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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. JEREMIAH JONES, Defendant and Appellant.	B266187 (Los Angeles County Super. Ct. No. TA128120)

APPEAL from a judgment of the Superior Court of Los Angeles County. Frank M. Tavelman, Judge. Affirmed.

Karen Hunter Bird, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

In case No. TA128120, appellant Jeremiah Jones pleaded no contest to carrying a concealed firearm in a vehicle (Pen. Code, § 25400, subd. (a)(1)).[1] He was placed on three years formal probation under the condition that he serve 270 days in county jail. On February 3, 2015, a probation officer filed a report representing that appellant had violated various conditions of his probation. Two days later, the trial court held a hearing at which it revoked appellant's probation and issued a bench warrant. A month later, at a bench warrant hearing, appellant was remanded into custody. The trial court ordered a second probation report and continued the matter to a subsequent date. On March 19, 2015, a second probation report was filed reiterating that appellant had violated conditions of his probation. On March 26, 2015, appellant appeared before the trial court and waived his right to a probation revocation hearing and admitted to violating probation. He was sentenced to two years in county jail, but execution of sentence was suspended and probation was reinstated with additional conditions.

On June 12, 2015, a probation report was filed indicating that appellant had again violated various conditions of his probation. That same date, the trial court held a joint probation violation hearing on case Nos. TA128120, 3AV01935[2] and 5AV00161.[3] The trial court revoked probation on all three cases. On case Nos. 3AV01935 and 5AV00161, appellant was sentenced to two consecutive sentences of 180 days in county jail. On case

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] This case involved, inter alia, a conviction for driving under the influence of alcohol. (Veh. Code, § 23152, subd. (a).)

[3] This case involved misdemeanor battery against a spouse or cohabitant. (§ 243, subd. (e)(1)).

No. TA128120, the juvenile court imposed the previously suspended two-year county jail sentence.

Appellant now appeals the probation revocation determination in case No. TA128120. He contends that at the June 12, 2015, hearing there was insufficient evidence of new probation violations postdating the March 26, 2015, hearing and therefore the June 12, 2015, probation violation findings and imposition of sentence in case No. TA128120 should be reversed. Appellant contends that the trial court improperly relied on probation reports that contained factual inaccuracies, and which confused facts arising in other criminal cases against him.

Upon review, we find no error and affirm.

FACTS

Case No. MM074717A

In 2012, in Kern County, appellant was charged with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)). When he failed to appear at a hearing, the complaint was amended to allege willful failure of a misdemeanant to appear in court (§ 1320, subd. (a)). Years later, on April 26, 2015, he was arrested in Kern County on a bench warrant. On April 29, 2015, he pleaded no contest to driving under the influence, and the failure to appear count was dismissed. He was placed on probation for three years and ordered to pay various fines. Per the terms of his probation, he was not to operate a motor vehicle with any measurable amount of alcohol in his blood.

Case No. 3AV01935

In March 2013, appellant was charged with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), resisting a peace officer (§ 148,

subd. (a)(1)), [4] giving false information to a peace officer (Veh. Code, § 31), driving when the privilege to drive was revoked or suspended for driving under the influence (Veh. Code, § 14601.2, subd. (a)), five counts of driving on a suspended or revoked license (Veh. Code, § 14601.1, subd. (a)), and for qualifying as a habitual traffic offender (Veh. Code, § 14601.3, subd. (a)). Subsequently, on June 17, 2013, appellant pleaded no contest to driving under the influence and resisting a peace officer. All other counts were dismissed. On the first count, imposition of sentence was suspended, and he was placed on a three-year summary probation. He was ordered, inter alia, to enroll in and complete a three-month first-offender alcohol and drug education and counseling program, and to install an ignition interlock device in his car. On the second count, he was ordered to serve 60 days in county jail.

Over the course of the next several years, appellant failed to complete a three-month alcohol and drug education and counseling program. His probation was revoked and reinstated multiple times. He was ordered to appear on June 12, 2015, for a joint probation violation hearing with other cases.

