition. If defendant knew of particular circumstances that would render him incapable of complying with the condition, he should have informed the court of those reasons. Instead, he expressly agreed to the new condition.

d. Abandoned argument

Citing *People v. Tapia* (2001) 91 Cal.App.4th 738, defendant contends the trial court lacked jurisdiction to revoke his probation in 2010 for anything he did or failed to do after his probationary term would have expired (without tolling) in October of 2007. He expressly abandoned this argument as moot in his reply brief. In any event, his federal conviction occurred in 2006, which was well within his original, untolled term of probation.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.