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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.

SERVIANO OROZCO,

Defendant and Appellant.

B292926

(Los Angeles County
Super. Ct. No. BA455549)

APPEAL from an order of the Superior Court of Los Angeles County. Craig Richman, Judge. Reversed.

Adrian K. Panton under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven E. Mercer and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

The trial court summarily revoked a criminal defendant's probation for "never report[ing]" to the Probation Department, even though it was undisputed that the *reason* the defendant never reported was because he was involuntarily deported. This was error, so we reverse.

FACTS AND PROCEDURAL BACKGROUND

On April 10, 2017, Serviano Orozco (defendant) pled guilty to a felony count of transporting methamphetamine (Health & Safety Code, § 11379). The trial court placed him on three years of formal probation, which included 180 days in the county jail. As conditions of probation, the court ordered defendant to "report to the [Probation Office] . . . within 48 hours of [his] release[] from custody" "to get a probation officer" and, thereafter, to "keep [the] [P]robation [Office] advised of [his] home, work address, and telephone numbers at all times."

Upon his release from the county jail on May 4, 2017, defendant was deported to Mexico. As a consequence, defendant "never reported" to the Probation Office.

More than 15 months later, in August 2018, the Probation Office asked the trial court to summarily revoke defendant's probation because he "ha[d] never reported" and had not paid the outstanding fine of \$4,050.00.¹

At an August 24, 2018 hearing, the trial court noted that the Probation Office had "indicat[ed] that [defendant] ha[d] never reported," acknowledged that it was "well aware that deportation is not a willful violation of probation," but nonetheless "revok[ed] probation at this point in time and issu[ed] a no-bail

¹ The fines originally imposed against defendant came only to \$420, so we surmise the remaining \$3,630 are the costs of probation.

. . . warrant.” When defendant’s attorney objected, the court recited that his “objection [was] noted for the record.”

Defendant filed this timely appeal.

DISCUSSION

Defendant argues that the trial court erred in summarily revoking his probation. We review this claim for an abuse of discretion. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981-982 (*Galvan*).)

The trial court abused its discretion in summarily revoking defendant’s probation for failing to report when that failure was due to his involuntary deportation. A court may “summarily revoke a defendant’s probation “if the interests of justice so require and the court has reason to believe . . .” that grounds for revocation exist.” (*People v. Leiva* (2013) 56 Cal.4th 498, 504-505, quoting Pen. Code, § 1203.2, subd. (a).) However, “[a] . . . probation violation must be *willful* to justify revocation . . .” (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 382, overruled on another point as stated in *People v. DeLeon* (2017) 3 Cal.5th 640, 646; *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186; see also *People v. Hall* (2017) 2 Cal.5th 494, 498 [“Revocation of probation typically requires proof that the probation violation was willful.”].) Where, as here, a defendant is involuntarily deported, his subsequent failure to report to the Probation Office is not willful and hence cannot provide the basis for revoking his probation. (*Galvan, supra*, 155 Cal.App.4th at pp. 983-984; *People v. Cervantes* (2009) 175 Cal.App.4th 291, 295-297 (*Cervantes*); see also *People v. Maya* (2019) 33 Cal.App.5th 266, 271 [so noting].) Revoking probation in this situation is an abuse of discretion necessitating reversal. (*Cervantes*, at p. 295.)

The People resist this conclusion. The People cite language from *People v. Campos* (1988) 198 Cal.App.3d 917 stating that “[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.” (*Id.* at 923.) This language is impossible to square with the above cited precedent requiring that violations of probation be *willful*, precedent our Supreme Court recently cited with approval in *Hall*. The People alternatively urge that, even if defendant’s deportation prevented him from reporting to the Probation Office, we should still affirm the trial court’s order summarily revoking defendant’s probation because defendant willfully failed to comply with other conditions of probation unaffected by his deportation to Mexico—namely, his failure to “keep probation advised of [his] home, work address, and telephone number at all times” and his failure to pay his fines. This argument ignores that the Probation Office did not allege defendant’s failure to provide current contact information as a basis for revocation (see *People v. Bauer* (2012) 212 Cal.App.4th 150, 156, fn. 2 [due process demands that proper notice be given of grounds for probation violations]), ignores that it would have been nigh impossible to provide that information absent the initial assignment to a particular probation officer (and his deportation prevented that assignment), and ignores that there was also no evidence that defendant’s failure to pay the fines was willful.

DISPOSITION

The order is reversed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