Case No. 5AV00161

On January 29, 2015, appellant was charged with misdemeanor battery against a spouse or cohabitant (§ 243, subd. (e)(1)). He pleaded no contest. Imposition of sentence was suspended, and he was placed on probation for

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[4] Section 148, subdivision (a)(1) provides: "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician. . . , in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

three years. He was required to enroll in a 52-week domestic violence treatment program and obey all laws and orders of the trial court. The trial court set a joint probation violation hearing with other cases for June 12, 2015.

Case No. TA128120 (The Case at Issue on Appeal)

The Complaint

A felony complaint was filed on May 7, 2013. Appellant was charged with carrying a concealed firearm in a vehicle (§ 25400, subd. (a)(1)), carrying a loaded, unregistered handgun (§ 25850, subd. (a)), and driving on a suspended or revoked license (Veh. Code, § 14601.5, subd. (a)).

No Contest Plea; Probation

The trial court held a hearing on June 18, 2013, and appellant entered a plea of no contest on the carrying a concealed firearm count. All other counts were dismissed pursuant to a plea deal. He was granted formal probation under, inter alia, the following terms: (1) once released after serving time in county jail, report to a probation officer within 48 hours; (2) keep the probation department advised of current residence; (3) obey all laws, orders, rules and regulations of the probation department and the trial court; (4) seek and maintain training, schooling or employment as directed by the probation officer; and (5) maintain residence as approved by the probation officer. The trial court imposed a $280 restitution fine, a $40 court security fee and a $30 court facilities assessment. Also, it imposed a $280 probation revocation restitution fine effective upon the revocation of probation.

The probation officer's preconviction report contained a list of requirements upon the grant of probation. They included a requirement that appellant pay a restitution fine, a probation restitution fine, a parole

revocation restitution fine, a court security fee and a criminal conviction/facilities assessment.

The February 3, 2015 Probation Report

The February 3, 2015, a probation report indicated that appellant had convictions for driving on a suspended or revoked license (Veh. Code, § 14601.1, subd. (a)) and a conviction for resisting a peace officer (§ 148, subd. (a)(1)), and that he had been placed on summary probation for these convictions.

Appellant violated these probation conditions: (1) maintain residence as approved by the probation officer; (2) seek and maintain training, schooling or employment as directed by the probation officer; (3) obey all rules and regulations of the probation department; and (4) pay fines and restitution.

The March 4, 2015 Hearing

Appellant either surrendered or was picked up on a bench warrant. At the March 4, 2015, hearing the trial court remanded appellant into custody.

The March 19, 2015 Probation Report

On March 19, 2015, the probation officer submitted a supplemental report stating that appellant last reported to probation on January 15, 2015; he had not paid his fines and assessments; and he had not obeyed all laws and orders of the trial court and all rules and regulations of the probation department.

The March 26, 2015 Hearing

At the March 26, 2015, hearing, the trial court found appellant in violation of probation but then reinstated probation. The trial court imposed the following additional probation terms:

1. Enroll within 30 days and successfully complete a 52-week domestic violence treatment program approved by the probation department. Attend all counseling sessions, keep all program appointments, and pay all program fees in accordance with appellant's ability to pay.

2. Report to probation officer within 48 hours of release.

The June 12, 2015 Probation Report

According to the June 12, 2015 probation report:

1. Appellant failed to obey all laws and orders of the trial court because he was arrested on May 22, 2014, by Lancaster police for resisting arrest pursuant to section 148, subdivision (a)(1), and he was arrested in Kern County on April 26, 2015, in case No. MM074717A.

2. Appellant failed to submit any proof or documentation that he was employed or enrolled in an educational or training program approved by his probation officer.

3. Appellant failed to obey rules and regulations of the probation department because: (a) though appellant is required to report to his probation officer once a month, he reported on April 21, 2015 (which he claimed was two days after his release from custody), but he did not report again as of May 15, 2015; (b) he did not report his April 26, 2015, arrest to his probation officer as required; and (c) appellant was arrested in Kern County, but he did not have permission from the probation department to be outside Los Angeles County.

