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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.

KALEAB HAILE,

Defendant and Appellant.

B230902

(Los Angeles County
Super. Ct. No. LA052153)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Karen Joyce Nudell, Judge. Affirmed.

Mark Yanis, 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, Assistant Attorney General, Colleen M. Tiedmann and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Kaleab Haile (Haile) appeals from a judgment following a felony conviction. He contends that the trial court abused its discretion when it revoked his probation for failure to pay restitution. We find no error and affirm.

FACTS

Haile was charged with theft from an elder or dependent adult by a caretaker in violation of Penal Code section 368, subdivision (e) and with four counts of forgery in violation of section 470, subdivision (a). He pleaded no contest to the theft offense and was convicted. His sentence was suspended and he was placed on formal probation for five years on the condition that he serve 120 days in county jail. The trial court ordered him to obey all laws, orders, rules and regulations of the trial court and probation department. He paid \$10,000 in victim restitution. At a subsequent hearing, he was ordered to pay an additional \$93,578. The forgery counts were dismissed pursuant to a plea agreement.

Four years later, the trial court held a probation violation hearing. Haile's probation officer, Andrew Chao (Chao), testified that Haile was supposed to make monthly restitution payments. In February 2010, he told the probation department that he had been unemployed for a long time and was having financial difficulties. He was referred to a financial evaluator. The financial evaluator reduced Haile's payments to \$50. He was instructed to meet with the financial evaluator again but missed appointments on April 7, 2010, June 23, 2010, and August 13, 2010. Chao filed a probation violation. Haile finally met with the financial evaluator on November 15, 2010, and was told to start paying \$25 a month. Haile paid nothing. In all of 2010, Haile paid only \$150. And since he was convicted, he had only paid \$1,440 through the probation department. The current balance of victim restitution was \$82,138. With fines and fees, the figure was \$95,268.80

According to Chao, he tried to contact Haile about the missed payments but his phone was disconnected. Haile did not update his information at the kiosk where he reported on a monthly basis. As a result, he failed his responsibility to ensure that the probation department could contact him. The financial evaluator, Pamela Cheng

(Cheng), also testified. She tried to contact Haile when he missed his appointments but the number he provided to the probation department was no longer in service by June 23, 2010.

At the close of evidence, the prosecutor argued that Haile was in violation of his probation because he did not make the required restitution payments, update his phone number or keep his appointments with Cheng. Defense counsel argued: “Basically this is an administrative mistake on his part. The probation department through the financial evaluator had ordered him to pay \$50 a month. There’s an indication that he was not financially capable of paying more than that. [¶] It would be preferable to have him out of custody to at least attempt to earn and pay back this sum rather than shuttle him off to state prison.”

The trial court stated: “Well, that’s what I thought originally, and that’s why I gave him a chance on probation. He’s just basically [flouted] the chance, could care less. [¶] Here is somebody who [takes] advantage of an elderly person, refinancing her home three times and stealing all of her money, writing forged checks . . . for almost a hundred thousand dollars. . . . [¶] It’s outrageous. I’ve asked [Haile] where is the money, and [he] has never been able to tell me where the money is. I don’t know if he’s hiding it, I don’t know if he used it, but what I do know is he destroyed somebody. He just destroyed somebody. And this court thought it would be in everybody’s interest to give him an opportunity on probation, and then he just thumbed his nose at the court and everybody else and barely paid anything back to this poor victim, this elderly person. [¶] He’s not going to do anything, he’s shown his stripes, and the court finds him to be in violation of probation. Probation is revoked.”

Haile was sentenced to three years in state prison.

This timely appeal followed.

DISCUSSION

A trial 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. . . . However, probation shall not be revoked for failure of a person to make restitution . . . unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay.” (Pen. Code, § 1203.2, subd. (a).)

We review the revocation of probation for an abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) According to Haile, the trial court abused its discretion because there was no evidence that he had the ability to pay restitution and his failure to pay was willful. He is correct that the evidence did not support revocation of probation based on his failure to make restitution payments. But there was no abuse of discretion. We “review the trial court’s ruling and not its reasoning. [Citations.]” (*People v. Mason* (1991) 52 Cal.3d 909, 944.) A ruling that is correct ““will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.” [Citation.]” (*D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) The ruling was supported by evidence that Haile failed to keep three appointments with Cheng and update the phone number that he had provided to the probation department.

Before revoking probation, a trial court must find that a violation was willful. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) Here, there is evidence of willful violations. Chao testified: “[Haile] failed to show up April 7th, June 23rd, August 13th [for appointments with Cheng]. These are the three appointments we instructed him to report to.” Thus, Haile did not obey an order of the probation department and violated a term of probation. Moreover, Chao and Cheng testified that when they called Haile’s phone, it was out of service. According to Chao, a person on “active felony probation” has the “responsibility for [the probation department] to be able to get in touch with them at all times.” This testimony gives rise to the inference that Haile willfully violated an order or regulation of the probation department to provide a current phone number. Though these violations are technical, they are sufficient to support the revocation of probation. (*People v. Dixon* (2003) 113 Cal.App.4th 146, 152

[probation revoked because the defendant did not report by mail to his probation officer].)

DISPOSITION

The judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