4. As of May 29, 2015, appellant had not submitted any proof or documentation establishing that he was enrolled in, or was attempting to enroll in, a domestic violence program.

5. Appellant had not paid any part of his $1,686 in fines.

The June 12, 2015 Joint Probation Violation Hearings

On June 12, 2015, the trial court held joint probation violation hearings for case Nos. TA128120, 3AV01935 and 5AV00161. The prosecution called Los Angeles County Deputy Sheriff Michael Deschamps as the lone witness.

Deputy Deschamps testified that on February 27, 2015, at 6:15 p.m., he was working in Palmdale with another deputy. They pulled appellant over due to a malfunctioning taillight. After he said he consumed a couple shots of Cognac, he was given several field sobriety tests and performed poorly. Deputy Deschamps administered a preliminary alcohol screening test. The alcohol concentration in appellant's first test was .03 percent, and .065 percent for the second test. He was arrested.

Because appellant was on probation for a driving under the influence conviction, he was supposed to have an ignition interlock device. He did not have one.

Appellant was taken to the police station, and was given a breath test. The first test showed appellant's blood concentration level to be .04 percent, and the second showed .05 percent.[5]

After hearing argument, the trial court stated: "I've read and considered the probation report dated June 12, 2015. What's apparent to me, it's a couple things. The court is challenged by the situation because it's obvious [appellant] is not a bad person, but he has some problems, and the problem is alcohol addiction. And at some point we have to balance the

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[5] Appellant contends that at the March 26, 2015, hearing the trial court was aware of the February 27, 2015, arrest by Deputy Deschamps. However, we see no reference to the February 27, 2015, arrest, in the probation reports, and we were not provided with a reporter's transcript for the March 26, 2015, hearing. Thus, what the trial court knew at that hearing is not something we can verify.

ability to rehabilitate someone through probation versus issues of public safety.

"And in reviewing the files that the court had had, the court has seen consistent repeated violation of the terms of probation. Bench warrants have been issued a number of times. There's been failure to comply with the alcohol programs on some of the cases. He picked up a felony case. He violated with the domestic battery matter. He was given another opportunity under an E.S.S. sentence. During that period of time, between court dates he picked up a new D.U.I. in Kern county for which . . . [he entered a plea of] no contest[.]

"So as such, the court is going to find him in violation of his probation for the following reasons: One is the number of internal violations. Based upon the reports, the no contest plea in [case No.] MM074717 in Kern County for [driving under the influence] and in this case, I find the deputy's testimony to be credible. And it's obvious one of the conditions of probation was driving with no measureable amount of alcohol in his system. He was driving with a measurable amount of alcohol in his system.[6] He was further putting society at risk by driving a vehicle by failing to install the [ignition interlock device] which is also maintained by probation as well.

"So as such, the court is going to find him in violation on all of the cases.

"Starting first with [case No.] TA128120, E.S.S. sentence was previously imposed by Judge Conley. I'm not able—I'm going to honor that sentence. I'm not sure if I'm not able to deviate from that or not. I know if I don't find him in violation or don't want to terminate probation, I have that

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6 Presumably, the trial court was referring to the February 27, 2015, arrest referred to by Deputy Deschamps in his testimony.

discretion; however, I'm terminating probation. So he's sentenced to" serve time in county jail.

The trial court then stated: "On case [No.] 5AV00161, the court finds he is in violation of probation. [The] court will sentence him to 180 days in county jail consecutive to any other time. Probation will terminate upon completion of the jail time and [the] probation revocation fine previously imposed and stayed is imposed due to the violation on [case No.] 3AV01935. The court finds [appellant] in violation as to count 1, the driving under the influence. The court will sentence him to 180 days in the county jail consecutive to any other time.

"As to count 2, additional consecutive 180 days in the county jail for a total of 360 days in the county jail."

Per minute order, appellant's probation in case No. TA128120 was revoked for the reasons stated in the June 12, 2015 probation report. The trial court imposed appellant's two-year county jail sentence.

This appeal followed.

DISCUSSION

Appellant argues that there was insufficient evidence of a new probation violation occurring after the March 26, 2015, hearing and that we must reverse the order imposing sentence. This argument fails. There was ample evidence of new probation violations postdating the March 26, 2015 hearing.

I. Relevant Law; Standard of Review.

"Section 1203.2, subdivision (a), authorizes a court to revoke probation if the interests of justice so require and the court, in its judgment, has reason to believe that the person has violated any of the conditions of his or her probation. [Citation.] '"When the evidence shows that a defendant has not

complied with the terms of probation, the order of probation may be revoked at any time during the probationary period. [Citations.]" [Citation.]' [Citation.] The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. [Citations.]" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772 (*Urke*).)

A hearsay probation report is properly admitted at a probation violation hearing to prove routine matters when the hearsay does not have to be weighed against contradictory evidence, and when the routine matters pertain to things a probation officer is not likely to personally recollect without consulting his or her own report. (*People v. Gomez* (2010) 181 Cal.App.4th 1028, 1039.)

"We review a probation revocation decision pursuant to the substantial evidence standard of review [citation], and great deference is accorded the trial court's decision, bearing in mind that '[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. [Citations.]' [Citation.] [¶] 'The discretion of the court to revoke probation is analogous to its power to grant the probation, and the court's discretion will not be disturbed in the absence of a showing of abusive or arbitrary action. [Citations.]' [Citation.] 'Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense. [Citation.]' [Citation.] "'[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .'" [Citation.] And the burden of demonstrating an abuse of the trial court's discretion rests squarely on the defendant. [Citation.]" (*Urke*, *supra*, 197 Cal.App.4th at p. 773.)

"When engaging in substantial evidence review, our power is circumscribed as follows: we must determine whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the judgment." (*Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 506.) Substantial evidence is evidence that is reasonable, credible and of solid value. (*Id.* at p. 507.)

II. Probation Revocation Supported by Substantial Evidence.

The trial court orally stated that it found appellant in violation due to internal violations, a no contest plea in case No. MM074717, and the testimony of Deputy Deschamps establishing that appellant was driving with alcohol in his system and had no ignition interlock device. The minute order stated that probation was revoked for all the reasons stated in the June 12, 2015 probation report.

Appellant attacks multiple grounds for the probation revocation, yet he leaves at least three grounds unexamined, which is fatal to his appeal.

The June 12, 2015, probation report recommended revocation, in part, based on appellant being arrested in Kern County on a bench warrant on April 26, 2015, at a time when he did not have the probation department's permission to leave Los Angeles County. Another basis was that appellant did not report his arrest. Yet another basis was the appellant had not paid any of the fines imposed upon him. In his appellate briefs, appellant does not explain why these facts do not amount to substantial evidence of probation violations supporting revocation. Arguments not made are deemed waived. (*Tan v. California Fed. Sav. & Loan Assn.* (1983) 140 Cal.App.3d 800, 811.) Moreover, it "is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) "'A judgment or order of the lower court is *presumed correct*. All

intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Based on the foregoing, there is no basis to reverse.

We note that appellant argues that he did not have sufficient time to enroll in a domestic violence program prior to May 29, 2015. The record indicates that on March 26, 2015, he was given 30 days to enroll. He later told the probation department on April 21, 2015, that he had been released from custody two days earlier. The record does not disclose appellant's exact dates of incarceration. In any event, we conclude that appellant had sufficient time to enroll between April 21, 2015, and May 29, 2015, and his failure constituted a probation violation.

All other issues are moot.[7]

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[7] Appellant filed a petition for writ of habeas corpus, case No. B271155. Though the petition has been considered concurrently with this appeal, a separate order ruling on the petition will be filed in that matter.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT